

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

UMBRA LLC,

Plaintiff,

v.

THE CORPORATIONS, INDIVIDUALS,  
PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE "A,"

Defendants.

**COMPLAINT**

Civil Action No. \_\_\_\_\_

**COMPLAINT**

1. Plaintiff, Umbra LLC, ("plaintiff"), by and through its counsel, Rupp Pfalzgraf LLC, hereby alleges the following against defendants, the corporations, individuals, partnerships, and unincorporated associations identified on Schedule "A" attached hereto.

**INTRODUCTION**

2. This is a civil action to enforce and protect and enforce plaintiff's rights pursuant to the Patent Act, 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. § 271.

3. United States Design Patent No. D1,009,511 (hereinafter referred to as "the '511 patent") issued on January 2, 2024, is enjoying a fifteen (15) year term, and is in full force and effect.

4. Without plaintiff's authorization or license, defendants have been and are continuing to willfully, intentionally and deliberately make, use, sell and/or offer infringing goods for sale within this district through an internet-based e-commerce store at Amazon.com and fully interactive commercial internet websites operating under the seller identification names set forth in Schedule "A" (the "Seller IDs") attached hereto as **Exhibit A**.

5. As a result, plaintiff is suffering continuous damages at the hands of the defendants, who unlawfully reproduce goods utilizing plaintiff's patent to sell for substantial profits.

6. Plaintiff has expended significant resources in connection with its patent enforcement efforts, including legal and investigative fees to combat the harm caused by defendants' infringement actions. Plaintiff now seeks injunctive relief and damages from defendants for patent infringement arising under 28 U.S.C. § 1651(a) and the patent laws of the United States, 35 U.S.C. § 101 et seq., including 35 U.S.C. §§ 271, 281, 283, 284 and 289.

### **PARTIES**

7. Plaintiff is the assignee and owner of the '511 patent.

8. Upon information and belief, defendants are corporations, individuals, partnerships and/or business entities of unknown makeup, who either reside and/or operate in foreign jurisdictions. Upon information and belief, defendants target their business activities toward consumers throughout the United States, including New York and this district using the operation of internet-based e-commerce stores, such as Amazon.com, via internet marketplace websites using their seller IDs and additional seller identification aliases and domain names not yet known to plaintiff.

9. Upon information and belief, defendants produce and/or distribute products from foreign jurisdictions and ship their goods to fulfillment centers within the United States to redistribute their products from those locations to American consumers.

10. Defendants have the capacity to be sued pursuant to Rule 17(b) of the Federal Rules of Civil Procedure.

11. Upon information and belief, defendants will continue to register or acquire new seller identification aliases and domain names for the purpose of selling goods and offering goods for sale that infringe the '511 patent unless preliminarily and permanently enjoined.

12. Plaintiff has and will continue to suffer damages as a result of defendants' patent infringement unless injunctive and monetary relief is awarded by this Honorable Court.

### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this case pursuant to the Federal Patent Act, 35 U.S.C. § 101 *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

14. Defendants are subject to personal jurisdiction in this district because defendants purposefully direct their sales of infringing goods to New York residents by operating stores through online platforms that offer shipping within the United States, including in this district. Defendants continue to infringe plaintiff's patent in this district by making, using, selling, importing, and/or offering goods for sale that infringe the '511 patent through such internet-based e-commerce stores and fully interactive commercial Internet websites.

15. Venue is proper in this district pursuant 28 U.S.C. § 1391 and 28 U.S.C. § 1400, since defendants are, upon information and belief, aliens engaged in making, using, selling, importing, and/or offering goods for sale in this district that infringe on plaintiff's patent.

### **GENERAL ALLEGATIONS**

16. Plaintiff has filed this lawsuit against defendants to enjoin online patent infringers who trade upon plaintiff's patented invention by making, using, selling, importing and/or offering goods for sale that infringe the '511 patent.

17. Plaintiff's '511 patent is valid and in full force and effect.

18. Plaintiff is the owner of all right, title, and interest in its patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement, as evidenced by an assignment of assignor's interest, executed on November 25, 2019, and recorded on November 27, 2019 at Reel 051130, Frame 0539. A copy of plaintiff's '511 patent is attached hereto as **Exhibit B**.

19. Plaintiff has not granted a license to defendants to make, use, offer for sale, sell and/or import goods under its '511 patent.

20. Upon information and belief, defendants have been and are continuing to willfully and knowingly infringe plaintiff's '511 patent.

21. Upon information and belief, defendants are making, using, selling, importing and/or offering goods for sale that infringe plaintiff's '511 patent in the United States.

22. Specifically, upon information and belief, without any authorization, defendants are making, using, selling, importing, and/or offering goods for sale that an "ordinary observer" would find to be substantially similar to plaintiff's claimed design in the '511 patent, such that the ordinary observer would be deceived into purchasing the accused design believing it to be the claimed design.

23. Upon information and belief, defendants are engaging in the above-described illegal infringing activities knowingly, deliberately, and intentionally.

24. If defendants' willful and intentional infringing activities are not preliminarily and permanently enjoined by this Court, plaintiff and the consuming public will continue to be harmed.

25. Upon information and belief, defendants' payment and financial accounts are being used by defendants to accept, receive, and deposit profits from defendants' infringing activities connected to its Seller IDs and any other alias seller identification names being used and/or controlled by them.

26. Upon information and belief, defendants continuously create new websites and online marketplace accounts using the Seller IDs listed in Schedule "A" attached hereto as Exhibit A, as well as other unknown fictitious names and addresses.

27. Further, upon information and belief, defendants are likely to transfer or conceal their assets to avoid payment of any monetary judgment awarded to plaintiff in order to avoid being detected and shut down. As a result, plaintiff has no adequate remedy at law and is suffering irreparable harm, injury and substantial damages directly and proximately caused by defendants' infringement of plaintiff's '511 patent.

28. Defendants must be enjoined from continuing to make, use, sell, import and/or offer for sale products that directly infringe plaintiff's '511 patent.

**CLAIM**

**INFRINGEMENT OF UNITED STATES  
PATENT PURSUANT 35 U.S.C. § 271**

29. Plaintiff reincorporates and realleges paragraphs 1 through 28 of this complaint as if fully set forth herein.

30. Plaintiff is the owner of all rights, titles, and interests in and to the designs covered by the '511 patent, and thus, plaintiff is entitled to receive all damages and benefits of any and all remedies for defendants' infringements.

31. Without plaintiff's permission or authorization, defendants have infringed the '511 patent by importing, manufacturing, offering for sale, and/or selling a substantial portion of the components protected in plaintiff's patent.

32. Defendants manufactured, supplied, and assembled infringing goods that contain one or more elements claimed in the '511 patent.

33. As a result, defendants are directly liable for infringing the '511 patent under the Patent Act, 35 U.S.C. § 271.

34. Defendants' unlawful actions have caused and are continuing to cause unquantifiable and irreparable harm and damage to plaintiff in an effort to reap the benefits of

plaintiff's patented invention through unjust enrichment at plaintiff's expense.

35. As a direct and proximate result of defendants' continuous infringement of the '511 patent, plaintiff is entitled to injunctive relief as well as monetary damages as provided by the Patent Act, including defendants' profits pursuant to 35 U.S.C. §§ 284 and 289. Plaintiff is further entitled to its attorney's fees pursuant to 35 U.S.C. § 285.

36. Defendants' conduct has caused and will continue to cause plaintiff to incur substantial damages, including irreparable harm, for which plaintiff has no adequate remedy at law, unless and until defendant is enjoined and restrained from infringing the plaintiff's patent. Plaintiff urges this Court to grant plaintiff injunctive relief, as set forth below, because of the continuing infringements of the '511 patent and because of the significant threat of future infringement as evidenced herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands judgment, an award of equitable relief and monetary relief against defendants as follows:

A. Entry of temporary, preliminary, and permanent injunctions pursuant to 35 U.S.C. § 284, and Federal Rule of Civil Procedure 65; enjoining and restraining defendants, their affiliates, officers, agents, representatives, servants, employees, and all persons acting in concert or participation therewith, from infringing plaintiff's '511 patent in manufacturing or causing to be manufactured, selling, importing, and/or offering for sale products that infringe plaintiff's '511 patent.

B. Entry of an order pursuant to 28 U.S.C. § 1651(a), The All Writs Act, and the Court's inherent authority, that upon plaintiff's request, the applicable governing internet marketplace website operators and/or administrators for the seller IDs who are provided with notice of an injunction issued by the Court disable and/or cease facilitating access to the seller IDs, associated ecommerce stores and websites, and any other alias seller identification names being used and/or controlled by defendants to engage in the business of offering to sell, and/or selling goods that infringe plaintiff's '511 patent. The internet marketplace platforms include but are not limited to Amazon.com.

C. Entry of an Order pursuant to 28 U.S.C. § 1651(a), and the Court's inherent authority, that upon plaintiff's request, any internet marketplace website operators and/or administrators for the seller IDs who are provided with notice of an injunction issued by the Court, identify any name, address and e-mail address known to be associated with defendants' respective seller IDs.

D. Entry of an order pursuant to 28 U.S.C. § 1651(a), and the Court's inherent authority that, upon plaintiff's request, any internet marketplace website operators and/or administrators who are provided with notice of an injunction issued by the Court permanently remove any and all listings and associated images of goods bearing infringements of plaintiff's '511 patent via the e-commerce stores operating under the seller IDs, and upon plaintiff's request, any other listings and images of goods that infringe the '511 patent associated with and/or linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by defendants to promote, offer for sale and/or sell goods that infringe the '511 patent.

E. Entry of an order that, upon plaintiff's request, defendants and any financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, and their related companies and affiliates, identify and restrain all funds, up to and including the total amount of judgment, in all financial accounts and/or sub-accounts used in connection with the seller IDs or other alias seller identification or e-commerce store names, domain names and/or websites used by defendants presently or in the future, as well as any other related accounts of the same customer(s) and any other accounts which transfer funds into the same financial institution account(s), to be surrendered to plaintiff in partial satisfaction of the monetary judgment entered herein.

F. Entry of a judgment and award that defendants account for and pay to plaintiff damages adequate to compensate for defendants' infringement of the '511 patent, including lost profits but in no event less than a reasonable royalty.

G. Entry of a judgement and award of defendants' total profits in an amount subject to proof at trial, pursuant to 35 U.S.C. § 289.

H. Entry of an Order finding that defendants' infringement was willful and an award of increased damages for willful infringement, pursuant to 35 U.S.C § 284.

I. Entry of an Order finding this case is exceptional under 35 U.S.C. § 285 and awarding plaintiff its costs, expenses and disbursements incurred in this action, including

reasonable attorney's fees as available by law to be paid by defendants.

J. Entry of an award of prejudgment interest on the judgment amount.

K. Entry of an Order for such other and further relief as the Court may deem just and proper.

Respectfully submitted on this 20th day of March, 2024.

**RUPP PFALZGRAF LLC**  
*Attorneys for Plaintiff*

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