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11 Company LLC

12  
13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF ARIZONA**  
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16 Cozy Comfort Company LLC,

17 Plaintiff,

18 v.

19 ABC Company dba Blanket Hoodies,

20 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT, TRADE DRESS  
INFRINGEMENT AND UNFAIR  
COMPETITION**

Demand for Jury Trial

21 Plaintiff Cozy Comfort Company LLC (“Cozy Comfort” or “Plaintiff”), by and  
22 through its attorneys, for its Complaint against defendant ABC Company dba Blanket  
23 Hoodies (“Blanket Hoodies” or “Defendant”) alleges as follows:  
24

25 **INTRODUCTION**

26 1. This action arises from Defendant’s willful and deliberate copying of  
27 Plaintiff’s patented product design for a hooded wearable blanket and Defendant’s  
28 subsequent importation and distribution of this infringing product(s) within the United

1 States. Defendant’s direct imitation of Plaintiff’s product seeks to cash in on the  
2 designs, technology and global market created by Plaintiff in hooded wearable  
3 blankets. However, the marketing, importation, and sale of such product(s) within  
4 the United States infringes upon the intellectual property rights of Plaintiff. This  
5 illegal practice will continue unless, and until, the Court puts an end to it.

6 2. By this action Plaintiff seeks permanent injunctive relief, money  
7 damages, exemplary damages and attorneys’ fees arising from Defendant’s: (i) patent  
8 infringement under the Patent Act, 35 U.S.C. § 271; (ii) federal trade dress  
9 infringement and unfair competition under the Lanham Act; (iii) common law trade  
10 dress infringement and unfair competition under Arizona law; and (iv) unjust  
11 enrichment.

12 **PARTIES**

13 3. Plaintiff is a limited liability company formed under the laws of Arizona  
14 with a principal place of business located in Phoenix, Arizona.

15 4. Plaintiff is the owner of intellectual property in relation to its flagship  
16 product, a hooded wearable blanket known as “THE COMFY”, as well as other  
17 related and associated designs, products, and services.

18 5. Upon information and belief, Defendant ABC Company dba Blanket  
19 Hoodies is a company with a principal place of business in Corona, California. ABC  
20 company is a person(s), partnership(s), corporation(s) or unincorporated  
21 association(s)/associate(s) doing business as Blanket Hoodies at its website,  
22 theblankethoodies.com, and is liable for the infringing acts complained of herein  
23 whose proper corporate name is unknown to Plaintiff and who is, therefore,  
24 designated by a fictitious name. Plaintiff will ask leave of the Court to substitute the  
25 true name of said party when it is ascertained and prior to the entry of judgment herein.

26 **JURISDICTION AND VENUE**

27 6. This is an action for infringement against Defendant brought under the  
28 Patent Act, 35 U.S.C. § 271 based upon Defendant’s unauthorized commercial

1 manufacture, use, importation, offer for sale and sale of wearable blankets which  
2 infringes upon United States (“U.S.”) Patent Numbers D859,788 and D969,458.  
3 Plaintiff also alleges infringement of trade dress protections afforded under the  
4 Lanham Act, 15 U.S.C. §1051, *et seq.* and Unfair Competition under federal and  
5 common law and afforded by the laws of the State of Arizona.

6 7. This Court holds original jurisdiction over the subject matter of this  
7 action pursuant to 28 U.S.C. §1331 (federal question jurisdiction); 28 U.S.C.  
8 §1338(b) (state claim of unfair competition joined with substantial and related federal  
9 claim under trademark laws); 28 U.S.C. § 1367 (supplemental jurisdiction); and the  
10 doctrines of ancillary and pendent jurisdiction.

11 8. This court has personal jurisdiction over Defendant because Defendant  
12 conducts business throughout the United States, including within the state of Arizona,  
13 and has committed in this District the acts of patent and trade dress infringement, and  
14 federal and state unfair competition, which give rise to this action.

15 9. Venue is proper in this District as Defendant has advertised and derived  
16 revenue from sales of products to citizens within this District and has engaged in  
17 systematic and continuous business contacts within this State. Defendant has had and  
18 continues to have significant contact with the state of Arizona through its website,  
19 through U.S. based sales, and distribution of products throughout the U.S., and has  
20 purposefully availed itself of Arizona’s laws.

21 **BACKGROUND**

22 10. THE COMFY was invented in April 2017 by two brothers residing in  
23 Arizona.

24 11. THE COMFY is an oversized wearable blanket. THE COMFY features  
25 a hood, cuffs, and large arm coverings, and covers the majority of a person’s upper  
26 and lower body. THE COMFY is known for its high-quality materials and  
27 construction, featuring a layer of fleece microfiber on one side and thick sherpa-type  
28 material on the opposite layer. THE COMFY also features a large front pocket

1 designed to allow its wearer to insert his or her hands for comfort, storage, or warmth.  
2 A logo of THE COMFY is featured on the lower left side portion of this pocket. The  
3 product is sold in a variety of colors. A sample image of the product appears below:



17 12. In April 2017, to facilitate the development and distribution of THE  
18 COMFY, as well as the growth of the business developing around the product, the  
19 inventors organized Plaintiff, an Arizona limited liability company.

20 13. In May 2017, to solicit funds for its expanding business, Plaintiff,  
21 through the inventors, auditioned for the nationally broadcast television show, *Shark*  
22 *Tank*. *Shark Tank* is a significantly popular and well-known reality show in which  
23 businesses and/or product owners showcase their ideas to a panel of investors, referred  
24 to on the show as “sharks.” The show is broadcast in the U.S. on the ABC network,  
25 is featured on the cable network CNBC, and is available on demand on Hulu and other  
26 streaming platforms. The show has won multiple Emmys for Outstanding Structured  
27 Reality Program. The format is significantly popular, with licensed versions of the  
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1 show produced and broadcast in many countries around the world, including Canada,  
2 Mexico, China, New Zealand, and Australia.

3 14. After several rounds of successful auditions with the producers of *Shark*  
4 *Tank*, the inventors were approved to appear on the program to pitch and feature THE  
5 COMFY on the 2017 end-of-the-year, holiday-themed episode of *Shark Tank*.

6 15. On September 13, 2017, Plaintiff, as the assigned owner of the rights to  
7 the design of THE COMFY, filed a patent application related to its designs, United  
8 States Patent and Trademark Office (“USPTO”) Application No. 29/617,421. Two  
9 years later, on September 17, 2019, that application matured into U.S. Patent No.  
10 D859,788 (the “’788 Patent”). A true and correct copy of the ’788 Patent is attached  
11 hereto as **Exhibit 1** and incorporated by reference.

12 16. On December 3, 2017, the episode of *Shark Tank* featuring THE  
13 COMFY premiered in the U.S. On the episode, the inventors discussed the potential  
14 success of a business surrounding THE COMFY.

15 17. On the episode of *Shark Tank*, the inventors displayed and discussed  
16 several attributes of THE COMFY. This included the shape of the product, the  
17 materials used in its construction (fleece and sherpa), the attached hood, the front  
18 pocket, and the fit of THE COMFY over the arms and body.

19 18. On the episode, several “shark” panelists displayed significant  
20 enthusiasm regarding the product. On air, two of the sharks proposed investing into  
21 Plaintiff. Ultimately, Plaintiff agreed to a proposal from Barbara Corcoran, one of  
22 the show’s sharks, to invest into the business.

23 19. Immediately following the airing of the 2017 *Shark Tank* episode  
24 featuring THE COMFY, interest in and exposure to THE COMFY skyrocketed. The  
25 product was not only featured on a popular, nationally broadcast television program,  
26 but there was substantial exposure of THE COMFY through initial orders, positive  
27 online reviews, online video clips and social media postings.

1           20. Plaintiff developed several other designs in addition to its original THE  
2 COMFY. Plaintiff owns multiple U.S. Patents relating to its designs, as well as  
3 multiple U.S. Trademark registrations and other common-law intellectual property  
4 assets.

5           21. Plaintiff established and maintains a company website located at  
6 <https://thecomfy.com/>, which since 2017 has displayed Plaintiff's products, and  
7 makes its products available for sale in the U.S. and throughout the world through  
8 Amazon and other online and brick-and-mortar retailers.

9           22. Through its activities, Plaintiff established itself as an innovator and  
10 leader in the wearable blankets market. In response to the success of THE COMFY,  
11 online retailer Amazon created a new category of products on its platform(s) labeled  
12 Wearable Blanket.

13           23. Plaintiff and its resellers have expended millions of dollars since 2017,  
14 advertising and promoting THE COMFY using Plaintiff's Trademarks and Trade  
15 Dress in the United States. Such advertising and promotion have been featured in  
16 print and electronic media, over the Internet, and in a variety of other media. THE  
17 COMFY has also been advertised, promoted, and sold by and through nationally  
18 recognized retail establishments such as Costco, Bed Bath & Beyond, QVC, Sam's  
19 Club, Kohl's, Target, and Kroger.

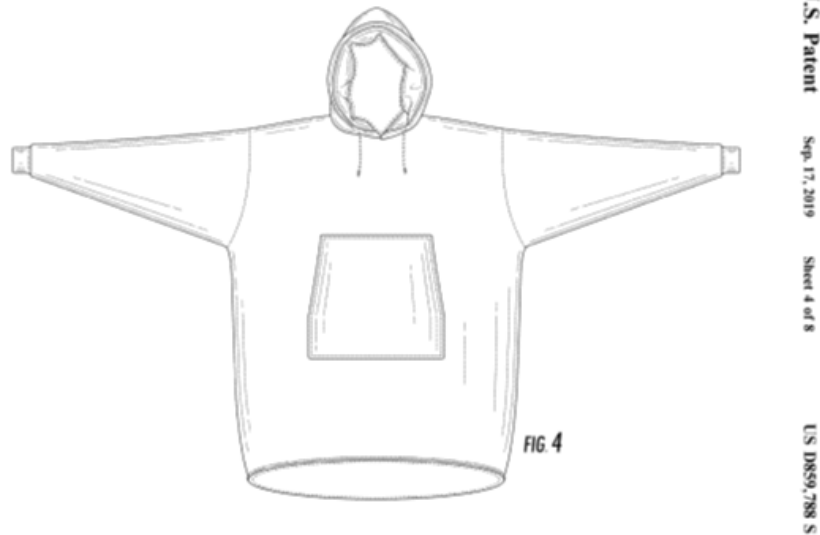
20           24. In addition to *Shark Tank*, THE COMFY featuring Plaintiff's Trade  
21 Dress has also been seen in streaming videos and numerous other television programs  
22 viewed by many millions of Americans, such as Good Morning America. THE  
23 COMFY has received extensive unsolicited media coverage and public exposure from  
24 celebrities such as Lizzo, Jamie Lynn Spears, Selena Gomez, Cindy Crawford, Kim  
25 Kardashian, and Kylie Jenner. In January of 2018, Plaintiff produced and posted a  
26 video on THE COMFY that has received over 100 million views.

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1           28. Figure 4 of the '788 Patent illustrates the invention without a person  
2 wearing it:



(Patent image rotated clockwise by 90 degrees)

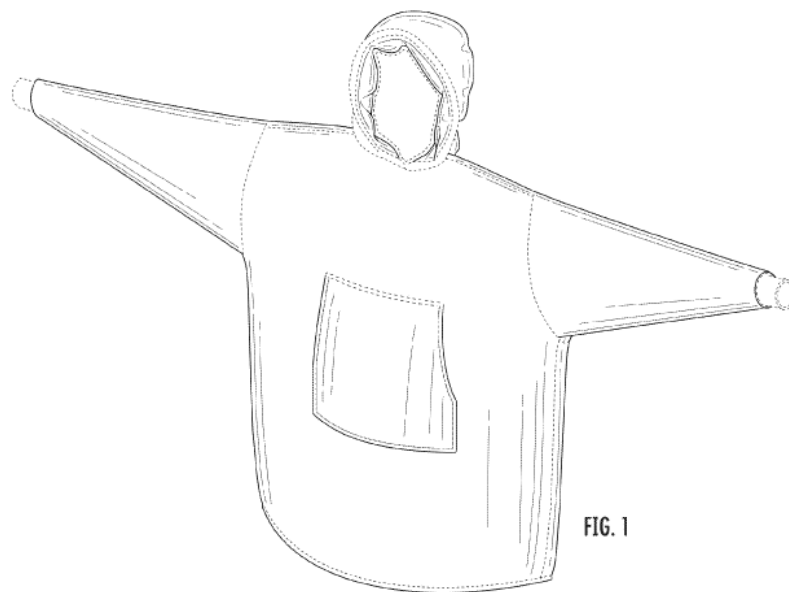
17           29. Plaintiff is also the owner of U.S. Patent No. D969,458 (the “’458  
18 Patent”) entitled “Whole body blanket” issued November 15, 2022. A true and correct  
19 copy of this patent is attached hereto as **Exhibit 2** and is incorporated by reference.

20           30. Figure 1 of the ’458 Patent illustrates the invention with dotted lines  
21 indicating optional features.

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U.S. Patent  
Nov. 15, 2022  
Sheet 1 of 12  
US D969,458 S

(Patent image rotated clockwise by 90 degrees)

31. Upon information and belief, Defendant did not begin selling its products until sometime in the third or fourth quarter of 2021. Defendant’s website, theblankethoodies.com, was created on September 7, 2021.

32. Upon information and belief, Defendant is the owner, distributor and/or manufacturer of the product known as “THE BLANKET HOODIE.” The product is sold in a variety of colors and patterns. A sample image of THE BLANKET HOODIE, taken from defendant’s website, appears below:

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33. Upon information and belief, Defendant, nor any of its direct affiliates or parent companies, sold wearable blankets or any similar wearable items, prior to 2021.

34. Upon information and belief, Defendant began displaying and offering THE BLANKET HOODIE for sale from its company’s website, <https://theblankethoodies.com>, in 2021. In describing THE BLANKET HOODIE, Defendant’s website states that it has “soft flannel fleece on the outside and warm sherpa fleece on the inside.”

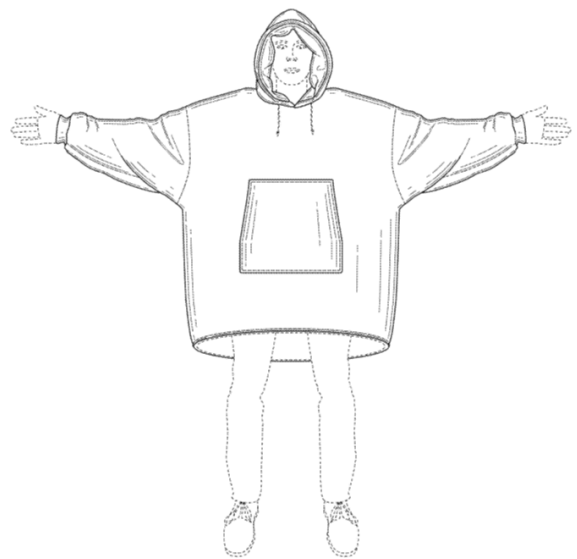
35. Defendant sells THE BLANKET HOODIE to U.S.-based customers through a storefront maintained on its website. Products displayed and listed for sale are intended to be shown to U.S.-based customers for direct shipment of THE BLANKET HOODIE to addresses located within the United States.

36. THE BLANKET HOODIE is sold in a variety of colors and decorative designs. However, the construction and design of THE BLANKET HOODIE is

1 substantially the same as those described in the '788 Patent, the '458 Patent, and  
2 within the trade dress of THE COMFY.

3 37. Defendant advertises THE BLANKET HOODIE as being “a super soft  
4 ONE SIZE FITS ALL hooded blanket.”

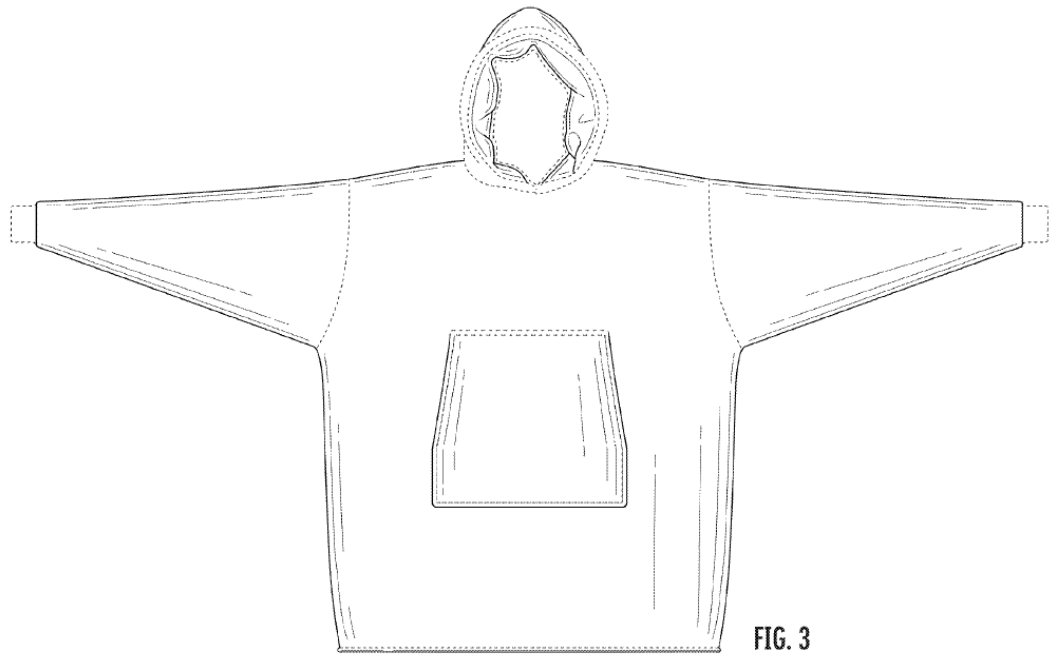
5 38. THE BLANKET HOODIE is substantially the same product as THE  
6 COMFY. A side-by-side comparison between a display found on Defendant’s  
7 website, and Figure 1 from the '788 Patent exhibit the overwhelming sameness:



18 39. Plaintiff purchased a sample product from Defendant’s website,  
19 theblankethoodies.com, to examine the similarities between THE BLANKET  
20 HOODIE and the intellectual property owned by Plaintiff. Comparisons of  
21 photographs of the sample product purchased, and Figures 3 and 4 from the '458  
22 Patent shows the following:  
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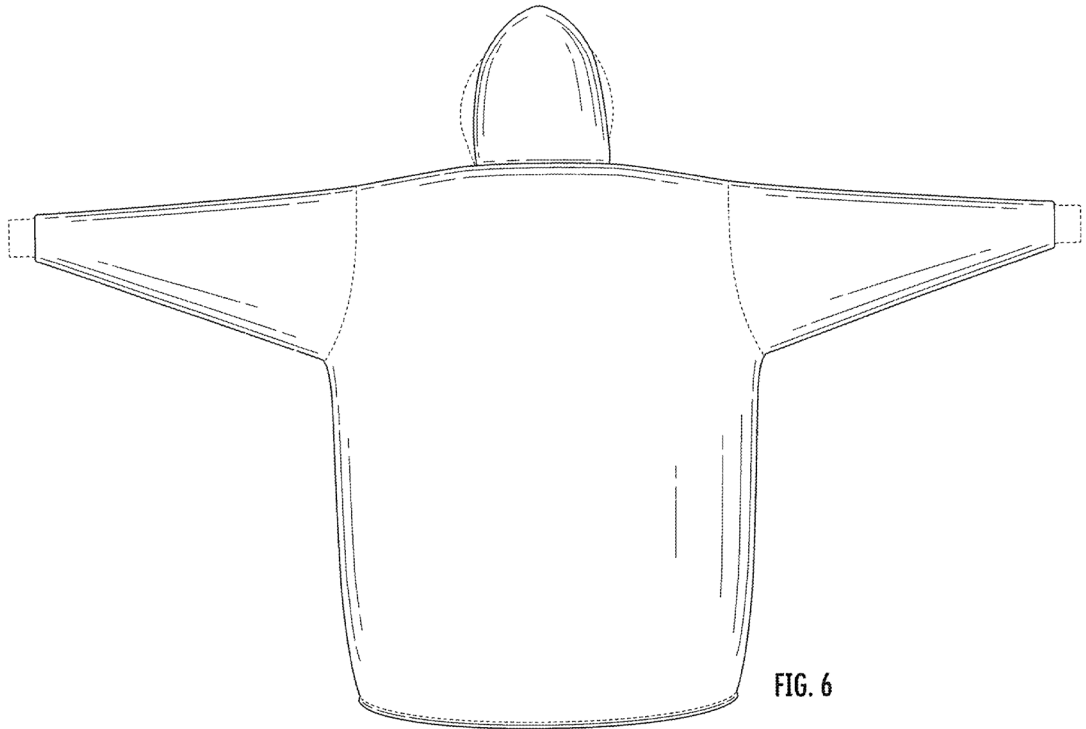


FIG. 6

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40. Through vast sales, promotion, and publicity surrounding THE COMFY, Plaintiff has acquired distinctiveness in the look and feel of THE COMFY. Plaintiff is an innovator in the wearable blanket industry, as recognized by the USPTO through the issuance of multiple patents, as well as by its performance within the market. Plaintiff has expended substantial sums in marketing and advertising its products and enjoys a substantial share in the market for wearable blankets in the United States.

41. Due to the extensive marketing, promotion, and sales of THE COMFY, customers recognize Plaintiff’s Trade Dress of an oversized wearable blanket, that has large arm coverings, a large hood, a sherpa lining, elastic wrist cuffs and a large front pocket, and associate such features to signify the product is a genuine THE COMFY.

42. The combination of elements comprising Plaintiff’s Trade Dress is non-functional as each feature could be accomplished with different design choices, without affecting cost or quality, to convey a different product that does not embody the same, or confusingly similar, features that customers have come to recognize as THE COMFY.

43. Plaintiff’s Trade Dress is famous for wearable blankets in the United States.

44. Plaintiff markets these features such that customers recognize such features as THE COMFY Trade Dress. For example, on the marketing shown below, Plaintiff promotes THE COMFY as: “A Wearable Blanket” with “A Giant Hood,” “Large Arm Coverings,” “Seamless Rib-Knit Cuffs,” “Giant Marsupial Pocket,” and “Luscious Sherpa Lining.”

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45. Plaintiff also markets these features on the packaging of THE COMFY such that customers recognize THE COMFY Trade Dress. For example, on the packaging shown below, Plaintiff promotes these features and highlights them with text such as “Oversized Everything, large enough to pull legs/arms in,” “Giant Pocket,” “Portable Warmth,” “Huge Hood,” and “Luxurious Material so soft, you’ll never want to take it off.”

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15 46. THE COMFY is sold in over 100 countries and through recognized retail  
16 establishments such as Costco, Bed Bath & Beyond, QVC, Sam's Club, Kohl's,  
17 Target, and Kroger. As a result of this exposure, consumers have come to recognize  
18 Plaintiff's Trade Dress features through the promotion, sales, and publicity of THE  
19 COMFY.

20 47. Consumers have grown to recognize THE COMFY and Plaintiff's  
21 related products as the industry standard for wearable blankets and identify the unique  
22 shape of Plaintiff's hooded wearable blankets as coming from a distinct source.

23 48. Plaintiff's Trade Dress is readily recognizable to consumers. Plaintiff  
24 has received, and continues to receive, complaints from confused consumers who  
25 purchase knock off goods that copy Plaintiff's Trade Dress with the expectation that  
26 they are buying a genuine THE COMFY.

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49. Defendant did not enter the market until it had seen the success of THE COMFY. As a result, Defendant and others were quick to enter the market to flood the market space. Although Plaintiff developed and invested in multiple intellectual property assets protecting THE COMFY, those assets took time to mature from applications into published registrations and issued protectable rights. Plaintiff is now in the position of having to enforce its rights against a number of infringers. THE COMFY brand, and recognized trade dress, is so successful it is now being counterfeited by pirates trying to capitalize on the goodwill and reputation that Plaintiff created.

50. Defendant has knowingly and willfully sold products which directly replicate the intellectual property of Plaintiff. Defendant has intentionally marketed, offered for sale, imported, used, and sold to U.S. based customers THE BLANKET HOODIE in violation of Plaintiff's rights.

51. Upon information and belief, THE COMFY predates the introduction of THE BLANKET HOODIE to the market and the formation of Defendant as an entity. THE COMFY is the worldwide industry standard for hooded wearable blankets with millions of dollars of units sold per year. Defendant has knowingly and willfully sold products which directly replicate the intellectual property of Plaintiff. Under the direction of Defendant, such products have been intentionally marketed, offered for sale, imported, and sold to U.S. based customers, in violation of Plaintiff's rights.

52. In addition, the types of materials used to construct THE BLANKET HOODIE and THE COMFY are substantially the same. THE COMFY is constituted of a fleece layer on the outside and a sherpa layer on the inside. THE BLANKET HOODIE constitutes a fleece layer on the outside and a sherpa layer on the inside. Both feature an oversized front pouch, hood, and elastic cuffs.

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1           53. A comparison below of advertising photographs of THE COMFY shown  
2 on the top, and THE BLANKET HOODIE shown on the bottom, highlights the  
3 substantial similarity between the products.  
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1 meaning within the relevant market and among the U.S. public. Defendant has used  
2 THE COMFY Trade Dress without the authorization of Plaintiff and continues to  
3 trade off the goodwill created and maintained by Plaintiff in THE COMFY Trade  
4 Dress.

5 77. Defendant's unauthorized use of Plaintiff's Trade Dress is likely to  
6 deceive consumers as to the origin, source, sponsorship, or affiliation of Defendant's  
7 goods and is likely to cause consumers to believe, contrary to fact, that Defendant's  
8 goods are sold, authorized, endorsed, or sponsored by Plaintiff, or that Defendant is  
9 in some way affiliated with or sponsored by Plaintiff.

10 78. Defendant's unauthorized use in commerce of Plaintiff's Trade Dress as  
11 alleged herein constitutes use of a false designation of origin and misleading  
12 description and representation of fact.

13 79. The foregoing use in commerce by Defendant of Plaintiff's Trade Dress  
14 has caused and/or is likely to cause confusion, or mistake, or to deceive consumers as  
15 to the affiliation, connection, or association of Defendant with Plaintiff, or as to the  
16 origin, sponsorship, or approval of Defendant's goods, or commercial activities by  
17 Plaintiff.

18 80. Defendant's acts are willful and are intended to cause confusion,  
19 mistake, or deception as to the affiliation, connection, or association of Defendant  
20 with Plaintiff.

21 81. Defendant's infringement of Plaintiff's Trade Dress as aforesaid has  
22 caused and is likely to continue to cause substantial injury to the public and to  
23 Plaintiff, and Plaintiff is entitled to injunctive relief and its attorneys' fees and costs  
24 under §§ 32, 34, 35 and 36 of the United States Trademark Act, 15 U.S.C. §§ 1114,  
25 1116, 1117 and 1118.

26 82. Defendant's conduct as alleged herein constitutes unfair competition in  
27 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).





1 Plaintiff in violation of the common law of the State of Arizona and A.R.S §44-1451  
2 and §44-1452.

3 89. This claim for common law unfair competition arises under the common  
4 law of the State of Arizona.

5 90. The foregoing use in commerce by Defendant of Plaintiff's Trade Dress  
6 has caused and/or is likely to cause confusion, or mistake, or to deceive consumers  
7 as to the affiliation, connection, or association of Defendant with Plaintiff, or as to  
8 the origin, sponsorship, or approval of Defendant's goods, or commercial activities  
9 by Plaintiff.

10 91. Defendant's acts are willful.

11 92. By reason of the foregoing, Plaintiff has sustained, and unless Defendant  
12 is enjoined, will continue to sustain, injury and damages.

13 93. Defendant has unlawfully and wrongfully derived income and profits  
14 and has been unjustly enriched by the foregoing acts. Defendant's acts have caused,  
15 and unless enjoined will continue to cause, irreparable harm to Plaintiff for which  
16 there is no adequate remedy at law.

17 94. Plaintiff is entitled to, among other relief, injunctive relief and an award  
18 of actual damages, Defendant's profits, enhanced damages and profits, reasonable  
19 attorneys' fees, and costs of the action, together with prejudgment and post-judgment  
20 interest.

21 95. Because Defendant engaged in knowing, willful, and conscious  
22 disregard for the rights of Plaintiff, Defendant is guilty of oppression, fraud, and  
23 malice, entitling Plaintiff to an award of punitive damages.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**

3 96. Plaintiff hereby incorporates and realleges each and every allegation  
4 contained in each of the preceding paragraphs of this Complaint as if fully set forth  
5 herein.

6 97. As a result of the conduct alleged herein, Defendant has been unjustly  
7 enriched to Plaintiff's detriment. Plaintiff therefore seeks an accounting and  
8 disgorgement of all ill-gotten gains and profits resulting from Defendant's inequitable  
9 activities.

10 **DEMAND FOR JURY TRIAL**

11  
12 98. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff respectfully  
13 demands a jury trial of all issues triable to a jury in this action.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 16 A. A judgment and order adjudicating and declaring that Defendant has  
17 infringed the '788 Patent;
- 18 B. A judgment and order adjudicating and declaring that Defendant has  
19 infringed the '458 Patent;
- 20 C. A judgment and order adjudicating and declaring that Defendant has  
21 engaged in unfair competition;
- 22 D. A judgment and order permanently enjoining Defendant, its employees,  
23 agents, officers, directors, attorneys, successors, affiliates, subsidiaries,  
24 and assigns, and all of those in active concert and participation with any  
25 of the foregoing persons or entities from further infringement of the '788  
26 Patent, the '458 Patent and Plaintiff's Trade Dress;
- 27 E. A judgment and order that Defendant must account for and pay actual  
28 damages (but no less than a reasonable royalty), to Plaintiff for

1 Defendant's infringement of the '788 Patent, the '458 Patent and/or  
2 Plaintiff's Trade Dress;

3 F. A judgment and order awarding Plaintiff the total profits realized by  
4 Defendant from its infringement of the '788 Patent and/or the '458 Patent  
5 pursuant to 35 U.S.C. § 289;

6 G. A judgment and order declaring Defendant has willfully infringed the  
7 '788 Patent, the '458 Patent and/or Plaintiff's Trade Dress;

8 H. A judgment and order awarding Plaintiff enhanced damages up to three  
9 times any amount ordered under 35 U.S.C. § 284 and the amount found  
10 as actual damages for Defendant's trade dress infringement under 15  
11 U.S.C. § 1117(a);

12 I. A judgment ordering an accounting for any infringing sales not presented  
13 at trial and an award by the court of additional damages for any such  
14 infringing sales;

15 J. A determination that this case is exceptional under 35 U.S.C. § 285;

16 K. A determination that this case is exceptional under 15 U.S.C. § 1117;

17 L. A judgment and order awarding Plaintiff its reasonable attorneys' fees;

18 M. A judgment and order awarding Plaintiff its costs, expenses, and interest,  
19 including pre-judgment and post-judgment, as provided for by 35 U.S.C.  
20 § 284 and 15 U.S.C. § 1117;

21 N. A judgment and order awarding pre-judgment and post-judgment  
22 interest on each and every monetary award; and

23 O. Granting Plaintiff any such other and further relief as this Court deems  
24 just and proper, or that Plaintiff may be entitled to as a matter of law or  
25 equity.

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1 DATED: January 26, 2024

MESSNER REEVES LLP

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/s/ Gregory P. Sitrick  
Gregory P. Sitrick  
Isaac S. Crum  
Attorneys for Plaintiff Cozy Comfort  
Company LLC