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*KNIX WEAR INC.*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

KNIX WEAR INC.,

Plaintiff,

v.

DIVA INTERNATIONAL INC., a Canadian  
company,

Defendant.

Case No. 3:24-cv-1436

**COMPLAINT FOR PATENT  
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff Knix Wear Inc. (“Knix Wear” or “Plaintiff”) alleges, based on actual knowledge with respect to Knix Wear and Knix Wear’s acts, and based on information and belief with respect to all other matters, against Defendant Diva International Inc. (“Diva” or “Defendant”), an Ontario Business Corporation headquartered in Canada, as follows:

**NATURE OF THE CASE**

This is a civil action for federal patent infringement in violation of the Patent Act, 35 U.S.C. §§ 1, *et seq.*, and specifically in violation of 35 U.S.C. §§ 271(a), (g).

**THE PARTIES**

1. Plaintiff Knix Wear is an Ontario Business Corporation having a principal place of business located at 179 John Street, Suite 600, Toronto, Ontario, M5T 1X4, Canada.

2. On information and belief, Defendant Diva is a Canadian company registered as an Ontario Business Corporation, having a principal place of business at 222 McIntyre Drive, Kitchener, Ontario, N2R 1E8, Canada.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because this case involves a federal question arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

4. This Court has personal jurisdiction in this action over Diva because, on information and belief, Diva conducts business in the state of Oregon at least by advertising its products to customers throughout the United States, including in Oregon, importing its products into Oregon, and selling its products to Oregon residents, including the products accused of patent infringement in this action. By committing purposeful acts of injecting its products into the nationwide stream of commerce through the e-commerce website shopdiva.com, including documented sales of infringing products to customers within this district, Diva reasonably knew or expected that it could be haled into court within this district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c)(3), which provides that a defendant not resident in the United States may be sued in any judicial district.

## FACTUAL ALLEGATIONS

### A. Plaintiff Knix Wear

6. Knix Wear markets, offers for sale, and sells throughout the United States several lines of lingerie, swimwear, loungewear, active wear, and other apparel, including its flagship period underwear product, through its online retail store at knix.com and a number of retail locations in the United States and Canada. Example images of Knix Wear’s period underwear are provided below.



7. Knix Wear has expended significant time and resources developing and marketing its period underwear and other products, as well as protecting its related intellectual property rights. Knix Wear owns seven U.S. patents as well as patents and registered designs in other jurisdictions. Knix Wear believes that Diva is infringing at least the following three of its U.S. patents: U.S. Pat. No. 10,441,479; U.S. Pat. No. 10,441,480; and U.S. Pat. No. 11,737,931 (collectively the “Asserted Patents”).

8. Knix Wear owns all right, title and interest in U.S. Pat. No. 10,441,479 (“the ’479 patent”), including the right to sue thereon and the right to recover for infringement thereof. The ’479 patent issued October 15, 2019, and will expire October 30, 2036. The ’479 patent

gives Knix Wear the right to exclude others from making, using, offering for sale, or selling the invention claimed in the patent within the United States; from importing the invention claimed in the patent into the United States; and from importing into the United States or selling, offering to sell, or using in the United States a product made by a process claimed in the patent. A copy of the '479 patent is attached hereto as Exhibit A.

9. Knix Wear owns all right, title, and interest in U.S. Pat. No. 10,441,480 (“the '480 patent”), including the right to sue thereon and the right to recover for infringement thereof. The '480 patent issued October 15, 2019, and will expire May 2, 2034. The '480 patent gives Knix Wear the right to exclude others from making, using, offering for sale, or selling the invention claimed in the patent within the United States; from importing the invention claimed in the patent into the United States; and from importing into the United States or selling, offering to sell, or using in the United States a product made by a process claimed in the patent. A copy of the '480 patent is attached hereto as Exhibit B.

10. Knix Wear owns all right, title, and interest in U.S. Pat. No. 11,737,931 (“the '931 patent”), including the right to sue thereon and the right to recover for infringement thereof. The '931 patent issued August 29, 2023, and will expire January 19, 2037. The '931 patent gives Knix Wear the right to exclude others from making, using, offering for sale, or selling the invention claimed in the patent within the United States; from importing the invention claimed in the patent into the United States; and from importing into the United States or selling, offering to sell, or using in the United States a product made by a process claimed in the patent. A copy of the '931 patent is attached hereto as Exhibit C.

11. Knix Wear began marking its products in accordance with 35 U.S.C. § 287 prior to Diva’s launch of the Accused Product.

**B. Defendant Diva**

12. On information and belief, Diva is a Canadian company selling reusable menstrual products, including period underwear, in the United States and elsewhere through its retail website located at shopdiva.com and through various retail partners, including at least 32 retailers that offer Diva’s products to U.S. customers. Screenshots from Diva’s retail website (as of August 28, 2024) are attached hereto as Exhibit D.

13. On information and belief, the product offered for sale and sold by Diva under the name “DIVA™ Reusable Period Underwear” and designated by the Universal Product Code (UPC) 841445000480 (“the Accused Product”) infringes the Asserted Patents and is made according to manufacturing methods that infringe the Asserted Patents. The Accused Product is sold through Diva’s retail website individually, in sets of four, and in bundles with other Diva products. Photos of the Accused Product from Diva’s retail website are shown below.



14. Photos of a sample Accused Product purchased through Diva’s retail website on October 11, 2023 and shipped to Oregon are attached hereto as Exhibit E. Illustrative claim

charts demonstrating infringement of one or more claims of each of the Asserted Patents based on the sample Accused Product are attached hereto as Exhibits F, G, and H.

15. Specifically, the claim chart of Exhibit F demonstrates infringement by the sample Accused Product of claims 1, 3-5, 7, 8, 17, 20, and 21 of the '479 patent; the claim chart of Exhibit G demonstrates infringement by the sample Accused Product of claims 1-4, 12, 13, 15, 16, 18, 19, 21-23, and 25 of the '480 patent; and the claim chart of Exhibit H demonstrates infringement by the sample Accused Product of claims 1-6, 8-17, and 19-25 of the '931 patent.

16. On information and belief, Diva has been aware of Knix Wear's patent rights in the Asserted Patents since at least 2019, at which time Diva proposed to Knix Wear that Knix Wear provide period underwear products to Diva for Diva to sell on a white-label basis, which Knix Wear declined to do. On information and belief, Diva began offering for sale and selling the Accused Product after Knix Wear declined its white-label proposal.

17. On October 11, 2023, Knix Wear's CEO sent an email to Diva's CEO advising Diva that the Accused Product infringes one or more of Knix Wear's patents. Subsequently, Knix Wear's counsel sent a demand letter to Diva on December 6, 2023, alleging infringement of the Asserted Patents in greater detail. Since then, the parties have negotiated both directly and through counsel in an attempt to resolve this dispute, but have been unable to do so to Knix Wear's satisfaction.

18. Knix Wear has not licensed any rights under any of the Asserted Patents to Diva. On information and belief, Diva is willfully infringing the Asserted Patents.

**CLAIM 1 – INFRINGEMENT OF THE '479 PATENT**

19. Knix Wear hereby incorporates by reference each of the other allegations set forth elsewhere in this Complaint as though set forth fully herein.

20. Diva has infringed at least claims 1, 3-5, 7, 8, 17, 20, and 21 of the '479 patent by making, using, selling, offering to sell, and/or importing the Accused Product.

21. Diva's infringement of the '479 patent has been and continues to be willful.

22. Knix Wear has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales, and/or lost royalties, due to infringement by Diva.

23. Knix Wear has suffered, and will continue to suffer, permanent and irreparable injury for which Knix Wear has no adequate remedy at law.

24. Knix Wear is entitled to relief as provided by 35 U.S.C. §§ 281, 283, 284, and 285.

**CLAIM 2 – INFRINGEMENT OF THE '480 PATENT**

25. Knix Wear hereby incorporates by reference each of the other allegations set forth elsewhere in this Complaint as though set forth fully herein.

26. Diva has infringed at least claims 1-4, 12, 13, 15, 16, 18, 19, 21-23, and 25 of the '480 patent by making, using, selling, offering to sell, and/or importing the Accused Product.

27. Diva's infringement of the '480 patent has been and continues to be willful.

28. Knix Wear has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales, and/or lost royalties, due to infringement by Diva.

29. Knix Wear has suffered, and will continue to suffer, permanent and irreparable injury for which Knix Wear has no adequate remedy at law.

30. Knix Wear is entitled to relief as provided by 35 U.S.C. §§ 281, 283, 284, and 285.

**CLAIM 3 – INFRINGEMENT OF THE '931 PATENT**

31. Knix Wear hereby incorporates by reference each of the other allegations set forth elsewhere in this Complaint as though set forth fully herein.

32. Diva has infringed at least claims 1-6, 8-17, and 19-25 of the '931 patent by making, using, selling, offering to sell, and/or importing the Accused Product.

33. Diva's infringement of the '931 patent has been and continues to be willful.

34. Knix Wear has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales, and/or lost royalties, due to infringement by Diva.

35. Knix Wear has suffered, and will continue to suffer, permanent and irreparable injury for which Knix Wear has no adequate remedy at law.

36. Knix Wear is entitled to relief as provided by 35 U.S.C. §§ 281, 283, 284, and 285.

**PRAYER FOR RELIEF**

WHEREFORE, Knix Wear prays for judgment as follows:

A. That Diva has infringed, and is infringing, the Asserted Patents, in violation of 35 U.S.C. § 271;

B. That infringement by Diva is willful;

C. That Diva be preliminarily and permanently enjoined against all acts of patent infringement, including but not limited to making, using, selling, offering to sell, and importing the Accused Product and any other Diva products found to infringe Knix Wear's patents;



D. That Diva be required to deliver to Knix Wear for destruction any and all articles in its possession and/or under its control that infringe any of Knix Wear's patents, including but not limited to all existing Accused Products, associated packaging, and advertisements;

E. That Diva be ordered to pay Knix Wear the damages that Knix Wear has suffered due to patent infringement by Diva, together with interest thereon;

F. That Diva be ordered to account for and pay Knix Wear the total profits Diva has received from the sale of products infringing any of Knix Wear's patents;

G. That this case be declared exceptional pursuant to 35 U.S.C. § 285, due to willful infringement by Diva, and that Knix Wear be awarded trebled damages and its reasonable attorneys' fees and costs; and

H. That Knix Wear have such other and further relief as the Court and/or a jury deems just and proper.

**JURY DEMAND**

Knix Wear hereby demands a trial by jury of all issues so triable.

DATED this 29<sup>th</sup> day of August, 2024.

Respectfully submitted,

**KOLITCH ROMANO DASCENZO GATES LLC**

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