

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

GEEKCOMMERCE LLC,

Plaintiff,

v.

JD E-COMMERCE AMERICA LIMITED,
JINGDONG E-COMMERCE (TRADE)
HONG KONG CORPORATION,
WAL-MART.COM USA, LLC, and
WALMART INC.,

Defendants,

CASE NO.: 6:24-cv-06589

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Jury Trial Demanded

Plaintiff, GEEKCOMMERCE LLC (“GeekCommerce” or “Plaintiff”) by and through its undersigned counsel, brings this Complaint against JD E-COMMERCE AMERICA LIMITED, JINGDONG E-COMMERCE (TRADE) HONG KONG CORPORATION, WAL-MART.COM USA, LLC, and WALMART INC. (“Defendants”) who are promoting, selling, offering for sale and distributing goods bearing or using infringements and confusingly similar imitations of Plaintiff’s intellectual property throughout the United States, including within the state of New York and this district, through Walmart online stores under the merchant name JOYBUY, and in support of its claims, alleges as follows:

SUMMARY OF THE ACTION

1. Plaintiff GEEKCOMMERCE brings this action for willful design patent infringement under 35 U.S.C. §271 committed in violation of the Plaintiff’s exclusive rights to make, use, offer to sell, or sell Plaintiff’s patented design, within the United States or for importation into the United States any patented design during the term of the patent-in-suit, and for all the remedies available under 35 U.S.C. §§ 283, 284, 285, and 289.

SUBJECT MATTER JURISDICTION

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

3. This Court also has original and exclusive subject matter jurisdiction over this action pursuant to 35 U.S.C. § 271.

PERSONAL JURISDICTION

4. All defendants are subject to personal jurisdiction in this district because they avail themselves of the laws of the State of New York, and purposefully direct their activities toward and conduct business with consumers within the state of New York and this district.

5. WAL-MART.COM USA, LLC and WALMART INC. (collectively “Walmart Defendants”) do business in this district through their retail stores throughout the state.

6. Walmart Defendants own and operate the fully interactive Walmart online website at <https://www.walmart.com/> (“Walmart.com”), which is accessible in New York.

7. Walmart.com is an online store that sells a variety of goods including clothing, groceries, and home accessories.

8. New York residents can readily access Walmart.com and are able to purchase an endless variety of goods.

9. JD E-COMMERCE AMERICA LIMITED and JINGDONG E-COMMERCE (TRADE) HONG KONG CORPORATION (collectively, “JD Defendants”) are merchants who sell goods to consumers on Walmart.com.

10. JD E-COMMERCE AMERICA LIMITED and JINGDONG E-COMMERCE (TRADE) HONG KONG CORPORATION do business on Walmart.com under the merchant names JOYBUY, JOYBUY EXPRESS, JOYBUY FASHION, JOYBUY SELECTION, and JOYBUY AMERICA.

11. Walmart.com allows New York residents to browse goods available and purchase them for direct shipping to their homes.

12. Walmart.com allows New York residents to order goods for pickup from stores located in New York.

13. New York residents can readily access the JD Defendants' listings on Walmart.com and are able to purchase a variety of goods, including the Infringing Goods, sold by JD Defendants.

14. New York residents can browse goods offered for sale by JD Defendants that are available by direct ship to homes in New York, and also for pickup at Walmart stores in New York.

15. Walmart.com allows New York residents to contact JD Defendants directly by phone through the number listed under "View Seller Information," or via email through Walmart.com.

16. Walmart Defendants and JD Defendants target their business activities toward consumers throughout the United States, including within this district.

17. Walmart.com promotes sales by the JD Defendants on the internet to New York residents through a variety of methods including search engine optimization (SEO) efforts, follow-up emails to New York residents who have Walmart.com accounts and who have searched for Joybuy products on Walmart.com, and banner ads promoting Joybuy products that direct customers, including New York residents, to additional information on those products and sellers, which include the JD Defendants.

18. JD Defendants promote their Walmart.com product listings on the internet, including to New York residents, through a variety of methods including search engine

optimization (SEO) efforts, follow-up emails to New York residents who have Walmart.com accounts, and who have previously purchased products from the JD Defendants, or who have searched for Joybuy products on Walmart.com, and banner ads promoting JD Defendants' products that direct customers, including New York residents, to additional information on those products

19. The Walmart Defendants and JD Defendants secure direct financial benefit from purchases made by New York residents as well as indirect commercial gain from the web traffic and sales generated by JD Defendants' activities on Walmart.com.

20. A substantial part of JD Defendants and Walmart.com's revenue derives from their sales to New York customers.

21. Walmart Defendants and JD Defendants are subject to personal jurisdiction in this district because their illegal activities directed towards the state of New York cause Plaintiff injury in New York, and Plaintiff's claims arise out of those activities, pursuant to NY CPLR § 302.

22. Walmart Defendants and JD Defendants are subject to personal jurisdiction in this district because they sold infringing goods to purchasers in the state of New York and in this district causing plaintiff injury in New York and this district, and Plaintiff's claims arise out of those activities, pursuant to NY CPLR § 302.

23. Alternatively, JD Defendants are subject to personal jurisdiction in this district pursuant to Federal Rule of Civil Procedure 4(k)(2) because (i) they are not subject to jurisdiction in any state's court of general jurisdiction; and (ii) exercising jurisdiction is consistent with the United States Constitution and laws.

VENUE

24. Venue is proper in this Court as to the Walmart Defendants and JD Defendants pursuant to 28 U.S.C. §1391(b) and (c) because Defendants do business in this judicial district and are subject to the Court's personal jurisdiction.

25. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) since Defendants are, upon information and belief, engaged in infringing activities and causing harm within this district by advertising, offering to sell, selling and/or shipping infringing products to consumers into this district.

26. Venue is proper in this Court pursuant to 28 U.S.C. §1400(a) because defendants or their agents reside or may be found in this judicial district and are subject to the Court's personal jurisdiction.

THE PARTIES

27. GeekCommerce is a California Limited Liability Company with its principal place of business at 12820 Castle Rd. Eastvale, California, 92880.

28. Wal-mart.com USA, LLC is a California limited liability company registered to do business in New York with its headquarters at 850 Cherry Avenue, San Bruno, California, 94066, and can be served by serving its registered agent CT Corporation System.

29. Walmart, Inc. is a Delaware Corporation with its headquarters located at 702 SW 8th Street, Bentonville, Arkansas 72716, and may be served with process through its registered agent, CT Corporation System.

30. JD E-Commerce America Limited, a Delaware limited liability company, is a subsidiary of JD.com, Inc., a Cayman Islands entity and a NASDAQ listed company with a principal place of business in Beijing, China.

31. Jingdong E-Commerce (Trade) Hong Kong Corporation, is a Hong Kong entity and a subsidiary of JD.com, Inc., a Cayman Islands entity and a NASDAQ listed company with a principal place of business in Beijing, China.

32. JD Defendants are affiliates of or are also identifiable by Walmart.com as Joybuy Express of Irvine, CA; Joybuy of Draper, UT; Joybuy America of Irvine, CA; Joybuy Fashion of Mountain View, CA; and Joybuy Selection of Irvine, CA.

THE PLAINTIFF

33. GeekCommerce sells novelty items, including prank gifts, toys, housewares, and apparel under the name Shut Up and Take My Money. GeekCommerce is owned and operated by David Peterson. Peterson started GeekCommerce back in 2010 with a simple goal: to bring laughter and joy to people's lives with its hilarious products. GeekCommerce believes in spreading good vibes and positive energy and it is always on the lookout for the next big thing in funny.

34. GeekCommerce's products are sold through its own website <https://shutupandtakemymoney.com>.

35. GeekCommerce owns the design patent for its prank penis shaped valve stem cap, TIRECOCKZ, shown below, that is the subject of this action.



36. Plaintiff offers for sale and sells its products within the State of New York, including this district, and throughout the United States.

37. Like many other intellectual property rights owners, Plaintiff suffers ongoing daily and sustained violations of its intellectual property rights at the hands of infringers, such as Defendants herein.

38. Plaintiff is harmed, the consuming public is duped and confused, and the Defendants earn substantial profits in connection with the infringing conduct.

39. In order to combat the harm caused by the combined actions of Defendants and others engaging in similar infringing conduct, Plaintiff expends significant resources in connection with its intellectual property enforcement efforts, including legal fees and investigative fees.

40. The recent explosion of infringement over the Internet has created an environment that requires companies like Plaintiff to expend significant time and money across a wide spectrum of efforts in order to protect both consumers and itself from the ill effects of infringement of Plaintiff's intellectual property rights, including consumer confusion and the erosion of Plaintiff's brands.

PLAINTIFF'S PATENT RIGHTS

41. Plaintiff's prank penis shaped valve stem cap's ornamental features are protected under a design patent and registered with the United States Patent and Trademark Office under U.S. Patent No. D991,156 S entitled "VALVE STEM CAP". A true and correct copy of the U.S. Design Patent Registration is attached hereto as **Exhibit 1** (the "'156 Design Patent").

42. The '156 Design Patent relates to the ornamental design for a valve stem cap, as shown and described in eight figures that make up the patent drawings, corresponding and

ordering in perspective, front, bottom, right, left, cross-sectional side, and a partially enlarged views.

43. Plaintiff's '156 Design Patent was registered on July 4, 2023, has not expired, and is valid.

44. Plaintiff has never granted authorization to anyone to import, make, use or sell unauthorized goods using Plaintiff's '156 Design Patent.

45. Plaintiff sells its TIRECOCKZ branded products with a Patent Notice.

WALMART DEFENDANTS

46. The Walmart Defendants describe Walmart.com as “a curated community of respected, professional sellers who offer only top-quality, authentic products and best-in-class customer service.”

47. Walmart.com claims to only allow “qualified businesses” to sell their products on Walmart.com, and to have a selection process that analyzes each seller’s catalog, operations, and business information to help ensure those sellers provide “high-quality experiences” to Walmart.com.

48. Walmart.com claims to respect the intellectual property rights of others.

49. Walmart.com’s “Patent Claims” policy states that where there is a claim of trademark infringement, “Walmart will forward the claim to the third party with the intent that the third party and patent owner will resolve between themselves any dispute over ownership rights and infringement. Walmart reserves the right to remove any content that is found to infringe the rights of a patent owner.”

50. Walmart.com’s “Counterfeit Claims” policy states that where there is a claim of counterfeiting, “Walmart reserves the right to remove any content it believes to be counterfeit

and further reserves the right to take any additional measures it deems appropriate in handling a claim of Infringing Goods.”

51. Walmart.com’s “Repeat Infringer Policy” states that it takes “appropriate action against parties it categorizes as repeat infringers. A repeat infringer includes, but is not limited to, anyone who qualifies as such under the DMCA or who receives multiple claims of IP infringement, and such claims are determined by Walmart to be valid. Action may include, but is not limited to, removal of listings and suspension or termination of any relationship with Walmart.”

52. Paragraph 2(e) of Walmart.com’s Marketplace Program Terms and Conditions requires sellers sell only products that are “authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded,” and that do not “infringe[] any third-party “Intellectual Property Rights.” Paragraph 2(f) states that once Walmart.com has removed a retailer product in response to a notice of violation of intellectual property, the seller must ensure that the removed “Products and related Retailer Product Content no longer appear on the Walmart.com Sites.”

53. Walmart.com engages in unfair competition with Plaintiff by allowing sellers such as the JD Defendants to continually advertise, offer for sale, and sell goods bearing or using infringements of Plaintiff’s intellectual property rights to consumers within the United States and this district through Walmart.com using the Seller IDs, competing with Plaintiff’s economic interests and causing Plaintiff harm and damage within this jurisdiction.

54. Walmart.com, by facilitating JD Defendants’ ability to sell and offer to sell products that infringe Plaintiff’s intellectual property rights, is contributorily infringing Plaintiff’s intellectual property rights.

55. Walmart.com facilitates the illegal actions of JD Defendants, resulting in the natural and intended byproduct of these actions, the erosion and destruction of the goodwill associated with Plaintiff's intellectual property rights and the destruction of the legitimate market sector in which it operates.

56. Upon information and belief, at all times relevant hereto, Walmart.com had actual or constructive knowledge of Plaintiff's intellectual property rights, including Plaintiff's exclusive right to use and license such intellectual property rights.

JD DEFENDANTS

57. JD Defendants have registered, established, or purchased, and maintained and operated seller ID accounts at Walmart called JOYBUY, JOYBUY EXPRESS, JOYBUY FASHION, JOYBUY SELECTION, and JOYBUY AMERICA.

58. JD Defendants use their seller ID accounts at Walmart.com to target their business activities toward consumers throughout the United States, including within this district, under the merchant names JOYBUY, JOYBUY EXPRESS, JOYBUY FASHION, JOYBUY SELECTION, and JOYBUY AMERICA.

59. JD Defendants are the past and present controlling forces behind the sale of products bearing or using infringements of Plaintiff's intellectual property rights as described under the merchant names JOYBUY.

60. JD Defendants directly engage in unfair competition with Plaintiff by advertising, offering for sale, and selling goods bearing or using infringements of Plaintiff's intellectual property rights to consumers within the United States and this district through Walmart.com using the Seller IDs with the merchant names JOYBUY.

61. JD Defendants use the ‘156 Design Patent to create infringing products, and these denominations and content are indexed on search engines and compete directly with Plaintiff for space in search results.

62. JD Defendants are using infringements of Plaintiff’s intellectual property rights to drive Internet consumer traffic to their individual seller stores at Walmart.com operating under the Seller IDs with the merchant name JOYBUY, thereby increasing the value of the Seller IDs and decreasing the size and value of Plaintiff’s legitimate marketplace and intellectual property rights at Plaintiff’s expense.

63. JD Defendants, through the sale and offer to sell infringing products, are directly, and unfairly, competing with Plaintiff’s economic interests throughout the United States, including in the state of New York, and causing Plaintiff harm and damage within this jurisdiction.

64. The natural and intended byproduct of JD Defendants’ actions is the erosion and destruction of the goodwill associated with Plaintiffs’ intellectual property rights and the destruction of the legitimate market sector in which it operates.

65. Upon information and belief, at all times relevant hereto, JD Defendants had actual or constructive knowledge of Plaintiff’s intellectual property rights, including Plaintiff’s exclusive right to use and license such intellectual property rights.

DEFENDANTS’ INFRINGING ACTIVITIES

66. Plaintiff’s business success purveying its high-quality and very unique products has resulted in infringement of Plaintiff’s ‘156 Design Patent.

67. Defendants are promoting, advertising, distributing, selling, and/or offering for sale cheap copies of Plaintiff’s patented products in interstate commerce that are infringements of Plaintiff’s intellectual property rights (the “Infringing Goods”) through Walmart.com operating

under the Seller IDs with the merchant name JOYBUY. True and correct copies of the web pages captured and downloaded showing the infringing products at Walmart.com are attached hereto as **Composite Exhibit 2**.

68. As shown in the comparison below, JD Defendants are using Plaintiff's '156 Design Patent to sell their cheap infringements on Walmart.com.

PLAINTIFF'S '156 DESIGN PATENT



DEFENDANTS' LISTING

Erccolor
Caps Tire Stem Presta Bike Tyre Pressure
Funny Rubber Mtb Cover Auto Car
Replacement

Now \$8.09 \$8.99
You save \$0.90
Price when purchased online

[Add to cart](#)

Free shipping, arrives by Fri, Oct 6 to Sacramento, 95829
Want it faster? [Add an address](#) to see options
[More options](#)

Sold and shipped by **Joybuy Marketplace**
★★★★☆ 63327 seller reviews
[View seller information](#)

Free 30-day returns [Details](#)

69. The Defendants are operating on Walmart.com using pirated copies of the '156 Design Patent to initially attract online customers and drive them to the Defendants' goods at Walmart.com.

70. Defendants are actively using, promoting and otherwise advertising, distributing, selling and/or offering for sale substantial quantities of their Infringing Goods with the knowledge and intent that such goods will be mistaken for the genuine high-quality goods offered for sale by Plaintiff, despite Defendants' knowledge that they are without authority to use the '156 Design Patent.

71. Defendants' infringing products reproduce the main design features of the '156 Design Patent, as is shown in the Claim Charts attached hereto as **Exhibit 3**. For purposes of supporting the above argument, only Figures 1 through 6 in the '156 Design Patent illustrating the design claimed were included. Because Figures 7 and 8 in the '156 Design Patent are inside views of the design, photos of infringing products recreating those views are not possible to be captured.

72. Defendants' Infringing Goods are of a quality substantially different than that of Plaintiff's genuine goods.

73. The net effect of Defendants' actions is likely to cause confusion of consumers, at the time of initial interest, sale, and in the post-sale setting, who will believe all of Defendants' goods offered for sale on Defendants' e-commerce stores are genuine goods originating from, associated with, and approved by Plaintiff.

74. The Defendants advertise their e-commerce stores, including their Infringing Goods offered for sale, to the consuming public via Walmart.com.

75. In so advertising their stores and products, Defendants improperly and unlawfully used the ‘156 Design Patent without Plaintiff’s permission.

76. As part of their overall infringement and pirating scheme, the Defendants are, upon information and belief, concurrently employing and benefitting from substantially similar advertising and marketing strategies based in large measure upon an illegal use of the ‘156 Design Patent or substantially similar photographs.

77. Specifically, the Defendants are using infringing versions of the ‘156 Design Patent in order to make their individual seller stores at Walmart.com selling illegal goods appear more relevant and attractive to consumers searching for both Plaintiff’s goods and goods sold by Plaintiff’s competitors online.

78. By their actions, Defendants are contributing to the creation and maintenance of an illegal marketplace operating in parallel to the legitimate marketplace for Plaintiff’s genuine goods at Walmart.com.

79. Defendants are causing individual, concurrent and indivisible harm to Plaintiff and the consuming public by (i) depriving Plaintiff and other third parties of their right to fairly compete for space within search engine results and reducing the visibility of Plaintiff’s genuine goods on the World Wide Web, and (iii) increasing Plaintiff’s overall cost to market its goods and educate consumers via the Internet.

80. Defendants are concurrently conducting and targeting their infringing activities toward consumers and likely causing unified harm within this district and elsewhere throughout the United States.

81. As a result, Defendants are defrauding Plaintiff and the consuming public for Defendants’ own benefit.

82. Upon information and belief, at all times relevant hereto, Defendants in this action had full knowledge of Plaintiff's ownership of the '156 Design Patent, including its exclusive right to use such intellectual property and the goodwill associated therewith.

83. Defendants' use of the '156 Design Patent, for the promotion and advertisement, reproduction, distribution, sale and offering for sale of their Infringing Goods, is without Plaintiff's consent or authorization.

84. Defendants are engaging in the above-described illegal infringing activities knowingly and intentionally or with reckless disregard or willful blindness to Plaintiff's intellectual property rights for the purpose of trading on Plaintiff's goodwill and reputation.

85. If Defendants' intentional infringing activities are not preliminarily and permanently enjoined by this Court, Plaintiff and the consuming public will continue to be harmed.

86. Defendants' infringing activities are likely to cause confusion, deception, and mistake in the minds of consumers before, during and after the time of purchase.

87. Defendants' wrongful conduct is likely to create a false impression and deceive customers, the public, and the trade into believing there is a connection or association between Plaintiff's genuine goods and Defendants' Infringing Goods, which there is not.

88. Defendants' payment and financial accounts are being used by Defendants to accept, receive, and deposit profits from Defendant's counterfeiting and infringing, and its unfairly competitive activities connected with the merchant names JOYBUY, JOYBUY EXPRESS, JOYBUY FASHION, JOYBUY SELECTION, and JOYBUY AMERICA at Walmart.com.

89. Plaintiff is suffering irreparable injury and has suffered substantial damages as a result of Defendants' unauthorized and infringing activities and their wrongful use of Plaintiff's intellectual property rights.

90. If Defendants' infringing, and unfairly competitive activities are not preliminarily and permanently enjoined by this Court, Plaintiff and the consuming public will continue to be harmed.

91. The harm and damages sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful manufacture, reproduction, use, advertisement, promotion, offers to sell, and sale of their Infringing Goods.

92. The Defendants reap the benefits of the sales of their Infringing Goods that infringe the '156 Design Patent.

93. Defendants have sold their infringing products in competition directly with Plaintiff's genuine products.

94. Plaintiff should not have any competition from Defendants because Plaintiff never authorized Defendants to use Plaintiff's design patent.

95. Plaintiff has no adequate remedy at law.

COUNT I – PATENT INFRINGEMENT

96. Plaintiff incorporates the allegations of paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. Plaintiff has the exclusive rights on the U.S. Design Patent No. US D991,156 S entitled "VALVE STEM CAP", claiming the design features of its TIRECOCKZ branded prank penis shaped valve stem cap.

98. Defendants have infringed the '156 Design Patent either directly or indirectly through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271, by

making, using, selling, importing and/or offering to sell infringing products, namely the infringing and counterfeit products, some of them under the TIRECOCKZ Mark.

99. Defendants' infringing products are the same in all material respects.

100. Defendants' infringement, contributory infringement and/or inducement to infringe has injured Plaintiff and is, therefore, entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

101. Defendants' infringement, contributory infringement and/or inducement to infringe has been willful and deliberate because Defendants have notice of or knew of the '156 Design Patent and has nonetheless injured and will continue to injure Plaintiff, unless and until this Court enters an injunction, which prohibits further infringement and specifically enjoins further manufacture, use, sale, importation and/or offer for sale of products that come within the scope of the '156 Design Patent.

102. Plaintiff has been damaged by the infringement.

103. The harm to Plaintiff is irreparable.

104. Plaintiff is entitled to temporary and permanent injunctive relief from Defendants' willful infringement.

105. Plaintiff is entitled to recover its actual damages and/or statutory damages, at its election.

106. Plaintiff is entitled to recover its reasonable costs and attorneys' fees incurred in this action.

WHEREFORE, Plaintiff demands judgment on all Counts of this Complaint and an award of equitable relief and monetary relief against Defendants as follows:

- a. Entry of a temporary restraining order, as well as preliminary and permanent injunctions pursuant to 28 U.S.C. § 1651(a), The All Writs Act, and the Court's inherent authority, enjoining Defendants and all third parties with actual notice of the injunction issued by this Court from participating in, including providing financial services, technical services, or other support to Defendants in connection with the sale and distribution of non-genuine goods that reproduce the ornamental features of Plaintiff's '156 Design Patent.
- b. Entry of an Order requiring Defendants to account to and pay Plaintiff damages for patent infringement in an amount to be determined by the Court pursuant to 35 U.S.C. §§ 284 and 289 which shall in no event be less than a reasonable royalty.
- c. Entry of an award pursuant to 35 U.S.C § 285 of Plaintiff's costs and reasonable attorneys' fees and investigative fees, associated with bringing this action, including the cost of corrective advertising.
- d. Entry of an award of pre-judgment interest on the judgment amount.
- e. Entry of an Order for any further relief as the Court may deem just and proper.

JURY DEMAND

GeekCommerce LLC hereby demands a trial by jury of all issues so triable.

DATED: October 10, 2024

Respectfully submitted,

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