

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

NIGHT CAP IT, 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-06658**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

Jury Trial Demanded

Plaintiff NIGHT CAP IT, LLC (“NIGHT CAP IT”) by and through its undersigned counsel, brings this Complaint against Defendants 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 infringements and confusingly similar imitations of Plaintiff’s intellectual property within this district, through Walmart online stores under the merchant name JOYBUY and in support thereof states as follows:

**SUMMARY OF THE ACTION**

1. Plaintiff NIGHT CAP IT brings this action for willful 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 invention, within the United States or for importation into the United States any patented invention during the term of the patent-in-suit, and for all the remedies available under 35 U.S.C. §§ 283, 284, and 285.

**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 has original and exclusive subject matter jurisdiction over this action pursuant to 35 U.S.C. § 271.

**PERSONAL JURISDICTION**

4. 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 consumers to browse goods available and purchase them for direct shipping to their homes.

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

13. New York consumers 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 consumers 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 consumers 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 JD Defendants on the internet to New York consumers through a variety of methods including search engine optimization (SEO) efforts, follow-up emails to New York consumers 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 consumers, to additional information on those products and sellers, which include JD Defendants.

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

optimization (SEO) efforts, follow-up emails to New York consumers who have Walmart.com accounts, and who have previously purchased products from 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 consumers, to additional information on those products.

19. Walmart Defendants and JD Defendants secure direct financial benefit from purchases made by New York consumers 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 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(b) because Defendants reside in this district, defendants committed acts of infringement in this district and have regular and established places of business in this district, and Defendants' agents reside or may be found in this judicial district.

**DEFENDANTS**

27. Plaintiff NIGHT CAP IT, LLC is an American limited company, with its principal place of business located at 700 S. Rosemary Ave. Suite 204 West Palm Beach, FL 33401.

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. Plaintiff NIGHT CAP IT, LLC (“NightCap”) specializes in creating innovative personal protection products, with a focus on preventing drink spiking. It was founded by Shirah Benarde, who invented the company’s signature product at the age of 16. The inspiration for the product came after a friend of Benarde’s was roofied, leading her to dream up a solution to this serious problem.

34. Plaintiff sells its products under the NightCap name and one of the main products is the NightCap Scrunchie, a drink spiking prevention device that gained popularity after being featured on ABC’s Shark Tank. This product is patent protected by the U.S. Patent and Trademark Office, No. 11,197,525 and No. 11,805,884.

35. Plaintiff’s NightCap products are sold through its own website at <https://nightcapit.com/>, and other authorized retailers, including Amazon, Walmart, Etsy, Ebay, Invisiwear, Fabulyss Boutique, Forever 21, and The Paper Store.

36. Plaintiff owns, as part of its intellectual property portfolio, the patents described below that are the subject of this action.

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

38. 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.

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

40. 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.

41. The recent explosion of infringement over the Internet has created an environment that requires companies like Plaintiff's 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 brand.

**PLAINTIFF'S INTELLECTUAL PROPERTY RIGHTS**

42. Plaintiff owns all right, title, and interests in, and has standing to sue for infringement of U.S. Patent No. 11,197,525 (“’525 Patent”) and No. 11,805,884 (“’884 Patent”), both entitled “DRINK SPIKING PREVENTION DEVICE”, as shown in the table below. True and correct copies of the ’525 Patent and the ’884 Patent (collectively “NightCap Patents”) are attached hereto as **Composite Exhibit 1**.

<b>Patent Registration Number</b>	<b>Issued On</b>	<b>Exhibit</b>
<b>11,197,525</b>	December 14, 2021	1A
<b>11,805,884</b>	November 7, 2023	1B

43. The NightCap Patents relate to a cover wearable as a hair accessory and operable to cover an opening of a cup to prevent foreign substances from being added to the cup.

44. The NightCap Patents and are valid, and the maintenance fees are current.

45. Plaintiff has never granted authorization to anyone to import, make, use, or sell goods using Plaintiff's NightCap Patents.

46. At all times relevant, Plaintiff complied with the federal patent marking statute, 35 U.S.C. § 287(a), shown in **Exhibit 2**.

### **WALMART DEFENDANTS**

47. 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.”

48. 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.

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

50. Walmart.com's “Patent Claims” policy states that Walmart reserves the right to remove any content that is found to infringe the rights of a patent owner.”

51. 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 counterfeit goods.”

52. 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.”

53. 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.”

54. Walmart.com engages in unfair competition with Plaintiff by allowing sellers such as 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.

55. 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.

56. 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.

57. 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.

**THE JD DEFENDANTS**

58. JD Defendants have registered, established, or purchased, maintained and operated seller ID accounts at Walmart.

59. 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.

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

61. 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 name JOYBUY.

62. JD Defendants use the NightCap Patents, and these denominations and content are indexed on search engines and compete directly with Plaintiff for space in search results.

63. 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.

64. 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 the state of New York, and causing Plaintiff harm and damage within this jurisdiction.

65. The natural and intended byproduct of JD Defendants' actions is 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.

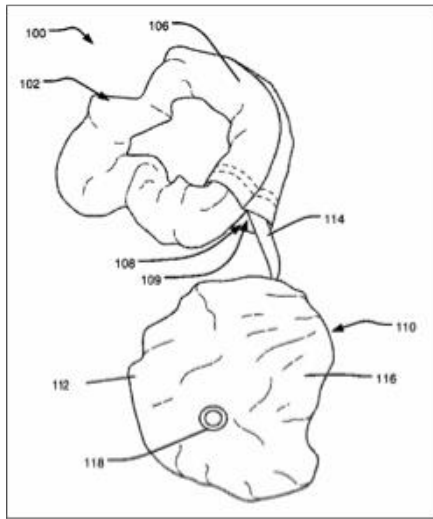
66. Upon information and belief, at all times relevant hereto, JD Defendants had actual or constructive knowledge of Plaintiff's intellectual property rights, including Plaintiff's exclusive right to use and license such intellectual property rights.

#### **DEFENDANTS' INFRINGING ACTIVITIES**

67. Defendants are promoting, advertising, manufacturing, distributing, selling, and/or offering products that have substantially the same technical features as the NightCap Patents, infringing Plaintiff's patent rights through at least the Internet-based e-commerce stores operating under the Seller IDs, selling infringing goods shown in **Exhibit 3** (the "Infringing Goods").

68. Defendants' Infringing Goods practice all elements of at least claim 1 of the '525 Patent and at least claim 1 of the '884 Patent. Attached as **Exhibit 4** is a claim chart to support this statement.

69. For additional reference, shown below side by side, is a comparison of Plaintiff's representative figure from NightCap Patents (on the left) and two examples of Defendant's Infringing Goods (on the right):



Plaintiff's representative figure from '525 and '884 Patents



Two examples of Defendants' Infringing Goods

70. Defendants are selling Infringing Goods using the NightCap Patents to initially attract online customers and drive them to Defendant's e-commerce stores operating under the Seller IDs.

71. Defendants are concurrently conducting and targeting their infringing activities toward consumers, likely causing unified harm within this district.

72. Defendants are defrauding Plaintiff and the consuming public for Defendants' own benefit.

73. At all times relevant hereto, Defendants in this action had full knowledge of Plaintiff's ownership of the NightCap Patents, including its exclusive right to use and license such intellectual property and the goodwill associated therewith.

74. Defendants' use of the NightCap Patents, including the promotion and advertisement, manufacturing, distribution, sale, and offering for sale of their Infringing Goods, is without Plaintiff's consent or authorization.

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

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

77. Plaintiff is suffering irreparable injury and has suffered substantial damages as a result of Defendants' unauthorized and infringing activities and its wrongful use of Plaintiff's patent rights.

78. Plaintiff has no adequate remedy at law and is suffering damages and irreparable injury as a result of Defendants' infringing actions.

**COUNT I – DIRECT PATENT INFRINGEMENT OF U.S. PATENTS NO. 11,197,525 and 11,805,884**

79. Plaintiff incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

80. Plaintiff owns all right, title, and interests in the NightCap Patents, claiming the technical and functional features of its NIGHT CAP branded car latch pedal products.

81. Within the six years preceding the filing of this Complaint, Defendants are making, using, selling, importing and/or offering to sell products which infringe directly of the NightCap Patents both literally and under the doctrine of equivalents.

82. Without limiting the foregoing, Defendants have infringed at least Claims 1 of the NightCap Patents.

83. Defendants' act of making, using, importing, selling, and/or offering for sale Infringing Goods has been without the license, permission, or authorization from Plaintiff.

84. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' product, including Infringing Goods, which incorporates Plaintiff's patent.

85. Defendants' infringement has injured and continues to injure Plaintiff in an amount to be proven at trial, but not less than a reasonable royalty.

**COUNT VII - INDIRECT INFRINGEMENT OF U.S. PATENTS NO. 11,197,525 and 11,805,884**

86. Plaintiff incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

87. With knowledge of the NightCap Patents, Defendants have been and are presently indirectly infringing one or more claims of the NightCap Patents by actively and knowingly inducing others to build and develop Infringing Goods that embody or use the utility and technical features or methods claimed in the NightCap Patents in violation of 35 U.S.C. § 271(b). On information and belief, such inducements include without limitation, with specific intent to encourage the infringement knowingly inducing its investors, partners, builders, employees to use the patented utility and technical features or methods that Defendants know or should know infringe one or more claims of the NightCap Patents.

88. Defendants have induced others to infringe at least Claims 1 of the NightCap Patents.

89. Defendants continue to infringe at least Claim 1 of the NightCap Patents even after receiving cease and desist notices from Plaintiff.

90. Defendants' infringement has been, and continues to be knowing, intentional, and willful.

91. Defendants' infringement has injured and continues to injure Plaintiff in an amount to be proven at trial, but not less than a reasonable royalty.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff NIGHT CAP IT, LLC, demands judgment and relief against Defendants and respectfully requests that the Court:

- A. Entry of temporary, preliminary, and permanent injunctions pursuant to Federal Rule of Civil Procedure 65 enjoining Defendants, their agents, representatives, servants, employees, and all those acting in concert or participation therewith, from copying, displaying, distributing or creating derivative works of Plaintiff's patents, or, from manufacturing or causing to be manufactured, importing, advertising or promoting, distributing, selling or offering to sell their Infringing Goods;
- B. Entry of an Order requiring all Defendants to account to and pay Plaintiff sufficient to compensate Plaintiff for the infringement in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284;
- C. A finding that this case is an exceptional case under 35 U.S.C. § 284 and an award to Plaintiff of its costs and reasonable attorneys' fees as provided by 35 U.S.C. § 285;
- D. Entry of an award of pre-judgment interest on the judgment amount; and
- E. Entry of an Order for any further relief as the Court may deem just and proper.

**JURY DEMAND**

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

Dated: November 13, 2024

Respectfully submitted,

/s/ Joel B. Rothman

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