

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

CUP COZY PILLOW L.L.C.,
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-06660

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Jury Trial Demanded

Plaintiff CUP COZY PILLOW L.L.C (“Cozy Cup”) 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 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 Cozy Cup brings this action for federal trademark counterfeiting and infringement, false designation of origin, unfair competition, and common law trademark infringement pursuant to 15 U.S.C. §§ 1114, 1116, and 1125(a), The All Writs Act, 28 U.S.C. § 1651(a), and New York’s common law.

2. Plaintiff Cozy Cup also 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,

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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 '261 Patent, and for all the remedies available under 35 U.S.C. §§ 283, 284, and 285.

3. Plaintiff Cozy Cup brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Cozy Cup's original copyrighted Work of authorship.

SUBJECT MATTER JURISDICTION

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

5. This Court also has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121.

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

7. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state law claims because those claims are so related to the federal claims that they form part of the same case or controversy.

PERSONAL JURISDICTION

8. 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.

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

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

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

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

13. 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.

14. 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.

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

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

17. New York residents can readily access the JD Defendants’ listings on Walmart.com and are able to purchase a variety of goods, including the counterfeit goods, sold by JD Defendants.

18. 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.

19. 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.

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

21. Walmart.com promotes sales by 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.

22. 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 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.

23. 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 the JD Defendants’ activities on Walmart.com.

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

25. 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.

26. 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.

27. 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

28. 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.

29. 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.

30. 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.

THE PARTIES

31. CUP COZY PILLOW L.L.C (“Cozy Cup Pillow”) is a Nevada Limited-Liability Company, with its principal place of business at 6955 N. Durango Drive, Suite 115-720, Las Vegas, NV 89149.

32. 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.

33. 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.

34. 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.

35. 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.

36. The 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

37. Michael and Monica Almaguer are the duo behind the innovative Cup Cozy Pillow. With a passion for both practicality and comfort, Monica and Michael embarked on a mission to revolutionize the way people enjoy their favorite beverages.

38. The accidental invention came about when Monica couldn't find a way to keep her drink close to her without spilling it. So, she got a pillow, cut a hole in it, and the Cup Cozy Pillow was born. Soon her husband Michael started taking it to use in his mancave.

39. From this humble beginning, their Las Vegas-based, family-owned business has flourished. Launched on ABC's Steve Harvey's Funderdome in 2017, the Cup Cozy Pillow has garnered widespread acclaim, fueled by glowing reviews from satisfied customers. With an expanding range of colors and product lines, the Cup Cozy Pillow continues to redefine comfort and practicality, ensuring its enduring presence in homes everywhere.

40. Plaintiff sells its products under the Cozy Cup Pillow name which is registered at the U.S. Patent and Trademark Office, Reg. No. 5,457,547.

41. Plaintiff Cozy Cup Pillow's are sold through their website at <https://cupcozypillow.com/> and other authorized retailers, including Walmart and eBay.

42. Plaintiff owns, as part of its intellectual property portfolio, the design patent described below that is the subject of this action.

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

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

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

46. 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.

47. 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

A. PLAINTIFF'S TRADEMARK RIGHTS

48. Plaintiff sells its products under its federally registered trademark, U.S. Trademark No. 5,457,547, CUP COZY PILLOW (the "Cup Cozy Mark"). A true and correct copy of the Trademark Registration is attached hereto as **Exhibit 1**.

49. Plaintiff is the owner of all rights in and to the Cup Cozy Mark, including the exclusive right to pursue acts of infringement and retain and recover all proceeds thereof.

50. The Cup Cozy Mark was issued May 1, 2018, has not expired, is valid, and the maintenance fees are current.

51. The Cup Cozy Mark is used in connection with the manufacture and distribution of Plaintiff's high-quality and unique products.

52. The Cup Cozy Mark has been used in interstate commerce to identify and distinguish Plaintiff's high-quality and unique products for an extended period of time.

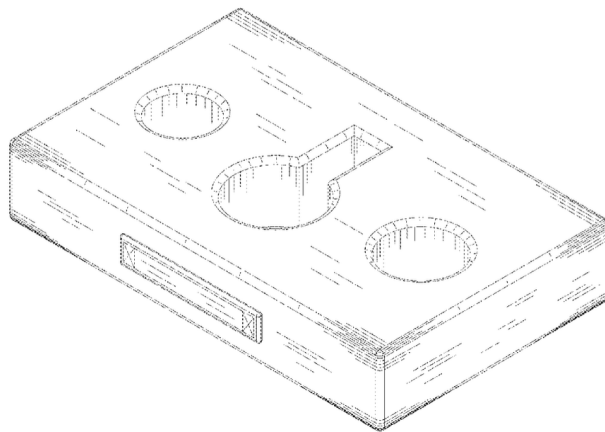
53. As a result of Plaintiff's efforts, members of the consuming public readily identify merchandise bearing or sold under the Cup Cozy Mark as being high-quality and unique water balloons sponsored and approved by Plaintiff.

54. Plaintiff has never granted authorization to anyone to import, make, use, or sell goods using the Cup Cozy Mark.

B. PLAINTIFF'S PATENT RIGHTS

55. Plaintiff owns all right, title, and interests in, and/or has standing to sue for infringement of U.S. Patent No. D944,607 S (“’607 Patent”); D942,810 S (“’810 Patent”); D789,162 S (“’162 Patent”); and D804,261 S (“’261 Patent”). At issue is the ‘261 Patent. A true and correct copy of the Patent Registration is attached hereto as **Exhibit 2**. A true and correct copy of the ‘261 Patent assignment is attached hereto as **Exhibit 3**.

56. The ‘261 Patent relates to ornamental design for a cup holder of which an exemplary figure is shown below:



Exemplary figure of Plaintiff’s ‘261 Patent

57. The ‘261 patent was issued December 5, 2017, has not expired, is valid, and the maintenance fees are current.

58. Plaintiff has never granted authorization to anyone to import, make, use, or sell goods using Plaintiff’s ‘261 Patent.

59. At all times relevant, Plaintiff complied with the federal patent marking statute, 35 U.S.C. § 287(a).

C. PLAINTIFF'S COPYRIGHT RIGHTS

60. Plaintiff advertises, markets, promotes, and sells its products using photographs, that are protected by copyright and registered with the Copyright Office (the “Copyrighted Images”). Examples of Plaintiff’s copyrighted product images are shown below:



61. Plaintiff registered the Copyrighted Images with the Register of Copyrights as a group registration on March 25, 2024, and was assigned registration number VAu 1,530,130. A copy of the registration is attached hereto as **Exhibit 4**.

62. Plaintiff’s Copyrighted Images are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

63. Plaintiff is the owner of all rights in and to the Copyrighted Work.

64. The Copyrighted Work is valuable to Plaintiff’s business and is part of her intellectual property assets. The Copyrighted Work in perspective, orientation, positioning, lighting and other details is entirely original, distinctive, and unique. As such, it qualifies as subject matter protectable under the Copyright Act.

65. Plaintiff has never granted authorization to anyone to advertise, market, or promote unauthorized goods using Plaintiff’s copyrighted Works.

WALMART DEFENDANTS

66. 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.”

67. 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.

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

69. Walmart.com’s “Trademark Claims” policy states that “Walmart reserves the right to remove any content that is found to infringe the rights of a trademark owner.”

70. 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.”

71. Walmart.com’s “Copyright Claims” policy states that “[c]opyright protected content can be removed and/or disabled if it was utilized or disseminated by Walmart.com without proper permission from the copyright owner.”

72. 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.”

73. 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.”

74. 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.”

75. 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.

76. Walmart.com, by facilitating the 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.

77. Walmart.com facilitates the illegal actions of the 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.

78. 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

79. 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.

80. 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.

81. 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 name JOYBUY.

82. 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.

83. JD Defendants use product denominations, descriptive content, and images in their individual seller stores at Walmart.com containing Plaintiff's intellectual property, and these denominations and content are indexed on search engines and compete directly with Plaintiff for space in search results.

84. The appearance of the JD Defendants' individual seller stores at Walmart.com in search engine results undermines Plaintiff's efforts to educate consumers about the value of products sold under Plaintiff's intellectual property.

85. 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.

86. 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.

87. 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.

88. 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.

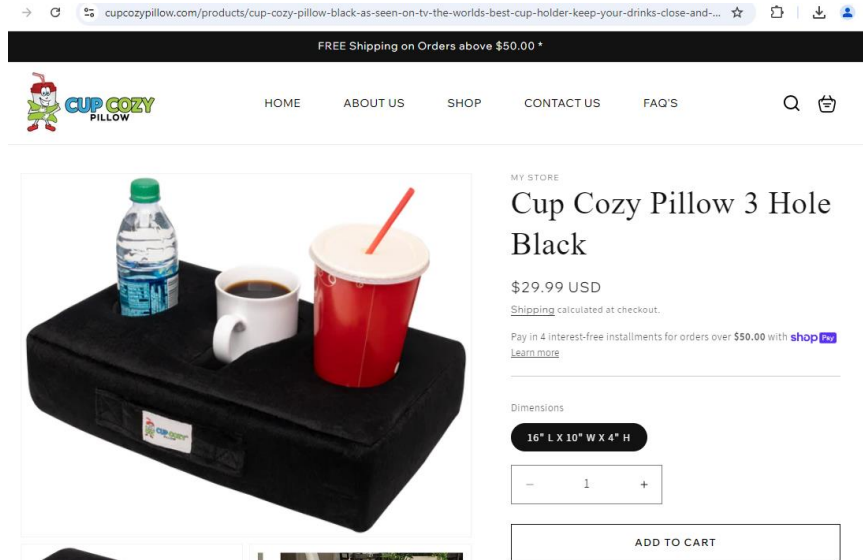
DEFENDANTS' INFRINGING ACTIVITIES

89. Plaintiff's business success purveying its high-quality products has resulted in infringement of Cup Cozy Mark, '261 Patent, and the Copyrighted Images.

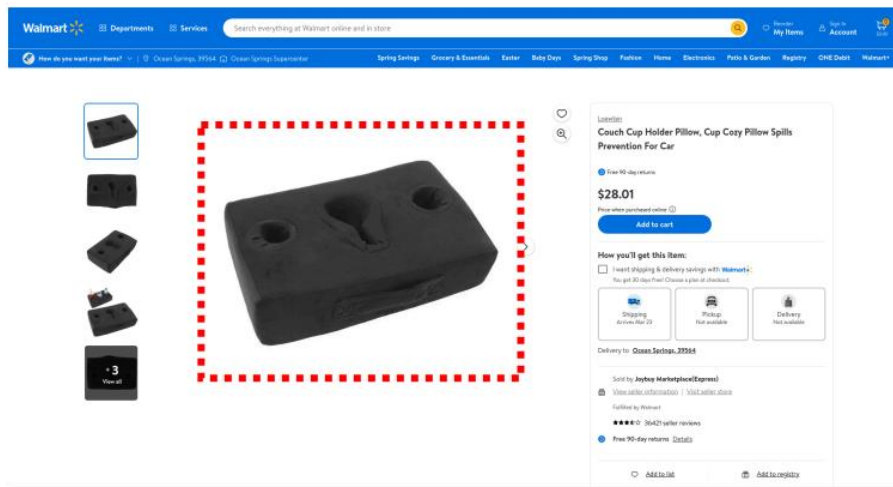
90. Defendants are promoting, advertising, manufacturing, distributing, selling, and/or offering products for sale in interstate commerce cheap knockoffs of Plaintiff's high-quality and very unique products that are counterfeits and infringements of Plaintiff's intellectual property rights (the "Counterfeit Goods") through Walmart.com operating under the Seller IDs with the merchant name JOYBUY EXPRESS. True and correct copies of the web pages captured showing the counterfeit and infringing products at Walmart.com are attached hereto as **Exhibit 5**.

91. As shown in the comparison below between a genuine product and a cheap knock-off sold by Defendants below, JD Defendants are using Walmart.com to counterfeit Plaintiff’s products.

PLAINTIFF’S GENIUNE LISTING

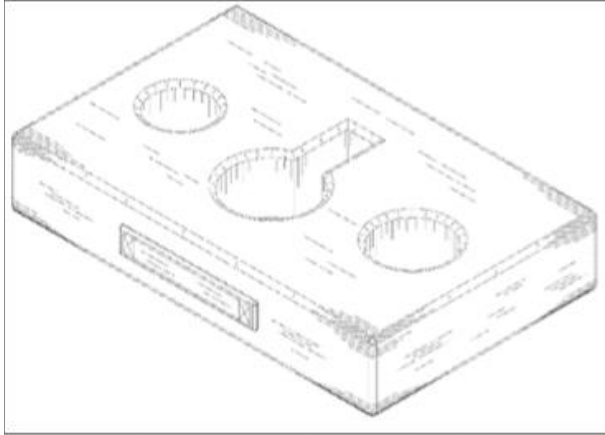


DEFENDANTS’ LISTING



92. Defendants’ Infringing Goods practice all elements of claim 1 of the ‘261 Patent.

93. The comparison of Plaintiff’s 261 Patent (on the left), one of ‘261 Patent, and an image of a sample of Defendant’s Infringing Goods (on the right) is shown below side by side:



Exemplary figure of Plaintiff's '261 Patent



Defendant's Infringing Goods

94. On a date after the Copyrighted Images at issue in this action was created, but before the filing of this action, Defendants copied the images and removed Plaintiff's copyright management information from the Copyrighted Images.

95. Specifically, Defendants are using Plaintiff's intellectual property to initially attract online customers and drive them to Defendants' individual seller stores at Walmart.com operating under the Seller IDs with the merchant name JOYBUY.

96. Defendants are using similar or identical copies of Plaintiff's intellectual property for different quality goods. The unauthorized use of Plaintiff's intellectual property by Defendants results in the false designation of origin of the products and misleads consumers about the source and quality of the products and/or a possible association between Plaintiff and the Defendants.

97. Plaintiff has used its intellectual property extensively and continuously before Defendants began offering counterfeit and confusingly similar imitations of Plaintiff's merchandise.

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

99. Defendants are actively using, promoting and otherwise advertising, distributing, selling and/or offering for sale substantial quantities of their Counterfeit Goods with the knowledge and intent that such goods will be mistaken for the genuine high-quality and unique products offered for sale by Plaintiff, despite Defendants' knowledge that it is without authority to use Plaintiff's intellectual property.

100. Plaintiff reported listings that infringed her intellectual property rights to Walmart, who subsequently took down the listings that Plaintiff reported. Despite the listings containing identical or near identical listing titles. Walmart has failed to identify and remove other infringing listings by Defendants.

101. The net effect of the Defendants' actions is consumer confusion at the time of initial interest, sale, and in the post-sale setting. Consumers are likely to believe Defendants' goods are genuine cup holder products originating from, associated with, and approved by Plaintiff.

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

103. In so advertising its stores and products, Defendants improperly and unlawfully use Plaintiff's intellectual property without Plaintiff's permission.

104. As part of their overall infringement and counterfeiting scheme, 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 Plaintiff's intellectual property.

105. Defendants are using identical or substantially similar photographs to the ones used by Plaintiff in its regular sales channel to advertise and market its products, featuring the

high-quality and unique products, in which Plaintiff's intellectual property can be seen. Therefore, Plaintiff's intellectual property is also being used in association with Defendants' infringing products, resulting in the infringement of Plaintiff's trademark, copyright, and patent, false designation of origin of the products, and the misleading of consumers about the source and quality of the products and/or a possible association between Plaintiff and Defendants.

106. Upon information and belief, at all times relevant hereto, some Defendants are removing the Cup Cozy Mark featured in the images to evade trademark infringement claims.

107. Specifically, Defendants are using counterfeits and infringements of the Cup Cozy Mark 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.

108. 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.

109. 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, (ii) causing an overall degradation of the value of the goodwill associated with Plaintiff's intellectual property, and (iii) increasing Plaintiff's overall cost to market its goods and educate consumers via the Internet.

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

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

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

113. Defendants' use of Plaintiff's intellectual property, including the promotion and advertisement, reproduction, distribution, sale and offering for sale of their Counterfeit Goods, is without Plaintiff's consent or authorization.

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

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

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

117. 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' Counterfeit Goods, which there is not.

118. 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 name JOYBUY at Walmart.com.

119. 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.

120. 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 Counterfeit Goods.

121. The Defendants reap the benefits of the sales of their Counterfeit Goods that infringe Plaintiff's intellectual property.

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

123. Plaintiff should not have any competition from Defendants because Plaintiff never authorized Defendants to use Plaintiff's intellectual property.

124. Plaintiff has no adequate remedy at law.

COUNT I – TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

125. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

126. This is an action for trademark counterfeiting and infringement against Defendants based on their use of counterfeit and confusingly similar imitations of Cup Cozy Mark in commerce in connection with the promotion, advertisement, distribution, offering for sale and sale of the Counterfeit and Infringing Goods.

127. Defendants are promoting and otherwise advertising, selling, offering for sale, and distributing goods bearing and/or using counterfeits and/or infringements of the Cup Cozy Mark.

128. Defendants are continuously infringing and inducing others to infringe the Cup Cozy Mark by using it to advertise, promote, sell, and offer to sell counterfeit and infringing goods.

129. Defendants' concurrent counterfeiting and infringing activities are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of Defendants' Counterfeit Goods.

130. Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Plaintiff and are unjustly enriching Defendants with profits at Plaintiff's expense.

131. Defendants' above-described illegal actions constitute counterfeiting and infringement of the Cup Cozy Mark in violation of Plaintiff's rights under § 32 of the Lanham Act, 15 U.S.C. § 1114.

132. Plaintiff has suffered and will continue to suffer irreparable injury and damages due to Defendants' above-described activities if Defendants are not preliminarily and permanently enjoined.

133. If not preliminarily and permanently enjoined, Defendants will continue to wrongfully profit from their illegal activities.

COUNT II – FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

134. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

135. Upon information and belief, Defendants have widely advertised, offered for sale, sold, and shipped throughout the United States via Walmart.com their Infringing Goods bearing or infringing the Cup Cozy Mark.

136. Defendants' Counterfeit Goods bearing the Cup Cozy Mark, offered for sale, and sold using copies of the Cup Cozy Mark are virtually identical in appearance to Plaintiff's genuine goods.

137. Defendants' Counterfeit Goods are different in quality from Plaintiff's goods and are of much lower quality.

138. Defendants' activities are likely to cause confusion in the trade and among the general public as to at least the origin or sponsorship of their Counterfeit Goods.

139. Defendants, upon information and belief, have used in connection with their advertisement, offer for sale, and sale of their Counterfeit Goods, false designations of origin and false descriptions and representations, including words or other symbols and trade dress, which tend to falsely describe or represent such goods and have caused such goods to enter into commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to Plaintiff's detriment.

140. Defendants have authorized infringing uses of the Cup Cozy Mark in Defendants' advertisement and promotion of their counterfeit and infringing branded goods.

141. Defendants have misrepresented to members of the consuming public that the Counterfeit Goods being advertised and sold by him are genuine, non-infringing goods.

142. Defendants are using counterfeits and infringements of the Cup Cozy Mark in order to unfairly compete with Plaintiff and others for space within organic search engine results and social media results, thereby jointly depriving Plaintiff of a valuable marketing and educational tool which would otherwise be available to Plaintiff and reducing the visibility of Plaintiff's genuine goods on the internet and across social media platforms.

143. Defendants' above-described actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

144. Plaintiff has no adequate remedy at law and has sustained indivisible injury and damage caused by Defendants' concurrent conduct.

145. Absent an entry of an injunction by this Court, Defendants will continue to wrongfully reap profits and Plaintiff will continue to suffer irreparable injury to its goodwill and business reputation, as well as monetary damages.

COUNT III – COMMON LAW UNFAIR COMPETITION

146. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

147. This is an action against Defendants based on their promotion, advertisement, distribution, sale and/or offering for sale of goods bearing the Cup Cozy Mark that are virtually identical to the Cup Cozy Mark in violation of New York's common law of unfair competition.

148. Defendants' activities complained of herein constitute unfair methods of competition.

149. Specifically, Defendants are promoting and otherwise advertising, selling, offering for sale and distributing goods using or bearing counterfeits and infringements of the Cup Cozy Mark.

150. Defendants are also using counterfeits and infringements of the Cup Cozy Mark to unfairly compete with Plaintiff and others for (1) space in search engine and social media results across an array of search terms and (2) visibility on the Internet.

151. Defendants' infringing activities are likely to cause and actually are causing confusion, mistake and deception among members of the trade and the general consuming public

as to the origin and quality of Defendants' individual seller stores at Walmart and all products sold therein by its use of the Cup Cozy Mark.

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

COUNT IV – COMMON LAW TRADEMARK INFRINGEMENT

153. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

154. This is an action for common law trademark infringement against Defendants based on their promotion, advertisement, offering for sale, and sale of their Counterfeit Goods bearing the Cup Cozy Mark.

155. Plaintiff is the owner of all common law rights in and to the Cup Cozy Mark.

156. Defendants, upon information and belief, are promoting, and otherwise advertising, distributing, offering for sale, and selling goods bearing infringements the Cup Cozy Mark.

157. Defendants' infringing activities are likely to cause and actually are causing confusion, mistake and deception among members of the trade and the general consuming public as to the origin and quality of Defendants' Counterfeit Goods bearing or sold under the Cup Cozy Mark.

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

COUNT V – AGAINST WAL-MART.COM USA, LLC, AND WALMART, INC. CONTRIBUTORY TRADEMARK INFRINGEMENT

159. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

160. Despite knowledge, Walmart failed to prevent further infringement of Plaintiff's intellectual property. Walmart allowed listings that were the subject of notices to continue to infringe.

161. Walmart allowed repeat infringers to maintain infringing listings and relist infringing products after having been put on notice.

162. Walmart failed to take reasonable steps to prevent continued infringement.

163. Walmart failed to take reasonable steps to identify and remove the listings that unlawfully used Plaintiff's trademark and pirated copies of Plaintiff's intellectual property.

164. By facilitating and enabling the repeated listings and relisting of products for sale that Walmart was aware infringed Plaintiff's trademark, Walmart contributed to the infringement.

165. Walmart knew about the infringement and allowed the infringement to continue.

166. Walmart's actions and inaction contributed to the infringement of Plaintiff's trademark.

167. Plaintiff has no adequate remedy at law and is suffering damages and irreparable injury as a result of Walmart's actions.

COUNT VI – DIRECT PATENT INFRINGEMENT

168. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

169. Plaintiff owns all rights, title, and interests in the '261 Patent, claiming the ornamental features of its beverage holder products.

170. 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 or indirectly of the '261 Patent both literally and under the doctrine of equivalents.

171. Without limiting the foregoing, Defendants have infringed at least Claims 1 of ‘261 Patent.

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

173. 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.

174. 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 PATENT INFRINGEMENT

175. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

176. With knowledge of the ‘261 Patent, Defendants have been and are presently indirectly infringing one or more claims of the ‘261 Patent by actively and knowingly inducing others to build and develop Infringing Goods that embodies or uses the invention and method claimed in the ‘261 Patent 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 product and method that Defendants know or should know infringe one or more claims of the ‘261 Patent.

177. Defendants have induced others to infringe at least Claim 1 of the ‘261 Patent.

178. Defendants continue to infringe at least Claim 1 of the ‘261 Patent even after receiving notices from Plaintiff.

179. Defendants’ infringement has been, and continues to be knowing, intentional, and willful.

180. 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 VIII – COPYRIGHT INFRINGEMENT

181. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

182. Plaintiff owns a valid copyright in the Copyrighted Images at issue in this case.

183. Plaintiff registered the Copyrighted Images at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

184. Defendants copied, displayed, and distributed the Copyrighted Images at issue in this case and made derivatives of the Copyrighted Images without Plaintiff's authorization in violation of 17 U.S.C. § 501.

185. Defendants performed the acts alleged in the course and scope of its business activities.

186. Defendants' acts were willful.

187. Plaintiff has been damaged.

188. The harm caused to Plaintiff has been irreparable.

COUNT IX – FALSIFICATION OF COPYRIGHT MANAGEMENT INFORMATION

189. Plaintiff incorporates the allegations of paragraphs 1 through 94 of this Complaint as if fully set forth herein.

190. Defendants knowingly and with the intent to enable, conceal, or facilitate copyright infringement, displayed the Works on their seller stores in violation of 17 U.S.C. § 1202(b).

191. Defendants committed these acts knowing or having reasonable grounds to know that it would induce, enable, facilitate or conceal infringement of Plaintiff's rights in the Works.

192. Defendants caused, directed, and authorized others commit these acts knowing or having reasonable grounds to know that it would induce, enable, facilitate or conceal infringement of Plaintiff's rights in the Works at issue in this action protected under the Copyright Act.

193. Plaintiff has been damaged.

194. The harm caused to Plaintiff has been irreparable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CUP COZY PILLOW LLC, demands judgment and relief against Defendants JD E-COMMERCE AMERICA LIMITED, JINGDONG E-COMMERCE (TRADE) HONG KONG CORPORATION, WAL-MART.COM USA, LLC, and WALMART INC. and respectfully requests that the Court:

- a. Entry of temporary, preliminary, and permanent injunctions pursuant to 15 U.S.C. § 1116, and Federal Rule of Civil Procedure 65 enjoining Defendants, their agents, representatives, servants, employees, and all those acting in concert or participation therewith, from manufacturing or causing to be manufactured, importing, advertising or promoting, distributing, selling or offering to sell their Counterfeit Goods; from infringing, counterfeiting, or diluting The Cup Cozy Mark; from using The Cup Cozy Mark, or any mark or design similar thereto, in connection with the sale of any unauthorized goods; from using any logo, trade name or trademark or design that may be calculated to falsely advertise the services or goods of Defendants as being sponsored by, authorized by, endorsed by, or in any way associated with Cup Cozy Pillow; from falsely representing itself as being connected with Cup Cozy Pillow, through sponsorship or association, or engaging in any act that is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or

services of Defendants, are in any way endorsed by, approved by, and/or associated with Cup Cozy Pillow; from using any reproduction, counterfeit, infringement, copy, or colorable imitation of The Cup Cozy Mark in connection with the publicity, promotion, sale, or advertising of any goods sold by Defendants; from affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent Defendants' goods as being those of Cup Cozy Pillow, or in any way endorsed by Cup Cozy Pillow and from offering such goods in commerce; from engaging in search engine optimization strategies using colorable imitations of Cup Cozy Pillow's name or trademark and from otherwise unfairly competing with Cup Cozy Pillow.

- b. Entry of temporary, preliminary, and permanent injunctions pursuant to 17 U.S.C § 502 and 503 and 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 registered copyrights, or, from manufacturing or causing to be manufactured, importing, advertising or promoting, distributing, selling or offering to sell their Counterfeit Goods.
- c. Entry of an Order requiring Defendants to account to and pay Cup Cozy Pillow for all profits and damages resulting from Defendants' trademark counterfeiting and infringing and unfairly competitive activities and that the award to Plaintiff be trebled, as provided for under 15 U.S.C. § 1117, or, at Cup Cozy Pillow's election with respect to Count I, that Plaintiff be awarded statutory damages in the amount of

two million dollars (\$2,000,000.00) per each counterfeit trademark used and product sold, as provided by 15 U.S.C. § 1117(c)(2) of the Lanham Act.

- d. Entry of an order authorizing seizure, impoundment and/or destruction of all of the products used to perpetrate the infringing acts pursuant to 17 U.S.C. § 503.
- e. Entry of an Order requiring all Defendants to account to and pay Plaintiff for actual damages and all profits resulting from Defendants' copyright infringement, for all infringements involved in the action, with respect to any one work, for which Defendants are liable as the Court considers just pursuant to 17 U.S.C. § 504(a)(1) and (b).
- f. An entry of judgment holding that Defendants have infringed and is infringing the '261 Patent.
- g. For an accounting and an award of damages sufficient to compensate Cozy Cup Pillow for the infringement in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284;
- h. A determination that Defendants' infringement has been willful, wanton, and deliberate and that the damages against it be increased up to treble on this basis or for any other basis in accordance with the law;
- i. Entry of an award pursuant to 15 U.S.C. § 1117 (a) and (b) and 17 U.S.C. § 505 of Cup Cozy Pillow's costs and reasonable attorneys' fees and investigative fees, associated with bringing this action, including the cost of corrective advertising.
- j. A finding that this case is an exceptional case under 35 U.S.C. § 284 and an award to Cozy Cup Pillow of its costs and reasonable attorneys' fees as provided by 35 U.S.C. § 285;

- k. Defendants be required to pay Cup Cozy Pillow its actual damages and Defendants' profits attributable to the infringement, or, at Cup Cozy Pillow's election, statutory damages, as provided in 17 U.S.C. §§ 504 and 1203;
- l. Entry of an award of pre-judgment interest on the judgment amount.
- m. 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 14, 2024

Respectfully submitted,

/s/ Joel B. Rothman

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