IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JEFFREY SCHON, Plaintiff, v. THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE A HERETO, Defendants.	Case No. 1:22-cv-02933

<u>COMPLAINT</u>

Plaintiff JEFFREY SCHON ("Plaintiff") hereby alleges as follows against the individuals, corporations, limited liability companies, partnerships, and unincorporated associations and foreign entities identified on **Schedule A** attached hereto (collectively, "Defendants"):

INTRODUCTION

1. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff's reputation and goodwill by making, using, offering for sale, selling and/or importing into the United States for subsequent sale or use unauthorized and unlicensed products, namely door stopper products shown in **Schedule A**, that infringe Plaintiff's patented design, U.S. Patent No. D943,408 (the "Infringing Products"). Defendants create e-commerce stores operating under one or more Seller Aliases that are making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique

identifiers establishing a logical relationship between them, suggesting that Defendants' operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal both their identities and the full scope and interworking of their operation. Plaintiff has filed this action to combat Defendants' infringement of its patented design, as well as to protect unknowing consumers from purchasing Infringing Products over the Internet. Plaintiff has been and continues to be irreparably damaged from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing its patented design as a result of Defendants' actions and seeks injunctive and monetary relief.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 1, *et seq*., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.

3. This Court has personal jurisdiction over Defendants because each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, e-commerce stores[1] operating under the seller aliases identified in **Schedule A** attached hereto (the "Seller Aliases"). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold products featuring Plaintiff's patented design to residents of Illinois. Each of the Defendants is

[1] The e-commerce store URLs are listed on Schedule A hereto under the Online Marketplaces.

committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PLAINTIFFS

5. Plaintiff is an individual residing at 28 W Hague Drive, Antioch, IL 60002.

6. Plaintiff is the owner of all right, title, and interest to U.S. Patent No. D943,408 ("the '408 Patent"), entitled "Door Stopper", which was duly and legally issued by the U.S. Patent and Trademark Office on February 15, 2022. The '408 Patent names Plaintiff as the sole inventor. Attached hereto as **Exhibit 1** is a true and correct copy of the '408 Patent. Plaintiff is the sole owner of all right, title and interest in and to the '408 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '408 Patent.

7. The '408 Patent claims "the ornamental design for door stopper, as shown" in the following accompanying figures:

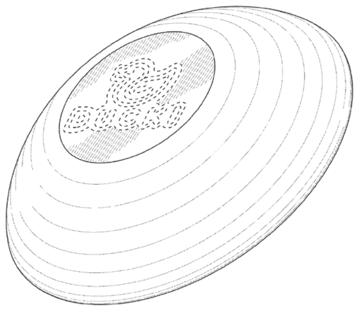

FIG. 1

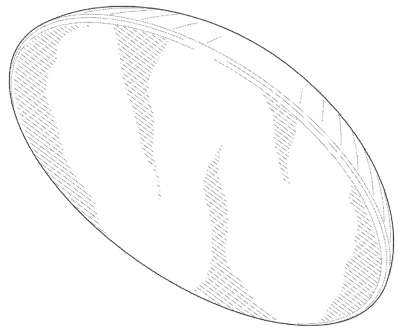

FIG. 2

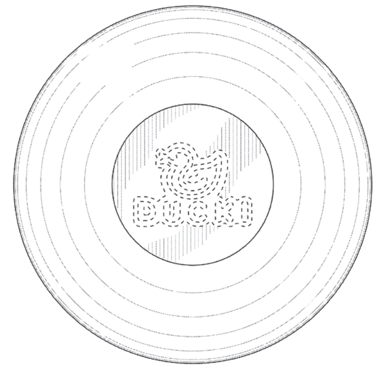

FIG. 3

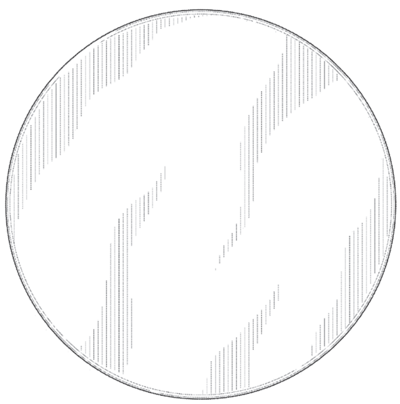

FIG. 4

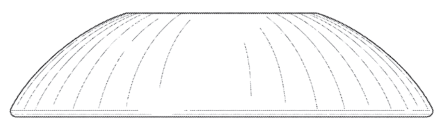

FIG. 5

8. The '408 Patent is valid, subsisting, enforceable, and unrevoked and all rights, title and interest therein is and has at all times relevant hereto been owned by Plaintiff, including but not limited to, the right to sue for and recover and obtain damages and all other available remedies for infringement of the '408 Patent.

9. Plaintiff is a manufacturer and seller of an innovative and superior quality door stopper product under the brand Ducki. Plaintiff's door stopper product embodies the design of the '408 Patent and is highly successful. Plaintiff's product is sold on various online marketplace platforms, including Amazon, Walmart and eBay. A photograph of the Plaintiff's product is below:

THE DEFENDANTS

10. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Plaintiff. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax intellectual property enforcement systems or redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

11. Defendants conduct business throughout the United States, including within Illinois and in this Judicial District, through the operation of one or more of the e-commerce stores. Each Defendant targets the United States, including Illinois, and has offered to sell and, on information and belief, has sold and continues to sell counterfeit products that infringe the '408 Patent to consumers within the United States, including Illinois and in this Judicial District.

THE DEFENDANTS' UNLAWFUL CONDUCT

12. The success of Plaintiff's patented product has resulted in its counterfeiting.

13. Plaintiff has identified numerous fully interactive, e-commerce stores such as Amazon and eBay, including those operating under the Seller Aliases, which were offering for

sale and/or selling Infringing Products to consumers in this Judicial District and throughout the United States. Defendants' e-commerce stores containing infringing product listings are listed in **Schedule A**.

14. E-commerce sales, including through e-commerce stores like those of Defendants, have resulted in a sharp increase in the shipment of unauthorized products into the United States. *See* **Exhibit 2**, Excerpts from Fiscal Year 2020 U.S. Customs and Border Protection ("CBP") Intellectual Property Seizure Statistics Report. Over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id*. Nearly 80% of CBP seizures originated from mainland China and Hong Kong. *Id*. Legislation was recently introduced in the U.S. Senate that would allow CBP to seize articles that infringe design patents, thus closing a loophole currently exploited by infringers.[2] Infringing and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue.

15. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers to "routinely use false or inaccurate names and addresses when registering with these e-commerce platforms." *See* **Exhibit 3**, Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age of the Internet*, 40 NW. J. INT'L L. & BUS. 157, 186 (2020); *see also* report on "Combating Trafficking in Counterfeit and Pirated Goods" prepared by the U.S. Department of Homeland Security's Office of Strategy, Policy, and Plans (Jan. 24, 2020) attached as **Exhibit 4** and finding that on "at least some e-commerce platforms, little identifying information is necessary for [an

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[2] *See* Press Release, U.S. Senator Tom Tillis, *Tillis, Coons, Cassidy & Hirono Introduce Bipartisan Legislation to Seize Counterfeit Products and Protect American Consumers and Businesses* (Dec. 5, 2019), https://www.tillis.senate.gov/2019/12/tillis-coons-cassidy-hirono-introduce-bipartisan-legislationto-seize-counterfeit-products-and-protect-american-consumers-and-businesses.

infringer] to begin selling" and recommending that "[s]ignificantly enhanced vetting of third-party sellers" is necessary. Infringers hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, infringers can have many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 4** at p. 39. Further, "E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of [infringement]." **Exhibit 3** at 186-187.

16. Defendants have targeted sales to Illinois residents by setting up and operating ecommerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold Infringing Products to residents of Illinois.

17. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing ecommerce stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union and/or PayPal. E-commerce stores operating under the Seller Aliases often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer.

18. Plaintiff has not licensed or authorized Defendants to use the design covered by the '408 patent, and none of the Defendants are authorized retailers of genuine Plaintiff's products.

19. Upon information and belief, Defendants have engaged in fraudulent conduct when registering the Seller Aliases by providing false, misleading and/or incomplete information to ecommerce platforms.

20. Upon information and belief, Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their e-commerce accounts and Seller Aliases to prevent discovery of their true identities and the scope of their e-commerce operation.

21. Upon information and belief, Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Infringing Products. Such seller alias registration patterns are one of many common tactics used by the Defendants to conceal their identities and the full scope and interworking of their operation, and to avoid being shut down.

22. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features, such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, illegitimate search engine optimization (SEO), advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images.

23. Additionally, Infringing Products for sale by the Seller Aliases bear similar irregularities and indicia of being unauthorized to one another, suggesting that the Infringing Products were manufactured by and come from a common source and that Defendants are interrelated.

24. In addition to operating under multiple fictitious names, infringers such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Plaintiff's enforcement efforts. Upon information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore bank accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff. Indeed, analysis of financial account transaction logs from previous similar cases indicates that off-shore infringers regularly move funds from U.S.-based financial accounts to off-shore accounts outside the jurisdiction of this Court.

25. Upon information and belief, the pricing offered by Defendants for their infringing counterfeit products is substantially below Plaintiff's pricing for its product embodying the design of the '408 Patent.

26. Upon information and belief, the substantially lower pricing of the infringing products by Defendants unfairly entices and will unfairly entice purchasers to buy such products instead of purchasing Plaintiff's higher priced genuine products, causing Plaintiff to lose substantial sales and resulting in a flood of infringing products into the marketplace and eroding the market for Plaintiff's patented product.

27. Upon information and belief, Defendants are an interrelated group of infringers working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Infringing Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Plaintiff, have jointly and severally, knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use products that infringe directly and/or indirectly the '408 Patent. Each e-commerce store operating under the Seller Aliases offers shipping to the United States,

including Illinois, and, on information and belief, each Defendant has sold Infringing Products into the United States and Illinois over the Internet.

28. Upon information and belief, Defendants' infringement of the '408 Patent in the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of the Infringing Products is willful.

29. Defendants' infringement of the '408 Patent in connection with the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of the Infringing Products, including the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of Infringing Products into Illinois, is irreparably harming Oakley.

COUNT I
INFRINGEMENT OF UNITED STATES DESIGN PATENT NO. D943,408
(35 U.S.C. § 271)
[Against Defendants Designated in Schedule A]

30. Plaintiff re-alleges the allegations contained in Paragraphs 1-29 as if fully set forth herein.

31. On February 15, 2022, the United States Patent Office duly and legally issued United States Design Patent No. D943,408 to Plaintiff.

32. Defendants have been and are currently engaged in activities which infringe the '408 Patent by making, using, selling, and/or offering for sale Defendants' infringing products in violation of 35 U.S.C. § 271.

33. Defendants' acts complained of herein have been and are currently being done willfully with knowledge of or reason to know that they constitute infringement of the '408 Patent in violation of Title 35 of the United States Code including, but not limited to, 35 U.S.C. § 271.

34. The acts of Defendants complained of herein are continuing in nature and will continue unless and until enjoined and restrained by the Court. Moreover, Plaintiff has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That, pursuant to 35 U.S.C. § 283, Defendants, their affiliates, officers, agents, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

a. making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use any products not authorized by Plaintiff and that include any reproduction, copy or colorable imitation of the design claimed in the ‘408 Patent;

b. aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon the ‘408 Patent; and

c. effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in Subparagraphs (a) and (b).

B. That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report made under oath setting forth in detail the manner and form in which Defendants have complied with paragraph A above;

C. Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces such as Amazon, AliExpress, Alibaba, and eBay, social media platforms such as Facebook, YouTube, LinkedIn and Twitter, and Internet search engines such as Google, Bing and Yahoo, shall:

a. disable and cease providing services for any accounts through which Defendants engage in the sale of the Infringing Products, including any accounts associated with the Defendants listed on Schedule A;

b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of the Infringing Products; and

c. take all steps necessary to prevent links to the Defendants Seller Aliases identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendants Seller Aliases from any search index.

D. That Plaintiff be awarded such damages as he shall prove at trial against Defendants that are adequate to compensate Plaintiff for Defendants' infringement of the '408 Patent, but in no event less than a reasonable royalty for the use made of the invention by the Defendants, together with interest and costs, pursuant to 35 U.S.C. §§ 284 and 289;

E. That the amount of damages awarded to Plaintiff to compensate Plaintiff for infringement of the '408 Patent be increased by three times the amount thereof, as provided by 35 U.S.C. § 284;

F. In the alternative, that Plaintiff be awarded all profits realized by Defendants from Defendants' infringement of the '408 Patent, pursuant to 35 U.S.C. § 289;

G. That this is an exceptional case within the meaning of 35 U.S.C. §285, and Plaintiff should be awarded reasonable attorneys' fees, and costs; and

H. That Plaintiff be awarded any other and further relief that this Court may deem just and proper.

Jury Demand

Plaintiff demands trial by jury on all counts in this Complaint.

Dated: June 3, 2022

Respectfully submitted,

By: /s/ Nicole L. Little

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