

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

NuWave, LLC,

Plaintiff,

v.

The Individuals, Corporations, Limited
Liability Companies, Partnerships, and
Unincorporated Associations Identified on the
Attached Schedule A,

Defendants.

Case No.: _____

JURY DEMANDED

COMPLAINT

Plaintiff NuWave, LLC, by its undersigned attorneys hereby complains of the Individuals, Corporations, Limited Liability Companies, Partnerships, Unincorporated Associations and others identified in the attached Schedule A (“Defendants”), and hereby alleges as follows:

NATURE OF THE CASE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff NuWave, LLC (“NuWave”) is a limited liability company organized under the laws of the State of Illinois with a principal place of business located at 1795 Butterfield Road, Libertyville, IL 60047.

3. NuWave is the original applicant and owner of U.S. Patent No. D851,444 (the ‘444 Patent).

4. The ‘444 Patent was issued on June 18, 2019.

5. A true and correct copy of the '444 Patent is attached as Exhibit 1.

6. On information and belief, Defendants are one or more individuals and/or business entities who reside in the People's Republic of China. Defendants conduct business throughout the United States, including with the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online marketplaces operating under Defendants' one or more Internet stores. The Defendants have targeted the United States, including Illinois, and have offered to sell, and currently offer to sell, and on information and belief have sold and continue to sell products that infringe upon NuWave's patent rights to consumers within the United States, including Illinois.

7. In particular, Defendants sell products that infringe upon the '444 Patent through online marketplaces and merchant accounts at banggood.com, newegg.com, walmart.com and Defendants' own fully interactive website. Screenshots of Defendants' offerings on these marketplaces are attached as Exhibit 3.

JURISDICTION AND VENUE

8. 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) (exclusive patent claim jurisdiction), and 28 U.S.C. § 1331 (original federal question jurisdiction).

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet store(s) operating under the Online Marketplace Accounts identified in Schedule A attached hereto. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet stores

through which Illinois residents can purchase products featuring Plaintiff's patented design. Each of the Defendants has targeted sales from Illinois residents by operating one or more online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products featuring Plaintiff's patented design to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

BACKGROUND

10. NuWave is a privately-owned company that specializes in designing, manufacturing, and selling various houseware small appliances such as, among other things, current and previously sold combination convection/conduction/infrared ovens, induction cooktops, coffee roasters, air purifiers, and food blenders.

11. In connection with its research and design of new houseware small appliances, NuWave developed a particular design for a food blender. NuWave filed for and was issued a design patent directed toward the base of its food blender, the '444 Patent.

12. NuWave sells products that embody the '444 Patent including the NuWave Moxie Blender and the NuWave Infinity Blender.

13. NuWave has marked its products embodying the '444 Patent pursuant to 35 U.S.C. § 287.

14. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores or merchant accounts and/or manufacture, import, offer to sell or sell the products for sale through those e-commerce stores or merchant accounts. Upon 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).

15. On information and belief, Defendants either individually or jointly, operate one or more e-commerce stores or merchant accounts listed in Schedule A attached hereto. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for NuWave to learn Defendants' true identities and the exact interworking of their network. If Defendants provide additional credible information regarding their identities, NuWave will take appropriate steps to amend the Complaint

16. This action has been filed by NuWave to combat online infringers who trade upon NuWave's reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed products, namely blenders that infringe upon the design claimed in the '444 Patent. In recent years, NuWave has identified numerous fully interactive, e-commerce stores and merchant accounts, including those identified in Schedule A, which were offering for sale and/or selling imitation, counterfeit, or infringing products to consumers in this Judicial District and throughout the United States. According to U.S. Customs and Border Protection (CBP), most infringing products now come through international mail and express courier services (as opposed to containers) due to increased sales from offshore online infringers. *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States* prepared for The Buy Safe America Coalition by John Dunham & Associates (Attached as Exhibit 4). The bulk of infringing products sent to the United States "come from China and its dependent territories," accounting for over 90.6% of all cargo with intellectual property rights (IPR) violations. *Id.* Of the \$1.23 billion in total IPR violations intercepted, \$1.12 billion was from China. *Id.* Legislation was previously introduced in the U.S. Senate that would have allowed CBP to seize articles that infringe design patents, thus

closing a loophole exploited by infringers¹. However, no such law has been enacted. 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. *Id.*

17. 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.” Exhibit 5, 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 (January 24, 2020) attached as Exhibit 6 and finding that on “at least some e-commerce platforms, little identifying information is necessary for [an 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 storefronts. *See* Exhibit 6 at p. 22. 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. *See* Exhibit 6 at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of [infringement].” Exhibit 5 at 186-187.

¹ *See* Press Release, U.S. Senator Thom 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-legislation-to-seize-counterfeit-products-and-protect-american-consumers-and-businesses>

18. Defendants have targeted sales to Illinois residents by setting up and operating ecommerce stores that target United States consumers using one or more e-commerce store or merchant account, 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.

19. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing ecommerce stores operating under the e-commerce stores or merchant accounts so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores and merchant accounts operated by Defendants appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, and/or PayPal. E-commerce stores and merchant accounts operated by Defendants often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. NuWave has not licensed or authorized Defendants to use the patented design, and none of the Defendants are authorized retailers of genuine NuWave Products.

20. E-commerce store operators like Defendants commonly engage in fraudulent conduct when registering their merchant accounts by providing false, misleading and/or incomplete information to e-commerce platforms to prevent discovery of their true identities and the scope of their e-commerce operation.

21. E-commerce store operators like Defendants regularly register or acquire new merchant accounts or 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 e-commerce store operators like 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 and merchant accounts operated by Defendants 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 and merchant accounts operated by Defendants include other notable common features, such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. 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.

23. E-commerce store operators like Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

24. Infringers such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of NuWave's enforcement. Ecommerce store operators like Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to NuWave. Indeed, plaintiff's in similar situations have been able to show that financial account transaction logs indicate that off-shore infringers regularly move funds from U.S.-based financial accounts to off-shore accounts outside

the jurisdiction of this Court. Of course, those logs are only available after the transfer and thus after the funds are outside the jurisdiction of this Court.

25. As shown *infra*, Defendants are 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 NuWave, have jointly and severally, knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use the same product that infringes directly and/or indirectly the NuWave Design covered by the '444 Patent. Each e-commerce store or merchant account operated by Defendants 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.

26. Defendants' infringement of the NuWave Design covered by the '444 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 was willful.

27. Defendants' infringement of the NuWave Design covered by the '444 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 NuWave.

28. The Defendants created one or more Internet e-commerce stores or merchant accounts and design those store(s) and their products so that it appears to consumers that Defendants are selling genuine products, while actually selling infringing products to unknowing consumers. NuWave has thus 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. NuWave 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.

29. As shown in the claim chart attached as Exhibit 2, the product being sold by Defendants incorporates each of the design elements claimed in the '444 Patent. Accordingly, the product being sold by Defendants infringes upon the '444 Patent.

30. NuWave has not licensed or authorized Defendants to use the design claimed in the '444 Patent and Defendants are not authorized retailers of NuWave's products.

31. Defendants, without any authorization or license from NuWave, have knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use product that infringe directly and/or indirectly the '444 Patent, and continue to do so via their Internet store(s) or merchant accounts. Defendants' Internet store(s) offer shipping to the United States, including Illinois, and, on information and belief, Defendants have sold products that infringe the '444 Patent into the United States and Illinois.

32. Defendants' infringement of the '444 Patent in the offering for sale, selling, or importing of products that infringe the '444 Patent has been and continues to be willful.

33. Defendants' infringement of the '444 Patent in connection with the offering to sell, selling, or importing of products that infringe the '444 Patent, including such acts into the State of Illinois, is irreparably harming NuWave.

COUNT I - Infringement of U.S. Design Patent (35 U.C.S. § 271)

34. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

35. As shown in the claim chart attached as Exhibit 2, Defendants offer for sale, sell, and/or import into the United States for subsequent resale or use, products that infringe directly or indirectly the ornamental design claimed in the '444 Patent.

36. Defendants have infringed the '444 Patent through such offering for sale, selling, or importing for subsequent resale or use and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused NuWave to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. NuWave is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

37. NuWave does not license the '444 Patent to third parties to use the design on non-NuWave products.

38. Unless and until a preliminary and permanent injunction is issued enjoining Defendants and all others acting in concert with Defendants from infringing the '444 Patent, NuWave will continue to suffer irreparable harm for which there is no adequate remedy at law.

39. NuWave is entitled to recover damages adequate to compensate for the infringement, including Defendants' profits pursuant to 35 U.S.C. § 289. NuWave is entitled to recover any other damages as appropriate pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NuWave, LLC. respectfully seeks the following relief against Defendants:

- A. A preliminary and permanent injunction enjoining, restraining and ordering Defendants, and their officers, agents, servants, attorneys, and other persons who are in active concert or participation with them:

- a. To cease making, using, offering for sale, selling and/or importing into the United States for subsequent sale or use any products that infringe upon U.S. Patent No. D851,444.
- b. To cease aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon U.S. Patent No. D851,444.
- B. Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms or distributors shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of goods that infringe U.S. Patent No. D851,444.
- C. That Judgment be entered against Defendants finding that they have infringed upon U.S. Patent No. D851,444.
- D. Damages for such infringement in an amount to be proven at trial, including Defendants' profits pursuant to 35 U.S.C. § 289 and any other damages as appropriate under 35 U.S.C. § 284, together with interests and costs.
- E. Judgment awarding Plaintiff treble damages under 35 U.S.C. § 284 for Defendants' infringement of U.S. Patent No. D851,444.
- F. A finding that this case is exceptional under 35 U.S.C. § 285.
- G. Plaintiff's attorney's fees and costs.
- H. Any and all other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

DATE: October 11, 2022

Respectfully submitted,

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