

IN THE U.S. DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

HAIRU MA	]	
	Plaintiff	] Case No.
v.	]	
THE INDIVIDUALS, CORPORATIONS,	]	
LIMITED LIABILITY COMPANIES,	]	
PARTNERSHIPS, AND	]	
UNINCORPORATED ASSOCIATIONS	]	
IDENTIFIED ON SCHEDULE A HERETO,	]	
	Defendants	]

COMPLAINT

Plaintiff, by its undersigned attorneys, alleges the following as and for its Complaint against the individuals, corporations, limited liability companies, partnerships, and unincorporated associations and foreign entities identified on **Schedule A** attached hereto (collectively, “Defendants”):

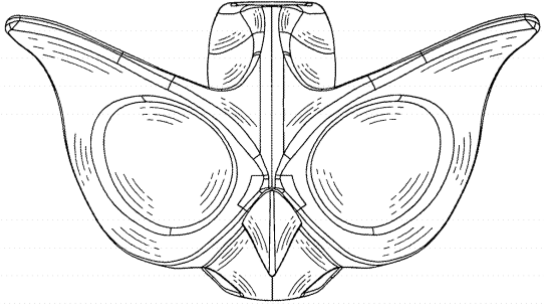
INTRODUCTION

1. This is an action for patent infringement under 35 U.S.C. §§271 and 289. Section 271 defines infringement as making, using, offering to sell, selling, or importing a patented invention without authority. This statute also extends the definition of infringement to individuals actively inducing infringement, as well as selling, offering to sell, or importing a material part of an invention protected by a design patent. Under Section 289, a patent holder may recover total profits earned by the infringing party in certain situations.

2. This action has been filed by Plaintiff to combat rampant and widespread infringement of his rights under his design patent for a pen or pencil holder of a unique and attractive design. Products of the patented design have been widely copied and sold without authorization in the United States as well as into and within this jurisdiction without license or

permission by Plaintiff.

3. The table below compares the patented design with an example of the Accused Products and demonstrates the infringement.

Figure 1 of the '327 Patent	Product Sold by Plaintiff
	

4. Our investigation and test buy samples show that each of the Accused Products is the same or substantially the same in design and appearance. This similarity suggests that the Accused Products come from the same supplier or group of suppliers working in concert.

JURISDICTION AND VENUE

5. This is a civil action arising under the Patent Act, Title 35 U.S.C. § 271 *et seq.* Subject matter jurisdiction lies in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in the United States generally, in New York, and in this Judicial District. The acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in New York and in this Judicial District.

7. 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, targeting consumers in the United States, including New York,

by sales in the Amazon Marketplace on <Amazon.com> through their respective Amazon storefronts and on<Walmart.com> through their respective storefronts on that site. Specifically, Defendants are reaching out to do business with New York residents by operating one or more commercial, interactive Internet stores through which New York residents can purchase products bearing infringing products. Each of the Defendants has targeted sales to New York residents by operating online stores that offer the product in English, offer shipping to the United States, including New York, accept payment in U.S. dollars by direct credit card payment, through the marketplace acting as agent for the seller, or through an online payment processor, such as PayPal, and, on information and belief, has sold products that infringe Plaintiff's patent rights to residents of New York. Each of Defendants is committing tortious acts in New York, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of New York.

THE PARTIES

8. Plaintiff Hairu Ma is a citizen of China and the owner of all rights under US Design Patent No. D944327 entitled "Pen Holder" (the "'327 Patent").

9. Defendants are individuals and business entities who, upon information and belief, reside mainly in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within New York and in this Judicial District, through the operation of the fully interactive online marketplaces <amazon.com> and <Walmart.com>. Each Defendant targets the United States, including New York, and has offered to sell and, on information and belief, has sold and continues to sell infringing products to consumers within the United States, including New York and in this Judicial District.

THE PATENT IN SUIT

10. The '327 Patent was filed on June 19, 2020 with a claim of priority to Chinese application no. 20190721742.7 which was filed on December 24, 2019. The '327 Patent issued on February 22, 2022. A copy is attached hereto as Exhibit 1.

11. Plaintiff is the owner of all right, title, and interest in the '327 Patent by assignment dated May 18, 2022 and recorded with the US Patent and Trademark Office at reel/frame 059955/0957.

12. A chart comparing the '327 Patent with a representative infringing product sold by each defendant (the "Accused Products") is attached hereto as Exhibit 2.

FACTS

13. The events material to this action occurred between February 22, 2022 (the issue date of the '327 Patent) and continue to date ("the relevant period").

14. Pencil holders generally help new writers to place and align their fingers for a sure grip that becomes muscle memory as the holder continues to be used. The unique design of the pen or pencil holder that is found in the '327 has a whimsical design that entertains the learning writer as they subconsciously learn the lessons of the guided grip.

15. The effectiveness of the patented design is demonstrated by the number of defendants who chose to sell the patented design despite the existence of noninfringing, less aesthetically appealing designs.

16. The sales by a large number of infringing competitors for the patented design have harmed the plaintiff in a number of ways, including lost licensing opportunities and revenues, depressed selling prices for products of the patented design, and loss of distinctiveness of the patented design from authorized sources.

COUNT I - Infringement of U.S. Patent No. D944327

17. Plaintiff hereby incorporates paragraphs 1 through 16, inclusive, herein by this reference. On information and belief, Defendant designs, manufactures, markets, imports, and sells Accused Products of the same or substantially the same design that infringe the claim of the '327 Patent either literally or under the doctrine of equivalents under 35 U.S.C. §§ 271(a).

18. Exhibit 2 is a non-limiting example of the infringement by Defendants' products based on currently available information. Plaintiff makes this preliminary and exemplary identification of infringing products and infringed claims without the benefit of discovery or claim construction in this action, and expressly reserves the right to augment, supplement, and revise their contentions based on additional information obtained through discovery or otherwise, pursuant to the Federal Rules of Civil Procedure, to this Court's rules and any applicable Local Rules, and/or as is otherwise appropriate.

19. Defendants had constructive notice of the '327 Patent by markings on authorized products or product packaging such as "Patent D944327" or "Pat. D944327", by virtual marking of the patented article with "1688.com" where "1688.com" is an Internet address that is accessible to the public without charge and which associates the patented article with the number of the '327 patent, or by actual notice at least upon the service of this Complaint.

20. Defendant's infringement has caused, and is continuing to cause, damage and irreparable injury to Plaintiff, and Plaintiff will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court. Plaintiff is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

21. Plaintiff is entitled to damages in accordance with 35 U.S.C. § 289.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. For a judgment temporarily, preliminarily, and permanently enjoining Defendants and their respective officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and its investors, partners, parents, subsidiaries, divisions, successors, and assigns, from
- 1) further acts of infringement,
 - 2) making, using, selling, importing, and offering for sale pen holders of the patented design during the pendency of this case or after a final judgment in this case;
 - 3) shipping, delivering, holding for sale, transferring, or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiffs, nor authorized by Plaintiffs to be sold or offered for sale, and which copy the design of the ‘327 Patent or any reproductions, counterfeit copies, or colorable imitations thereof;
 - 4) using, linking to, transferring, selling, exercising control over, or otherwise owning any online marketplace account that is being used to sell or is the means by which Defendants could continue to sell infringing pen holders; and
 - 5) operating and/or hosting websites at any domain name registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any pen holder product embodying the design of the ‘327 Patent or any reproduction, counterfeit copy or colorable imitation

thereof that is not authorized by Plaintiff to be sold;

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 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, social media platforms such as Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendant Domain Names, and domain name registrars, shall:

- 1) disable and cease providing services for any accounts through which Defendants engage in the sale of infringing pen holder products, including any accounts associated with the Defendants listed on Schedule A; and
- 2) disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of infringing pen holder products embodying the design of the '327 Patent;

d. For a judgment in favor of Plaintiff that Defendant has infringed the '327 Patent;

e. For an award of damages sufficient to compensate Plaintiff for each Defendant's infringement of the '327 Patent in an amount not less than a reasonable royalty or, to the extent not duplicative, that Defendant be ordered to provide an accounting for the damages resulting from the infringement of the Patents-in-Suit, together with interest and costs, and all other damages permitted by 35 U.S.C. §§ 284 and 289, as applicable, including

an accounting for infringing sales not presented at trial and an award by the court of additional damages for any such infringing sales;

f. That Defendant be ordered to pay Plaintiff Defendant's total profit made by Defendant for its sale of the Accused Products, pursuant to 35 U.S.C. § 289 since the issue date or date of notice of the '327 patent;

g. That the Court determine that Defendant's infringement of the '327 Patent Suit was willful and award Plaintiff treble damages under 35 U.S.C. § 284;

h. For a judgment in favor of Plaintiff that this case is "exceptional" under 35 U.S.C. § 285, and an award to Plaintiffs of their reasonable attorneys' fees incurred in this action;

i. For an award of pre- and post-judgment interest, and the taxation of all allowable costs against Defendant; and

j. That Plaintiff have such other, further, and different relief as the Court deems proper and just under the circumstances.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 39.

Dated: December 21, 2022

By: /s/Cory Rosenbaum
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212.321.5080
cjr@Amazon sellerslawyer.com

SCHEDULE A

Doe No.	Defendant Seller	Defendant Online Marketplace
1.	Alucy	https://www.amazon.com/-/es/Firesara-Pu%C3%B1os-para-l%C3%A1pices-unidades/dp/B08F4XH5JY
2.	ANGGREK K-US	https://www.amazon.com/dp/B09CP8MVMJ
3.	CactusAngui	https://www.amazon.com/dp/B09FPDYF9F
4.	DACAKAN	https://www.amazon.com/dp/B09FLC2DT6
5.	EUBUY	https://www.amazon.com/dp/B09Q3D4YVS
6.	Kireinaa	https://www.amazon.com/dp/B08HCQNT7R?th=1
7.	Midesaiseng	https://www.amazon.com/-/es/escritura-herramienta-correcci%C3%B3n-preescolares-ergon%C3%B3mica/dp/B08X7DB6BS
8.	Orfatya	https://www.amazon.com/dp/B098BCX62S
9.	Pongnas	https://www.amazon.com/dp/B08K8XF5WD
10.	Rotekt1740	https://www.amazon.com/dp/B0B8DYKLCP
11.	Sinbuy-us	https://www.amazon.com/dp/B08L3H2HMK?th=1
12.	VINGVO	https://www.amazon.com/dp/B08MF9MP7J
13.	xiangpitang	https://www.amazon.com/dp/B09QHZBG2T
14.	xuuyuu	https://www.amazon.com/dp/B091H3TM2R
15.	yuytee	https://www.amazon.com/dp/B0B8PBP6GJ
16.	6DU Digital Store	https://www.aliexpress.com/item/1005003247403903.html
17.	Alborada Store	https://www.aliexpress.com/item/1005003953786747.html
18.	ALSMT Store	https://www.aliexpress.com/item/1005003123742225.html
19.	BL David Digital Store	https://www.aliexpress.com/item/1005003953765870.html
20.	Burson Princess stationery - erasable pen Store	https://www.aliexpress.com/item/4001119559746.html
21.	Halyeey Earphone Store	https://www.aliexpress.com/item/1005003881998593.html
22.	MROOFUL Official Store	https://www.aliexpress.com/item/1005003775666746.html
23.	MROOFUL Stationery Store	https://www.aliexpress.com/item/1005002854640759.html
24.	MROOFUL Store	https://www.aliexpress.com/item/1005004047902119.html
25.	Secret of life Store	https://www.aliexpress.com/item/1005003251295604.html
26.	TT Digital Store	https://www.aliexpress.com/item/1005003249692473.html
27.	Yearling Life Store	https://www.aliexpress.com/item/1005003252170384.html
28.	Your First Selection Store	https://www.aliexpress.com/item/1005003953843442.html
29.	18380115487	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a89892af09745d7ac303e?source=feed_page

		view_id=1668023425_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
30.	Abydos	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a891c74f91903c8ddb82?source_feed_page_view_id=1668023297_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
31.	Adilceazo	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a899162a76823871ada23?source_feed_page_view_id=1668023351_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
32.	Adilcevazmoon	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8733764d9768bc7f60ff?source_feed_page_view_id=1668023305_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
33.	Argissa	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a889d36731821ae372b96?source_feed_page_view_id=1668023071_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
34.	Bhambare	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a898552e12e2b2193a9b4?source_feed_page_view_id=1668023320_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
35.	Bogorsun	https://www.wish.com/search/Pencil%20Grips%20for%20Kids/product/613a87b5535f238a9669eb3b?source_feed_page_view_id=1668032130_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
36.	boise	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a882426cf9805ff36861e?source_feed_page_view_id=1668032086_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
37.	bologna58	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a88b5336b75610adb6bb?source_feed_page_view_id=1668023093_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
38.	Castrol	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a898538baff1d6604bf61?source_feed_page_view_id=1668023429_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
39.	chenfulei111	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a874dcb5db8fbc1c23482?source_feed_page_view_id=1668023415_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
40.	dhjk	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a86c23cd42cb0af77ed0d?source_feed_page_view_id=1668023113_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
41.	eachanother	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a874dd009471d407de2bd?source_feed_page_view_id=1668023439_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web

42.	echoneko	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a85d307ffbcce65f6ba37?source_feed_page_view_id=1668023420_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
43.	favorites	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8898fe35d1e4aa372d44?source_feed_page_view_id=1668023435_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
44.	fengyushouzu	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a86b9df50b50770b60f40?source_feed_page_view_id=1668023125_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
45.	ghf139	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a85d6bf3274195902b715?source_feed_page_view_id=1668023331_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
46.	huangb	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a87ac92d3ad229150e13e?source_feed_page_view_id=1668023106_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
47.	huntington	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a86b920331f51112ff4cd?source_feed_page_view_id=1668023445_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
48.	jiufenvily	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a87399529641cb13802be?source_feed_page_view_id=1668032136_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
49.	Junnan Hometextile	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a882157b7f20a27cb81b4?source_feed_page_view_id=1668023097_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
50.	kent5200	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8a0ea53b417738ab7495?source_feed_page_view_id=1668023076_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
51.	Kolding	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a89865408ad8c61295763?source_feed_page_view_id=1668023454_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
52.	lijinglong	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a87b24c8de78a04ad94cc?source_feed_page_view_id=1668032093_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
53.	limanru	https://www.wish.com/product/613a86b9347596845f7b923f?share=web
54.	linlinstore789	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a873d079dcc3820e795b2?source_feed_page_view_id=1668032064_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web

55.	mengximomeizhuang	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8755c2a74c451502b672?source_feed_page_view_id=1668023318_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
56.	mjm	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a89892a0b081319cbe1b1?source_feed_page_view_id=1668023307_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
57.	munich	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8917d3be339428f6b93c?source_feed_page_view_id=1668023449_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
58.	orange fly	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a891fdfb29e6f6a589236?source_feed_page_view_id=1668023061_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
59.	oregon	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a891177e10c43de59e9dd?source_feed_page_view_id=1668032072_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
60.	Shenzhen Bluelans Networks Technology Co., Ltd.	https://www.wish.com/search/Pencil%20Grips%20for%20Kids/product/613a87af1ec3cfeac8e79541?source_feed_page_view_id=1668032123_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
61.	simivalley	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a898697fb4b1a52a7f7aa?source_feed_page_view_id=1668023058_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
62.	Six Feels Store	https://www.wish.com/product/6161148c6d5c269b89fde839?share=web
63.	tanforword100	https://www.wish.com/search/Pencil%20Grips%20for%20Kids/product/613a86c30830d34b2f4df689?source_feed_page_view_id=1668032116_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
64.	tennessee	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8742edadcdbfedbd78f6?source_feed_page_view_id=1668023081_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
65.	Warnemunde	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a88b3674e482abb50e0ca?source_feed_page_view_id=1668023367_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
66.	xuanchenliauto	https://www.wish.com/search/Pencil%20Grips%20for%20Kids/product/613a873d2a4784d0e56c1d29?source_feed_page_view_id=1668032108_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
67.	yayazhijia	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8911af6f0259053db667?source_feed_page_view_id=1668032080_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web

68.	yiyoubao5866	https://www.wish.com/search/Grip%20Corrector%20pen/product/613a8740cb5db8fbc1c2346e?source_feed_page_view_id=1668023361_2300be589ea64c69b7d82f211adf4efd_SearchPage&share=web
69.	Dream Lifestyle	https://www.walmart.com/ip/seort/192042494?action=Create&rm=true
70.	Joybuy	https://www.walmart.com/ip/seort/911624945?athbdg=L1700
		https://www.walmart.com/ip/OCUhome-Grip-Corrector-Wear-resistant-Durable-Convenient-Wear-resistant-Silicone-Pencil-Posture-Corrector/998258804
		https://www.walmart.com/ip/Bluelans-Pencil-Posture-Corrector-Wear-resistant-Durable-Attractive-Effective-Handwriting-Posture-Pencil-Aid-Grip/682774769
		https://www.walmart.com/ip/IOAOAI-Pen-Grip-Strong-Construction-Durable-Unique-Eco-friendly-Anti-slid-Pen-Posture-Corrector/221903236
71.	Joybuy Express	https://www.walmart.com/ip/VERMON-Pencil-Aid-Grip-Anti-slid-Lightweight-Convenient-Reliable-Ergonomic-Grip-Corrector/448346238?athbdg=L1700
		https://www.walmart.com/ip/VEAREAR-Pen-Grip-Wear-resistant-Durable-Convenient-Reliable-Ergonomic-Grip-Corrector/923465786
		https://www.walmart.com/ip/SANWOOD-Pen-Grip-Elastic-Professional-Unique-Eco-friendly-Anti-slid-Pen-Posture-Corrector/709283028