

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION FILE NO.: 3:21-cv-196

TROVE BRANDS, LLC d/b/a THE)
BLENDERBOTTLE COMPANY, a)
Utah limited liability company,)
)
Plaintiffs)
)
v.)
)
AIEVE LLC, a *North Carolina limited*)
liability company,)
)
Defendant.)

COMPLAINT

JURY DEMANDED

Plaintiff Trove Brands, LLC, doing business as The BlenderBottle Company, for its Complaint against Defendant Aieve LLC, alleges and avers as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Trove Brands, LLC doing business as the BlenderBottle Company ("BlenderBottle®" or "Plaintiff") is a limited liability company organized and existing under the laws of the State of Utah, with its principal place of business located at 250 South 850 East, Lehi, Utah 84043.

2. BlenderBottle® is informed and believes, and, based thereon, alleges that Defendant Aieve LLC ("Aieve" or "Defendant") is a North Carolina limited liability company with a principal place of business at 401 N. Tryon St., 10th Floor Suite 1132-A1, Charlotte, North Carolina 28202.

3. This Court has original subject matter jurisdiction over the claims in this action that relate to patent infringement, trade dress infringement, false designation of origin, and federal unfair competition pursuant to 35 U.S.C. §§ 271 and 281, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116, 1121(a), and 1125(a), as these claims arise under the laws of the United States. The Court has supplemental jurisdiction over the claims that arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. This Court has personal jurisdiction over Defendant Aieve because Aieve resides in this judicial district, has a principal place of business within this judicial district, and has a continuous, systematic, and substantial presence within this judicial district. For example, Defendant has been selling and offering for sale infringing products in this judicial district, and committing acts of infringement in this judicial district, including but not limited to, selling infringing products to consumers and/or retailers in this district and selling into the stream of commerce knowing such products would be sold in North Carolina and this district. These acts form a substantial part of the events or omissions giving rise to BlenderBottle®'s claims.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b) because Defendant is a company organized and existing under the laws of North Carolina and has its principal place of business located within this district,

because Defendant has committed acts of infringement by offer to sell and/or selling infringing products in this judicial district, and because Defendant has a regular and established place of business in this district.

GENERAL ALLEGATIONS

6. BlenderBottle® revolutionized the way supplements are mixed and consumed. Through the tireless efforts of its designers and engineers over nearly two decades, BlenderBottle® has pioneered innovative technology and path-breaking designs to create premium products that help simplify everyday life. Available in more than 90 countries worldwide and in over 60,000 retail locations, BlenderBottle®'s shakers have become the go-to products for outdoor enthusiasts, gym goers, serious protein drinkers and more. Products embodying BlenderBottle®'s proprietary designs and technology have been lauded by consumers and the media, including *Good Morning America*, *Reader's Digest*, *Self*, *The Today Show*, *Men's Fitness*, and others.

7. BlenderBottle® protects its substantial investment in innovation and design from imitators with its intellectual property rights.

8. On December 31, 2013, the United States Patent and Trademark Office ("USPTO") duly and lawfully issued United States Design Patent No. D696,551 (the "D551 Patent"), titled "BOTTLE LID HAVING INTEGRATED HANDLE." BlenderBottle® is the exclusive licensee of the D551 Patent and has been granted all rights thereunder, including the right and standing to enforce the D551 Patent. A true and correct copy of the D551 Patent is attached hereto as **Exhibit 1**.

9. On February 2, 2016, the USPTO duly and lawfully issued United States Design Patent No. D748,478 (the "D478 Patent"), titled "CLOSURE FOR A CONTAINER." BlenderBottle® is the exclusive licensee of the D478 Patent and has been granted all rights thereunder, including the right and standing to enforce the D478 Patent. A true and correct copy of the D478 Patent is attached hereto as **Exhibit 2**.

10. On June 12, 2018, the USPTO duly and lawfully issued United States Design Patent No. D820,038 (the "D038 Patent"), titled "LID FOR A CONTAINER." BlenderBottle® is the exclusive licensee of the D038 Patent and has been granted all rights thereunder, including the right and standing to enforce the D038 Patent. A true and correct copy of the D038 Patent is attached hereto as **Exhibit 3**.

11. On April 15, 2014, the USPTO duly and lawfully issued United States Patent No. 8,695,830 (the "'830 Patent"), titled "CONTAINER LID HAVING INDEPENDENTLY PIVOTING FLIP TOP AND HANDLE." BlenderBottle® is the exclusive licensee of the '830 Patent and has been granted all rights thereunder, including the right and standing to enforce the '830 Patent. A true and correct copy of the '830 Patent is attached hereto as **Exhibit 4**.

12. Defendant manufactures, uses, sells, offers for sale, and/or imports into the United States cups with lids that infringe BlenderBottle®'s patent rights, including the D551 Patent, D478 Patent, D038 Patent, and '830 Patent (collectively the "Asserted Patents").

13. BlenderBottle® manufactures and sells shakers with lids bearing a distinctive trade dress in the overall design of its lid (the "Lid Trade Dress"). Examples of BlenderBottle®'s Lid Trade Dress are depicted below.



14. The Lid Trade Dress includes: a lid element with a tall shoulder; a recessed domed top from which a conical spout protrudes on one side and a pair of brackets on the opposing side; and the brackets host a pivoting arm containing a circular spout closure element.

15. As a result of BlenderBottle®'s widespread use and display of the Lid Trade Dress in association with its shaker bottle lids, (a) the public has come to recognize and identify lids bearing the Lid Trade Dress as emanating from BlenderBottle®, (b) the public recognizes that lids bearing the Lid Trade Dress constitute high quality products that conform to the specifications created by BlenderBottle®, and (c) the Lid Trade Dress has established strong secondary meaning and extensive goodwill.

16. The Lid Trade Dress is not functional. The design features embodied by the Lid Trade Dress are not essential to the function of the product. A lid for a container can have many different forms and shapes. The Lid Trade Dress

is not in its particular shape because it works better in that shape. There are numerous alternative shapes and structures for container lids. Examples of commercially available alternatives are depicted in the table below:

| | |
|--|--|
|  <p data-bbox="540 514 776 640"><i>“PUSHLIMITS Designed by Artoid” product</i></p> |  <p data-bbox="1136 514 1396 682"><i>“Rubbermaid® SHAKER BOTTLE” product</i></p> |
|  <p data-bbox="519 976 795 1102"><i>“Contigo® LEAK- PROOF SHAKER BOTTLE” product</i></p> |  <p data-bbox="1161 976 1372 1102"><i>“BluePeak Shaker Bottle” product</i></p> |

17. Further, the design features of the Lid Trade Dress are not comparatively simple or inexpensive to manufacture because the elements are complex. For example, the Lid Trade Dress is more expensive to manufacture than other lids. The design features of the Lid Trade Dress do not affect the quality of the product. The design of the Lid Trade Dress is not a competitive necessity.

18. The Lid Trade Dress is an invaluable asset essential to BlenderBottle®'s success and represents the design of its signature products.

19. Subsequent to BlenderBottle®'s use and adoption of the Lid Trade Dress, Defendant has developed, manufactured, imported, advertised, and/or lids that use trade dress that is confusingly similar to the Lid Trade Dress.

20. Defendant manufactures, uses, sells, offers for sale, promotes, advertises, and/or imports into the United States the following lids which infringe BlenderBottle®'s intellectual property rights (the "Aieve Lids"):



21. On November 12, 2020, BlenderBottle® sent Defendant a cease and desist letter demanding that Defendant cease selling lids that infringe the D551 Patent, D478 Patent, D038 Patent, '830 Patent and the Lid Trade Dress. A true and correct copy of this letter is attached as **Exhibit 5**.

22. On December 10, 2020, BlenderBottle® sent Defendant a follow-up letter repeating the demands of BlenderBottle®'s November 12, 2020 letter. A true and correct copy of this letter is attached as **Exhibit 6**.

23. Despite BlenderBottle®'s letters and subsequent correspondences seeking to resolve this dispute without litigation, Defendant has not responded and continues to sell the Aieve Lids.

24. BlenderBottle® is informed and believes, and based thereon alleges, that Defendant has intended to blatantly copy BlenderBottle®'s proprietary designs and pass off its goods as BlenderBottle®'s high quality products to misappropriate the immense goodwill that BlenderBottle® has spent enormous time, effort, and expense to cultivate in the marketplace. Defendant's use of the Lid Trade Dress in commerce is likely to cause confusion, cause mistake, and to deceive as to an affiliation, connection, or association of Defendant and/or its products with BlenderBottle®, when there is none.

25. Defendant's acts complained of herein have caused BlenderBottle® to suffer irreparable injury to its business. BlenderBottle® will continue to suffer substantial loss and irreparable injury unless and until Defendant is enjoined from its wrongful actions complained of herein.

26. BlenderBottle® is informed and believes, and on that basis alleges, that Defendant's acts complained of herein are willful and deliberate.

FIRST CLAIM FOR RELIEF
(Patent Infringement – 35 U.S.C. § 271)

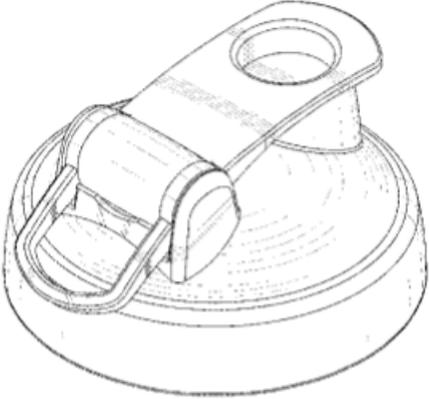
27. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1–26 of this Complaint as if set forth fully herein.

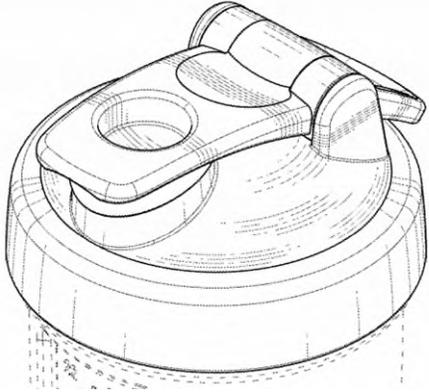
28. This is a claim for patent infringement under 35 U.S.C. § 271.

29. Defendant, through its agents, employees, and/or servants has knowingly, intentionally, and willfully infringed the '830 Patent either literally or under the doctrine of equivalents, through for example, the manufacture, use, sale, offer for sale, and/or importation into the United States of, at least, the Aieve Lids.

30. The Aieve Lids infringe at least Claim 1 of the '830 Patent as shown in the claim chart attached hereto as **Exhibit 7**.

31. Defendant, through its agents, employees and/or servants has knowingly, intentionally, and willfully infringed the D551 Patent, the D478 Patent, and the D038 Patent by making, using, selling, offering for sale, and/or importing products, including the Aieve Lids, that have designs that infringe these patents. For example, the side-by-side visual comparisons of the D551 Patent, D478 Patent, and D038 Patent and the Aieve Lids shown below establish that in the eye of the ordinary observer, giving such attention as a purchaser usually gives, the designs of the Aieve Lids are substantially the same as the claimed designs of the D551 Patent, D478 Patent, and D038 Patent, because the resemblance is such as to deceive such an observer inducing him to purchase one supposing it to be the other. As a result, Defendant infringes the D551 Patent, D478 Patent, and D038 Patent.

| | |
|--|---|
| <p align="center">Aieve Lids</p> | <p align="center">U.S. Design Patent No. D696,551</p> |
|  |  |
| <p align="center">Aieve Lids</p> | <p align="center">U.S. Design Patent No. D748,478</p> |
|  |  |

| Aieve Lids | U.S. Design Patent No. D820,038 |
|---|--|
|  |  |

32. BlenderBottle® is informed and believes, and thereon alleges, that Defendant knew of the D551 Patent, D478 Patent, and D038 Patent at least as early as November 2020, when BlenderBottle® sent a cease and desist letter to Defendant notifying it of the D551 Patent, D478 Patent, and D038 Patent.

33. As a direct and proximate result of Defendant's acts of infringement, Defendant has derived and received gains, profits, and advantages in an amount that is not presently known to BlenderBottle®.

34. Pursuant to 35 U.S.C. § 284, BlenderBottle® is entitled to damages for Defendant's infringing acts and treble damages together with interests and costs as fixed by this Court.

35. Pursuant to 35 U.S.C. § 285, BlenderBottle® is entitled to reasonable attorneys' fees for the necessity of bringing this claim in this exceptional case.

36. Pursuant to 35 U.S.C. § 289, BlenderBottle® is entitled to Defendant's total profits from Defendant's infringement of the D551 Patent, D478 Patent, and D038 Patent.

SECOND CLAIM FOR RELIEF
(Trade Dress Infringement – 15 U.S.C. § 1125(a))

37. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1–36 of this Complaint as if set forth fully herein.

38. This is a claim for trade dress infringement under 15 U.S.C. § 1125(a).

39. Subsequent to BlenderBottle®'s use and adoption of the Lid Trade Dress, and the development of secondary meaning in that trade dress, Defendant has developed, manufactured, imported, advertised, and/or sold products, including the Aieve Lids, that uses trade dress that are confusingly similar to the Lid Trade Dress. An example of Defendant's infringing use of the Lid Trade Dress is shown below:

Lid Trade Dress:



Infringing Lids:



40. Defendant's use of the Lid Trade Dress in connection with its products is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with BlenderBottle®.

41. BlenderBottle® is informed and believes, and based thereon alleges, that Defendant infringed BlenderBottle®'s trade dress rights with the intent to unfairly compete with BlenderBottle®, to trade upon BlenderBottle®'s reputation and goodwill by causing confusion and mistake among customers and the public, and to deceive the public into believing that Defendant's products are associated with, sponsored by, originated from, or are approved by BlenderBottle®, when they are not, resulting in a loss of reputation in, and mischaracterization of, BlenderBottle®'s products and its brand, damaging its marketability and saleability.

42. Defendant's activities constitute willful and intentional infringement of BlenderBottle®'s trade dress rights in total disregard of BlenderBottle®'s proprietary rights, and were done despite Defendant's knowledge

that use of the Lid Trade Dress was and is in direct contravention of BlenderBottle®'s rights.

43. BlenderBottle® is informed and believes, and thereon alleges, that Defendant has derived and received, and will continue to derive and receive, gains, profits, and advantages from Defendant's trade dress infringement in an amount that is not presently known to BlenderBottle®. By reason of Defendant's actions, constituting trade dress infringement, BlenderBottle® has been damaged and is entitled to monetary relief in an amount to be determined at trial.

44. Pursuant to 15 U.S.C. § 1117, BlenderBottle® is entitled to recover (1) Defendant's profits, (2) any damages sustained by BlenderBottle®, and (3) the costs of the action. In assessing damages, the Court may enter judgment up to three times actual damages, and in awarding profits, the Court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. The Court may also award BlenderBottle® its reasonable attorneys' fees for the necessity of bringing this claim in this exceptional case.

45. Due to Defendant's actions, constituting trade dress infringement, BlenderBottle® has suffered great and irreparable injury, for which BlenderBottle® has no adequate remedy at law.

46. Defendant will continue to infringe BlenderBottle®'s trade dress rights to the great and irreparable injury of BlenderBottle®, unless and until Defendant is enjoined by this Court.

THIRD CLAIM FOR RELIEF

*(False Designation of Origin, Passing Off,
& Federal Unfair Competition – 15 U.S.C. § 1125(a))*

47. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1–46 of this Complaint as if set forth fully herein.

48. This is a claim for unfair competition and false designation of origin arising under 15 U.S.C. § 1125(a).

49. Defendant's use of the Lid Trade Dress, without BlenderBottle®'s consent, constitutes false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such entity with another entity, or as to the origin, sponsorship, or approval of its goods or commercial activities by another entity in violation of 15 U.S.C. § 1125(a).

50. Defendant's use of the Lid Trade Dress, without BlenderBottle®'s consent, constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of its products or commercial activities in violation of 15 U.S.C. § 1125(a).

51. BlenderBottle® is informed and believes, and based thereon alleges, that Defendant's acts of false designation of origin, passing off, and unfair competition have been willful and without regard to BlenderBottle®'s rights.

52. Pursuant to 15 U.S.C. § 1117, BlenderBottle® is entitled to recover (1) Defendant's profits, (2) any damages sustained by BlenderBottle®, and (3)

the costs of the action. In assessing damages, the Court may enter judgment up to three times actual damages, and in awarding profits, the Court may in its discretion enter judgment for such sum as the Court finds to be just, according to the circumstances of the case. The Court may also award BlenderBottle® its reasonable attorneys' fees for the necessity of bringing this claim in this exceptional case.

53. BlenderBottle® has been damaged by Defendant's conduct in an amount to be determined at trial.

54. Due to Defendant's actions, constituting false designation of origin, false or misleading statements, false or misleading description of fact, false or misleading representations of fact, passing off, and unfair competition, BlenderBottle® has suffered and continues to suffer great and irreparable injury, for which BlenderBottle® has no adequate remedy at law.

55. Defendant will continue its false designation of origin, false or misleading statements, false or misleading description of fact, false or misleading representations of fact, passing off, and unfair competition, unless and until Defendant is enjoined by this Court.

FOURTH CLAIM FOR RELIEF

(Unfair and Deceptive Acts or Practices – N.C. Gen. Stat. § 75-1.1)

56. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1–55 of this Complaint as if set forth fully herein.

57. Defendant's patent infringement, trade dress infringement, false designation, passing off, and unfair methods of competition constitute unfair or deceptive acts or practices, as those terms are defined under N.C. Gen. Stat. § 75-1.1.

58. Defendant's unfair or deceptive acts or practices were in or affecting commerce, as that term is defined under N.C. Gen. Stat. § 75-1.1.

59. Defendant's unfair or deceptive acts or practices proximately caused BlenderBottle® to suffer a loss.

60. BlenderBottle® has been damaged by Defendant's unfair or deceptive acts or practices in an amount to be determined at trial.

61. BlenderBottle® is entitled to have any recovery from Defendant trebled under N.C. Gen. Stat. § 75-16.

62. In all events, Defendant's acts are causing, and unless restrained, will continue to cause damage and immediate irreparable harm to BlenderBottle® for which BlenderBottle® has no adequate remedy at law. BlenderBottle® is thus entitled to a preliminary injunction and permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, BlenderBottle® prays for judgment in its favor against Defendant for the following relief:

A. An Order adjudging Defendant to have willfully infringed the Asserted Patents under 35 U.S.C. § 271;

B. That Defendant account for all gains, profits, and advantages derived through Defendant's infringement of the Asserted Patents in violation of 35 U.S.C. § 271, and that Defendant pay to BlenderBottle® all damages suffered by BlenderBottle® and/or Defendant's total profits from such infringement pursuant to 35 U.S.C. §§ 284 and 289;

C. That the Court find for BlenderBottle® against Defendant on BlenderBottle®'s claim of trade dress infringement, false designation of origin, and passing off;

D. A preliminary and permanent injunction enjoining Defendant, its respective officers, directors, agents, servants, employees, customers, and attorneys, and those persons in active concert or participation with Defendant, from infringing United States Patent No. 8,695,830 and/or United States Design Patent Nos. D696,551, D748,478, and/or D820,038, in violation of 35 U.S.C. § 271, including, for example, through the manufacture, use, sale, offer for sale, and/or importation into the United States of Defendant's products accused of infringing United States Patent No. 8,695,830, and/or United States Design Patent Nos. D696,551, D748,478, and/or D820,038, and any products that are not colorably different from these products;

E. That the Court issue a preliminary and permanent injunction against Defendant, its agents, servants, employees, representatives, successors, and assigns, and all persons, firms, or corporations in active concert or activities and from assisting or inducing, directly or indirectly, others to engage in the following activities:

1. manufacturing, importing, marketing, displaying, distributing, offering to sell, and/or selling Defendant's products infringing the Lid Trade Dress or any products that are not colorably different therefrom;

2. using BlenderBottle®'s Lid Trade Dress or any other trade dress that is confusingly similar to BlenderBottle®'s Lid Trade Dress;
3. falsely designating the origin of Defendant's products;
4. passing off Defendant's products as those of BlenderBottle®;
5. misrepresenting by any means whatsoever, directly or indirectly, the source or sponsorship of any of Defendant's products;
6. unfairly competing with BlenderBottle® in any manner whatsoever; and
7. causing a likelihood of confusion or injuries to BlenderBottle®'s business reputation.

F. That an accounting be ordered to determine Defendant's profits resulting from its trade dress infringement, false designation or origin, passing off, and unfair competition;

G. That BlenderBottle® be awarded monetary relief in an amount to be fixed by the Court in its discretion as it finds just as an equitable remedy and as a remedy under 15 U.S.C. § 1117, including all damages sustained by BlenderBottle® as a result of Defendant's acts of trade dress infringement, false designation of origin, passing off, and unfair competition, all profits received by Defendant from sales and revenues of any kind made as a result of its infringing actions, and the costs of this

action. That such award of BlenderBottle® of damages and profits be trebled pursuant to 15 U.S.C. § 1117;

H. An Order adjudging that this is an exceptional case under 15 U.S.C. § 1117 and/or 35 U.S.C. § 285;

I. An Order that Defendant's infringement is willful and a trebling of damages and/or exemplary or punitive damages because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

J. That the Court find for BlenderBottle® against Defendant on BlenderBottle®'s claim for unfair or deceptive acts or practices under N.C. Gen. Stat. § 75-1.1;

K. That BlenderBottle® be awarded monetary relief in an amount to be fixed by the Court in its discretion as it finds just as an equitable remedy and as a remedy under N.C. Gen. Stat. § 75-1.1, including all damages sustained by BlenderBottle® as a result of Defendant's unfair or deception acts or practices and the costs of this action. That such award of BlenderBottle® of damages and profits be trebled pursuant to N.C. Gen. Stat. § 75-16; An award to BlenderBottle® of the attorneys' fees, expenses, and costs incurred by BlenderBottle® in connection with this action pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117, and/or North Carolina law;

L. An award of pre-judgment and post-judgment interest and costs of this action against Defendant;

M. A trial by jury on all issues so triable; and,

N. Such other and further relief as this Court may deem just and proper.

This the 29th day of April, 2021.

/s/ Joseph A. Schouten
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