

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ACTIVE CREATIONS LLC,

Plaintiff,

v.

BEIJING JINWEI KANGDA MEDICAL
INSTRUMENT LTD.,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Active Creations LLC (“Active”), by its undersigned attorneys, for its Complaint against Beijing Jinwei Kangda Medical Instrument Ltd. (“Defendant”), states as follows:

NATURE OF THE ACTION

1. Through inequitable conduct, Defendant improperly obtained two United States design patents, (a) D883,498, entitled “Knee Support” (the “‘498 Patent”) and (b) D883,500, entitled “Ankle Support (the “‘500 Patent”) (collectively, the “Asserted Patents”), each of which claims an ornamental design that was already on sale in the United States by third parties including, without limitation, Active’s predecessor-in-interest, before the respective applications for the Asserted Patents were filed. (A copy of the ‘498 Patent and the ‘500 Patent are attached hereto, respectively, as Exhibits 1 and 2.)

2. Even though Defendant, upon information and belief, knew that knee braces bearing the design claimed in the ‘498 Patent were on sale prior to the ‘498 Patent’s priority date, Defendant illegally and improperly failed to disclose this information to the United States Patent and Trademark Office (“USPTO”) during the prosecution of the ‘498 Patent.

3. Even though Defendant, upon information and belief, knew that ankle braces bearing the design claimed in the ‘500 Patent were on sale prior to the ‘500 Patent’s priority date, Defendant illegally and improperly failed to disclose this information to the United States Patent and Trademark Office (“USPTO”) during the prosecution of the ‘500 Patent.

4. After obtaining the Asserted Patents, Defendant, upon information and belief, knowing that the Asserted Patents were invalid and unenforceable, began asserting these patents against Active by submitting a notice of infringement to Amazon.com (“Amazon”) with respect to the ‘498 Patent, which caused Active’s Amazon listings for knee braces to be taken down, causing a resultant loss of business to Active, and by accusing Active in writing of infringing the ‘500 Patent.

5. Active, an online retailer of, among other things, athletic braces and supports, brings this action for a judgment declaring that the Asserted Patents are invalid and obtained by inequitable conduct, and to recover its damages caused by Defendant’s illegal and improper conduct.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 28 U.S.C. §§ 1331, 1338, and 1367.

7. The Court has personal jurisdiction over Defendant pursuant to 35 U.S.C. § 293, which provides that, in cases involving a “patentee not residing in the United States,” this Court “shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.”

8. Upon information and belief, Defendant is the owner of the Asserted Patents and, as a Chinese resident and citizen, is a “patentee not residing in the United States” under 35 U.S.C. § 293. Upon information and belief, Defendant has not provided “a written designation stating the

name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder.” 35 U.S.C. § 293. Thus, Defendant is subject to this Court’s personal jurisdiction under 35 U.S.C. § 293.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(3) because Defendant is subject to this Court’s personal jurisdiction under 35 U.S.C. § 293. Venue is also proper under 28 U.S.C. § 1391(c)(3) because a defendant that does not reside in the United States may be sued in any judicial district.

THE PARTIES

10. Active is a company formed under the laws of the state of Delaware, with a place of business at 550 West 45th Street, Suite 2902, New York New York 10036.

11. Upon information and belief, Defendant is a limited company formed under the laws of China with a place of business at Room 1406-1409, 1st Building, No. 14 Courtyard South Road of Western 3rd Ring-Road, Fengtai District, Beijing, 100073, China.

ACTIVE AND ITS BUSINESS

12. Active is an online retailer of a wide variety of products. Active primarily uses the Amazon Marketplace to offer and sell its products.

13. The Amazon Marketplace is an online e-commerce platform that allows for third parties like Active to sell products on that platform.

14. Active offers a variety of home, sports and outdoors goods on the Amazon Marketplace, including knee and ankle braces.

15. Upon information and belief, Amazon is the world’s largest online retailer.

16. The privilege of selling on Amazon is highly advantageous, as Amazon provides third parties like Active with exposure to the world marketplace on a scale that no other online retailer can currently provide.

17. At all relevant times, Active has had a contractual and business relationship with Amazon, such that Active is permitted to sell its products on Amazon's e-commerce platform.

18. Nearly all of Active's business is derived from the sale of products on the Amazon Marketplace.

19. Any harm that comes to the relationship between Active and Amazon creates a potential for serious and irreparable injury to Active.

THE '498 PATENT

20. On August 30, 2018, Defendant filed the application for the '498 Patent with the USPTO (the "'498 Application").

21. The '498 Application identified Yingfen Lu as the inventor of the design claimed in the '498 Application and Defendant as the assignee of that invention.

22. The Application Data Sheet submitted with the '498 Application listed Ms. Lu and Defendant as having the same mailing address.

23. Upon information and belief, Ms. Lu is the CEO of Defendant.

24. In connection with the '498 Application, Ms. Lu signed a declaration pursuant to 37 C.F.R. § 1.63 stating, in part, "I believe that I am the original inventor or an original joint inventor of a claimed invention in the application."

25. Upon information and belief, at all relevant times, Ms. Lu and Defendant knew that she was not the original inventor or an original joint inventor of a claimed invention in the '498 Application.

26. Upon information and belief, prior to filing the '498 Application, Defendant knew that one or more third parties, such as Active's predecessor PowerLix Ltd. ("PowerLix"), were selling knee braces bearing the design claimed in the '498 Application.

27. Upon information and belief, during the prosecution of the Application, Defendant knew that, prior to August 30, 2018, third parties, such as Active's predecessor PowerLix, were selling knee braces bearing the design claimed in the '498 Application.

28. During the prosecution of the '498 Patent, Defendant did not disclose to the USPTO that one or more third parties were selling knee braces bearing the design claimed in the '498 Application prior to August 30, 2018.

29. The '498 Patent, entitled "Knee Support," issued on May 5, 2020. A true and correct copy of the '498 Patent is attached hereto as Exhibit 1. The '498 Patent claims the ornamental design of a knee support, i.e., knee brace, that is identical in all respects to the design of knee braces that were already on sale in the United States by PowerLix one more than one year prior to the filing of the '498 Application. A claim chart showing the figures from the '498 Patent and photographs of the knee brace sold in the United States by PowerLix more than one year before the filing date of the '498 Patent is attached hereto as Exhibit 2.

THE '500 PATENT

30. On August 30, 2018, Defendant filed the application for the '500 Patent with the USPTO (the "'500 Application").

31. The '500 Application identified Yingfen Lu as the inventor of the design claimed in the '500 Application and Defendant as the assignee of that invention.

32. The Application Data Sheet submitted with the '500 Application listed Ms. Lu and Defendant as having the same mailing address.

33. In connection with the '500 Application, Ms. Lu signed a declaration pursuant to 37 C.F.R. § 1.63 stating, in part, "I believe that I am the original inventor or an original joint inventor of a claimed invention in the application."

34. Upon information and belief, at all relevant times, Ms. Lu and Defendant knew that she was not the original inventor or an original joint inventor of a claimed invention in the '500 Application.

35. Upon information and belief, prior to filing the '500 Application, Defendant knew that one or more third parties, such as Active's predecessor PowerLix, were selling ankle braces bearing the design claimed in the '500 Application.

36. Upon information and belief, during the prosecution of the Application, Defendant knew that, prior to August 30, 2018, third parties, such as Active's predecessor PowerLix, were selling ankle braces bearing the design claimed in the '500 Application.

37. During the prosecution of the '500 Patent, Defendant did not disclose to the USPTO that one or more third parties were selling ankle braces bearing the design claimed in the '500 Application prior to August 30, 2018.

38. The '500 Patent, entitled "Ankle Support," issued on May 5, 2020. A true and correct copy of the '500 Patent is attached hereto as Exhibit 3. The '500 Patent claims the ornamental design of an ankle support, i.e., ankle brace, that is identical in all respects to the design of ankle braces that were already on sale in the United States by third parties more than one year prior to the filing of the '500 Patent. A claim chart showing the figures from the '500 Patent and photographs of the ankle brace sold in the United States by PowerLix more than one year before the filing date of the '500 Patent is attached hereto as Exhibit 4.

DEFENDANT'S ILLEGAL CONDUCT

39. As demonstrated below, Defendant has engaged in a course of conduct designed to preclude Active from selling its knee brace by making false and defamatory allegations of intellectual property infringement.

40. Upon information and belief, Defendant either sells knee braces on e-commerce platforms such as Amazon or sells knee braces to third parties who resell them on the Amazon platform.

41. Upon information and belief, Defendant competes with Active with respect to sales of knee braces.

42. It is well-known among intellectual property owners that Amazon has a policy of acting on virtually any notice of intellectual property infringement, whether legitimate or not.

43. As one Amazon expert has previously explained:

In order to meet a minimum liability standard, Amazon will act upon properly submitted and completed notice claims of infringement. They will notify specified marketplace sellers which party reported them, on what listing, and how to reach that would-be rights owner via email. The rest though, is up to you. And, unless you (and possibly your legal team) can prove that the Notice claim is false, Amazon considers it valid and actionable.

Unfortunately, word is out among potential Notice claim abusers that anyone can submit a form. Amazon [is] not worried about additional vetting or verification processes. Investigators merely check the form for completed content in all the right spaces, kill the listings and send off the notifications.

They don't independently verify that any of the information is actually correct, or valid. The rights owner makes a legally-binding declaration in the form, and signs it.

See Chris McCabe, *False Infringement Claims are Rife on Amazon*, WebRetailer (Apr. 11, 2018),

<https://www.webretailer.com/lean-commerce/false-infringement-claims-amazon/> (emphasis added).

44. It is well known that once Amazon takes down an Amazon Marketplace seller's listing for alleged infringement, it is often very difficult, if not impossible, to have the listing

reinstated, even if the seller demonstrates to Amazon that the accused product is not infringing, or that the intellectual property owner lacks valid rights.

45. On the occasions that Amazon does reinstate a product listing, it can take Amazon weeks to do so.

46. Upon information and belief, Defendant was, at all relevant times, aware of the foregoing Amazon policy with respect to reports of intellectual property infringement.

47. Upon information and belief, Defendant was, at all relevant times, aware that Amazon will act on reports that a product infringes a design patent, regardless of the truth of the report.

48. Upon information and belief, Defendant was, at all relevant times, aware that once Amazon takes down an Amazon Marketplace seller's listing for alleged infringement, it is often very difficult, if not impossible, to have the listing reinstated, even if the seller demonstrates to Amazon that the accused product is not infringing, or that the intellectual property owner lacks valid rights.

49. By letter dated June 1, 2021, Defendant threatened to file patent infringement complaints with Amazon regarding the knee braces and ankle braces sold by Active on the Amazon Marketplace (respectively, the "Knee Braces" and the "Ankle Braces") unless Active placed orders for these products with Defendant. A true and correct copy of the June 1, 2021 letter is attached hereto as Exhibit 5.

50. Upon information and belief, on or about June 3, 2021, Defendant filed or caused to be filed a complaint with Amazon which alleged that Active's Knee Braces infringed the '498 Patent (the "Report"). A copy of the Report is attached hereto as Exhibit 6.

51. Specifically, the Report alleged that Active's knee brace sold under the following listings on the Amazon Marketplace (identified by its Amazon Standard Identification Numbers ("ASIN")) infringed the '498 Patent: B08DNNKKJ7; B082ZR13NR; and B08DH3PQLN.

52. The Report—which was identified by "Complaint ID: 841968301, provided the following e-mail address as the "contact details" for Defendant: 2248714220@qq.com.

53. Upon information and belief, at all relevant times, Defendant knew that such allegations of patent infringement in the Report were false.

54. The Report submitted to Amazon was signed by Defendant under penalty of perjury.

55. When submitting an infringement report to Amazon, an intellectual property rights owner must read and accept the following statements:

I have a good faith belief that the content(s) described above violate(s) my rights described above or those held by the rights owner, and that the use of such content(s) is contrary to law.
I declare, under penalty of perjury, that the information contained in this notification is correct and accurate and that I am the owner or agent of the owner of the rights described above.

Report Infringement, <https://www.amazon.com/report/infringement> (last visited June 29, 2021).

56. Upon information and belief, the purpose of the false Report that Defendant made to Amazon regarding Active's knee braces was, and is, to injure competitors such as Active by causing Amazon to take down Active's listings for its knee braces, and to otherwise damage Active's sales, reputation and goodwill.

57. Because the '498 Patent is unenforceable as it was obtained through inequitable conduct and is otherwise invalid, Defendant has no legitimate intellectual property claim against Active.

58. The Report caused Amazon to take down Active's listings for its knee braces.

59. Upon information and belief, at all relevant times, Defendant has known that the '498 Patent is invalid and unenforceable.

60. Upon information and belief, Defendant's materially false allegations that Active's knee braces infringed the '498 Patent were knowingly false and made in bad faith, and with the intent to damage Active.

61. As a result of the above false Report, Active's Amazon listings for Active's knee braces were taken down, resulting in an immediate loss of revenue and profits for Active.

62. At no time has Active infringed the '498 Patent.

63. Upon information and belief, Defendant knowingly made a false intellectual property rights complaint against Active.

64. Upon information and belief, the true purpose of the Report was to ensure the removal of Active's listings for Active's knee braces, and to control pricing and eliminate fair competition in the knee brace market.

65. While Active was able to have some of the Amazon listings for the knee braces restored, Defendant has threatened to file additional infringement complaints with Amazon regarding Active's knee braces and ankle braces if Active does not purchase these products from Defendant.

66. Defendant withdrew the Report and Amazon relisted Active's Knee Braces after Defendant demanded and Active agreed to enter into negotiations to purchase significant quantities of Knee Braces and Ankle Braces from Defendant. Defendant's prices for knee braces and ankle braces of the type Active offers for sale on Amazon are far greater than the prices charged by Active's current manufacturer of the Knee Braces and Ankle Braces.

67. On or about June 7, 2021, another infringement complaint based on the '498 Patent

was filed with Amazon with respect to the Knee Braces. Again, Amazon took down the Knee Brace sold under the following ASINs: B07B3RXKGB; B06XST8Z2W; B01NBMVZ67; B07B3N5C3B; B07B3TKRR4; B01MQYADOT; B07B3P9TGJ; B07B3VPD3H; and B01N7KGPZ. A copy of this complaint is attached hereto as Exhibit 7. According to Defendant, it did not file or cause this complaint to be filed, although the contact information provided with this complaint was the same as the Defendant's contact information provided in the Report.

68. Active was able to largely resolve this issue on or about June 7, 2021, after Defendant provided Active with a "Power of Attorney" which authorized Active to sell the Knee Braces and Ankle Braces asserted to be covered by, respectively, the '498 Patent and the '500 Patent on Amazon. A true and correct of the Power of Attorney is attached hereto as Exhibit 8.

69. Since early June, Active has been engaging in negotiations with Defendant regarding the purchase of ankle braces and knee braces from Defendant. To date, these negotiations have been fruitless.

70. On July 14, 2021, Defendant sent Active an email stating, "patent authorization will expire at the end of July. If both parties do not sign a new patent license agreement agreement (sic) before the end of July, we will terminate your protection and patent authorization by then. From 1st August, the patent authorization will be offered to other stores at Amazon." A true and correct copy of the July 14, 2021 email is attached hereto as Exhibit 9.

FIRST CAUSE OF ACTION
(Declaratory Judgment of Patent Invalidity as to the '498 Patent)

71. Active repeats and realleges the allegations of Paragraphs 1–70 as if fully set forth herein.

72. This claim arises under the patent laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

73. There exists an actual and justiciable controversy between Active and Defendant with respect to the alleged validity of the '498 Patent due to the assertion of the '498 Patent against Active.

74. The '498 Patent is invalid for failure to comply with at least 35 U.S.C. § 102(a) in view of, among other things, the knee braces that were already on sale in the United States by PowerLix more than one year prior to the filing of the application for the '498 Patent.

75. As shown in Exhibit 2 hereto, each and every element of the ornamental design of the '498 Patent was anticipated by the Knee Braces sold by PowerLix.

76. In view of the foregoing, Active is entitled to a judgment declaring that the '498 Patent is invalid under at 35 U.S.C. § 102.

SECOND CAUSE OF ACTION
(Declaratory Judgment of Unenforceability as to the '498 Patent)

77. Active repeats and realleges the allegations of Paragraphs 1–76 as if fully set forth herein.

78. This claim arises under the patent laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

79. There exists an actual and justiciable controversy between Active and Defendant with respect to the alleged enforceability of the '498 Patent due to the assertion of the '498 Patent against Active.

80. Upon information and belief, before and during the prosecution of the '498 Application, Defendant knew that one or more third parties were selling knee braces bearing the design claimed in the '498 Application.

81. During the prosecution of the '498 Application, Defendant failed to disclose to the USPTO that one or more third parties were offering for sale and selling knee braces in the United States bearing the design claimed in the '498 Application prior to August 30, 2018.

82. Upon information and belief, Defendant's failure to disclose such prior art knee braces to the USPTO was intentional.

83. Upon information and belief, at all relevant times, Defendant knew that these prior art knee braces were material because they rendered the design claimed in the '498 Patent unpatentable.

84. Upon information and belief, Defendant failed to disclose the prior art knee braces to the USPTO with an intent to deceive because Defendant deliberately wanted to hide the fact that the design claimed in the '498 Patent was unpatentable in view of these prior art knee braces.

85. Upon information and belief, had the USPTO been aware of the prior art knee braces during the prosecution of the '498 Patent, it would not have allowed the '498 Patent to issue.

86. Upon information and belief, because Defendant failed to disclose the prior art knee braces, the USPTO allowed the '498 Patent to issue.

87. In view of the foregoing, Active is entitled to a judgment declaring that the '498 Patent was obtained by inequitable conduct upon the USPTO and thus is unenforceable.

THIRD CAUSE OF ACTION
(Declaratory Judgment Patent Invalidity as to the '500 Patent)

88. Active repeats and realleges the allegations of Paragraphs 1–87 as if fully set forth herein.

89. This claim arises under the patent laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

90. There exists an actual and justiciable controversy between Active and Defendant with respect to the alleged validity of the '500 Patent due to the assertion of the '500 Patent against Active.

91. The '500 Patent is invalid for failure to comply with at least 35 U.S.C. § 102(a) in view of, among other things, the ankle braces that were already on sale in the United States by PowerLix more than one year prior to the filing of the '500 Application.

92. As shown in Exhibit 4 hereto, each and every element of the ornamental design of the '500 Patent was anticipated by the Ankle Braces sold by PowerLix.

93. In view of the foregoing, Active is entitled to a judgment declaring that the '500 Patent is invalid under at 35 U.S.C. § 102.

FOURTH CAUSE OF ACTION
(Declaratory Judgment of Unenforceability as to the '500 Patent)

94. Active repeats and realleges the allegations of Paragraphs 1–93 as if fully set forth herein.

95. This claim arises under the patent laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

96. There exists an actual and justiciable controversy between Active and Defendant with respect to the alleged enforceability of the '500 Patent due to the assertion of the '500 Patent against Active.

97. Upon information and belief, before and during the prosecution of the '500 Application, Defendant knew that one or more third parties were offering for sale and selling ankle braces in the United States bearing the design claimed in the '500 Application.

98. During the prosecution of the ‘500 Application, Defendant failed to disclose to the USPTO that one or more third parties were selling ankle braces in the United States bearing the design claimed in the Application prior to August 30, 2018.

99. Upon information and belief, Defendant’s failure to disclose such prior art ankle braces to the USPTO was intentional.

100. Upon information and belief, at all relevant times, Defendant knew that these prior art ankle braces were material because they rendered the design claimed in the ‘500 Patent unpatentable.

101. Upon information and belief, Defendant failed to disclose the prior art ankle braces to the USPTO with an intent to deceive because Defendant deliberately wanted to hide the fact that the design claimed in the ‘500 Patent was unpatentable in view of these prior art ankle braces.

102. Upon information and belief, had the USPTO been aware of the prior art ankle braces during the prosecution of the ‘500 Patent, it would not have allowed the ‘500 Patent to issue.

103. Upon information and belief, because Defendant failed to disclose the prior art ankle braces, the USPTO allowed the ‘500 Patent to issue.

104. In view of the foregoing, Active is entitled to a judgment declaring that the ‘500 Patent was obtained by inequitable conduct upon the USPTO and thus is unenforceable.

FIFTH CAUSE OF ACTION
(Tortious Interference with Contract and Business Relations)

105. Active repeats and realleges the allegations of Paragraphs 1–104 as if fully set forth herein.

106. Active has had an advantageous business relationship with Amazon, which allows Active to sell on Amazon’s e-commerce platform as a third-party seller.

107. Active also has a contractual relationship with Amazon, including through the Amazon Business Services Agreement.

108. At all relevant times, Defendant was aware of Active's business relationship with Amazon, as well as its contractual relationship with Amazon.

109. At all relevant times, Defendant was aware of the terms and conditions of Active's contract with Amazon, as well as the advantageous business relationship that comes with being an Amazon Marketplace seller.

110. Defendant intentionally and improperly interfered with Active's advantageous and contractual relationship with Amazon by falsely claiming, with knowledge of such falsity, in writing, to Amazon, that Active was selling infringing products.

111. Defendant's conduct directly and proximately caused disruption of Active's relationship and contract with Amazon.

112. Defendant intended to cause Amazon to remove Active's listing for Active's knee braces on Amazon, and therefore to interfere with Active's business relationship with Amazon.

113. Defendant had actual knowledge that its actions would cause Amazon to remove Active's listings for Active's knee braces.

114. Defendant's defamatory accusations of infringement, made directly to Amazon, were for the improper purpose of suppressing competition.

115. Defendant's actions interfered with Active's business relationship with Amazon and proximately caused Active's Amazon listing for Active's knee braces to be taken down.

116. Defendant's Report regarding Active's knee braces sold by Active was defamatory, made maliciously and with the intent to interfere with Active's business relationship with Amazon.

117. Active has been damaged by the removal of its listings for Active's knee braces in that it lost, and continues to lose, revenue and profits related to Active's knee braces.

118. Active is entitled to damages, costs and attorneys' fees as allowed by law.

119. Defendant's conduct was malicious, intentional and oppressive, thereby justifying an award of punitive damages.

120. Active has suffered injury and, unless Defendant is enjoined from such activity, Active will continue to suffer injury.

SIXTH CAUSE OF ACTION
(Defamation)

121. Active repeats and realleges the allegations of Paragraphs 1–121 as if fully set forth herein.

122. Defendant published false statements to Amazon regarding Active by sending the Report to Amazon alleging that Active infringed the '498 Patent with the intent to injure Active.

123. Active did not infringe the '498 Patent.

124. Defendant's false statements were injurious to Active's business because they caused Amazon to suspend Active's selling privileges related to Active's knee braces.

125. Defendant's false statements were injurious to Active's business because they caused Amazon's and Active's customers to avoid purchasing products from Active.

126. Upon information and belief, Defendant was, at a minimum, negligent in making the false statements to Amazon because, among other things, Defendant knew that the '498 Patent was invalid and/or unenforceable.

127. Defendant's false statements are not protected by any privilege.

128. Defendant acted with actual malice, or with reckless disregard for the truth of the matter contained in Defendant's false statements to Amazon and Active's customers.

129. False statements that are directed to the honesty, efficiency, or other business character traits amount to defamation *per se*.

130. The statements made by Defendant were defamatory *per se*.

131. Additionally, Active incurred special harm, including, but not limited to, suspension from selling Active's knee braces and damage to Active's relationship with Amazon and its customers.

132. Whether by defamation *per se* or by special harm, Active has suffered injury as Active's selling privileges related to Active's knee braces have been suspended and Active has lost sales of Active's knee braces and other products.

133. Active is entitled to damages, costs, and attorneys' fees as allowed by law.

134. As a result of the defamatory statements made by Defendant, Active has been damaged in an amount to be determined at trial.

135. Defendant's conduct was malicious, intentional and oppressive, thereby justifying an award of punitive damages.

136. Active has suffered irreparable injury and, unless Defendant is enjoined from such activity, will continue to suffer irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Active demands judgment as follows:

- A. Declaring that the '498 Patent is invalid and unenforceable;
- B. Declaring the '500 Patent is invalid and unenforceable;
- C. Preliminary and permanent injunctive relief restraining Defendant and its agents, servants, employees, successors and assigns, and all others in concert and privity with them from filing false complaints with Amazon, and any other e-commerce platform, regarding Active's knee braces and ankle braces;

- D. Declaring this action an exceptional case under 35 U.S.C. § 285;
- E. Awarding Active its damages caused by Defendant's tortious actions;
- F. Awarding Active punitive damages;
- G. Awarding Active its attorney's fees and costs incurred in this Action; and
- H. Granting such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Active hereby requests a jury trial for all issues triable by jury.

Dated: July 19, 2021

Respectfully submitted,

OF COUNSEL:
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