

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Theragun, Inc., a Delaware corporation,

Plaintiff,

v.

Golovan Ltd., d/b/a GetKraft, an
Israel limited company; and Does 1 through
10, inclusive,

Defendants.

Case No.:

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Theragun, Inc. (“Theragun”) files this complaint against Defendants Golovan Ltd. d/b/a GetKraft (“Golovan”) and Does 1-10, inclusive (collectively “Defendants”), and states as follows:

THE PARTIES

1. Theragun is, and at all times relevant hereto was, a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 6100 Wilshire Blvd., Ste. 200, Los Angeles, CA 90048.

2. Theragun is informed and believes and, based thereon, alleges that defendant Golovan is an Israel limited company, with offices at 198 Dizengoff, Tel Aviv, Israel. Golovan is further informed and believes that Golovan is doing business in the United States under the name GetKraft and that it has an office at 15429 NE 21st Avenue, North Miami Beach, Florida 33162.

3. Theragun does not know of the true names and capacities of defendants sued herein as Does 1 through 10, inclusive, and therefore sues these defendants by such fictitious names and capacities. Theragun will amend this Complaint to allege their true names and capacities when ascertained, along with the appropriate charging allegations.

4. Theragun is informed and believes and thereon alleges that Defendants are manufacturing, using, selling, or offering for sale within the United States, or importing into the United States, the infringing products described below.

5. Theragun is informed and believes and thereon alleges that each of the Defendants conspired and acted in concert with one or more other Defendants to commit the wrongs against Theragun alleged herein, and in doing so were at all relevant times the agents, servants, employees, principals, joint venturers, alter egos, and/or partners of each other. Theragun is further informed and believes and on that basis alleges that, in doing the things alleged in this Complaint, each of the Defendants was acting within the scope of authority conferred upon that Defendant by the consent, approval, and/or ratification of one or more of the other Defendants.

JURISDICTION AND VENUE

6. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, and for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Sta., § 501.201 *et seq.*

7. This Court has subject matter jurisdiction over the patent claims in this action pursuant to 28 U.S.C. § 1338. This Court has supplemental jurisdiction over the state law claim under 28 U.S.C. §§ 1338 and 1367, because the claim is so related to Theragun's claim under federal law that it derives from a common nucleus of operative fact and forms part of the same case or controversy.

8. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c) and § 1400(b). Theragun is informed and believes and, based thereon, alleges that, all Defendants have offices in this judicial district and distribute, promote, market, use, sell, offer for sale, import, and/or advertise their infringing products in or to this District and/or to businesses and individuals in this District. Theragun is further informed and believes and, based thereon, alleges that Defendants derive substantial revenue from the

distribution, promotion, marketing, manufacture, use, sale, offer for sale, or import of infringing products in or to this District.

GENERAL ALLEGATIONS

9. Theragun is in the business of developing, manufacturing, and selling high-quality, innovative percussive therapy devices and attachments therefor. Theragun invests considerable time, effort and money in developing and protecting its intellectual property, including the unique and novel design and trade dress of its products.

10. Theragun is the owner of United States Patent Number 10,918,565, entitled “Percussive massage device and method of use” (hereinafter the “‘565 Patent”), issued on February 16, 2021, a true and correct copy of which is attached hereto as Exhibit A. The ‘565 Patent pertains to a vibrating massage device or percussive massage device that provides reciprocating motion. The ‘565 Patent is presumed to be valid and is *prima facie* proof that the inventions claimed in the ‘565 Patent are novel and non-obvious.

11. Theragun is the owner of United States Patent Number 10,702,448, entitled “Percussive massage device and method of use” (hereinafter the “‘448 Patent”), issued on July 7, 2020, a true and correct copy of which is attached hereto as Exhibit B. The ‘448 Patent pertains to a vibrating massage device or percussive massage device that provides reciprocating motion. The ‘448 Patent is presumed to be valid and is *prima facie* proof that the inventions claimed in the ‘448 Patent are novel and non-obvious.

12. Theragun’s patented and patent-pending devices are innovative and have received industry praise and recognition, including the 2019 A’ Design Award in Digital and Electronic Devices Design for its Theragun G3PRO design.

13. Theragun is informed and believes and based thereon alleges that Defendants began competing with Theragun in the percussive massage device industry by manufacturing and selling

percussive massage devices infringing the '565 Patent. Specifically, Defendants are marketing, promoting, advertising, using, selling, offering to sell, and/or importing the infringing device, the "KRAFTGUN FORCE," identified below in Fig. 1 (the "Infringing Product").



Fig. 1

14. The online records of the United States Patent and Trademark Office identified Golovan as the owner of U.S. Trademark Application Nos. 88709856 and 88709857 for KRAFTGUN and KRAFTGUN (stylized), respectively. Further, the specimens of use filed in support of each of those applications shows the infringing KRAFTGUN product and the website at kraftgun.com (the "KRAFTGUN Website"), through which infringing products are sold. The third result in a Google® search for "Golovan Ltd." is the website at getkraft.co, which redirects to kraftgun.com. Through the KRAFTGUN website, Golovan advertises business locations in Lee, Massachusetts and North Miami Beach, Florida.

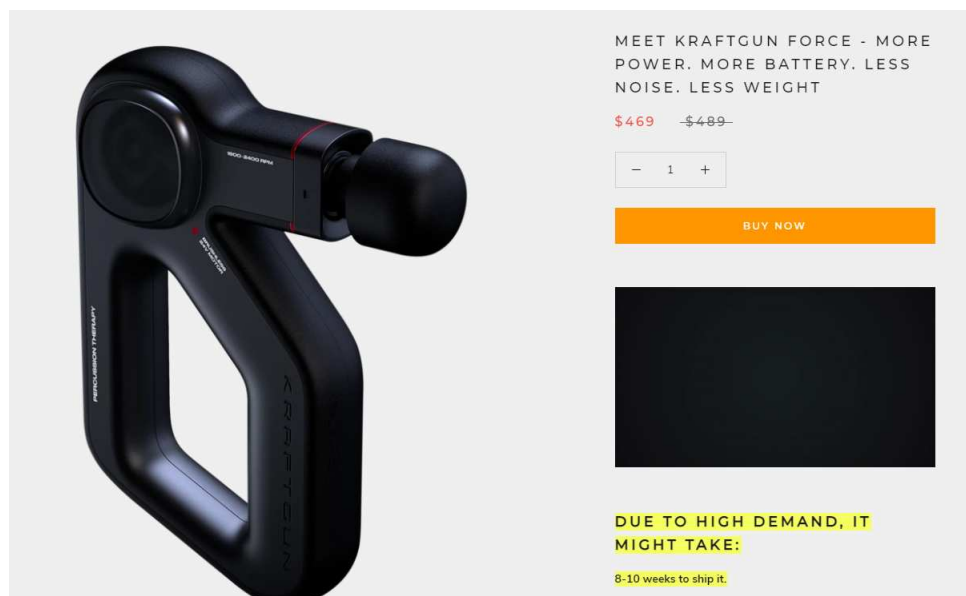
15. The Infringing Product is integral to Defendants' product offering as shown from the Defendants' website. From this, it is apparent that Defendants have been actively advertising the Infringing Product, touting the products throughout a variety of markets and to numerous audiences. Theragun is informed and believes that Defendants sell their Infringing Product in the

same marketing channels as Theragun, including online through their respective websites and through social media advertising.

16. This is not the first time Defendant Golovan has infringed Theragun's patents. Last year, in *Theragun, Inc. v. Golovan Ltd, et al.*, Case No. 1:20-cv-22327 (S.D. Fla. June 4, 2020), Theragun asserted infringement of its patented design on its percussive massage gun copied by Golovan. The case resulted in a significant monetary payment by Golovan to Theragun and agreement that Golovan would discontinue sales of its infringing massage guns.

17. On March 19 and April 20, 2021, Theragun notified Defendant Golovan by letter that the Infringing Product was infringing Theragun's '565 patent and demanded that Defendant immediately cease and permanently discontinue all manufacture, offer for sale, sale, use and importation of the Infringing Product.

18. In a letter dated May 20, 2021, Defendant Golovan represented that it had stopped selling the Infringing Product in April 2021. However, contrary to its representation, the Infringing Product remains available (through August 10, 2021) on Defendant's website at <http://kraftgun.com/products/kata>. The screenshot below shows Defendant Golovan offering the Infringing Product for sale on its website:



19. Notwithstanding Theragun's demand and in conscious disregard of Theragun's intellectual property rights as set forth herein, Defendants have continued to offer for sale and sell the Infringing Product.

COUNT I
PATENT INFRINGEMENT, 35 U.S.C. §§ 101 et seq.
(Against All Defendants)

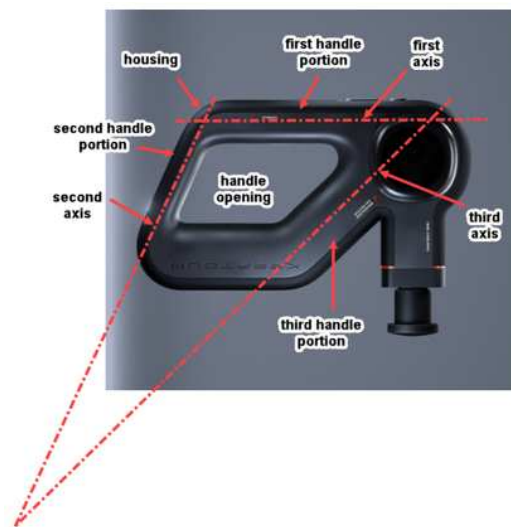
20. Theragun realleges paragraphs 1–20 as if set forth fully herein.

21. At all times herein mentioned the '565 Patent was and is valid and fully enforceable.

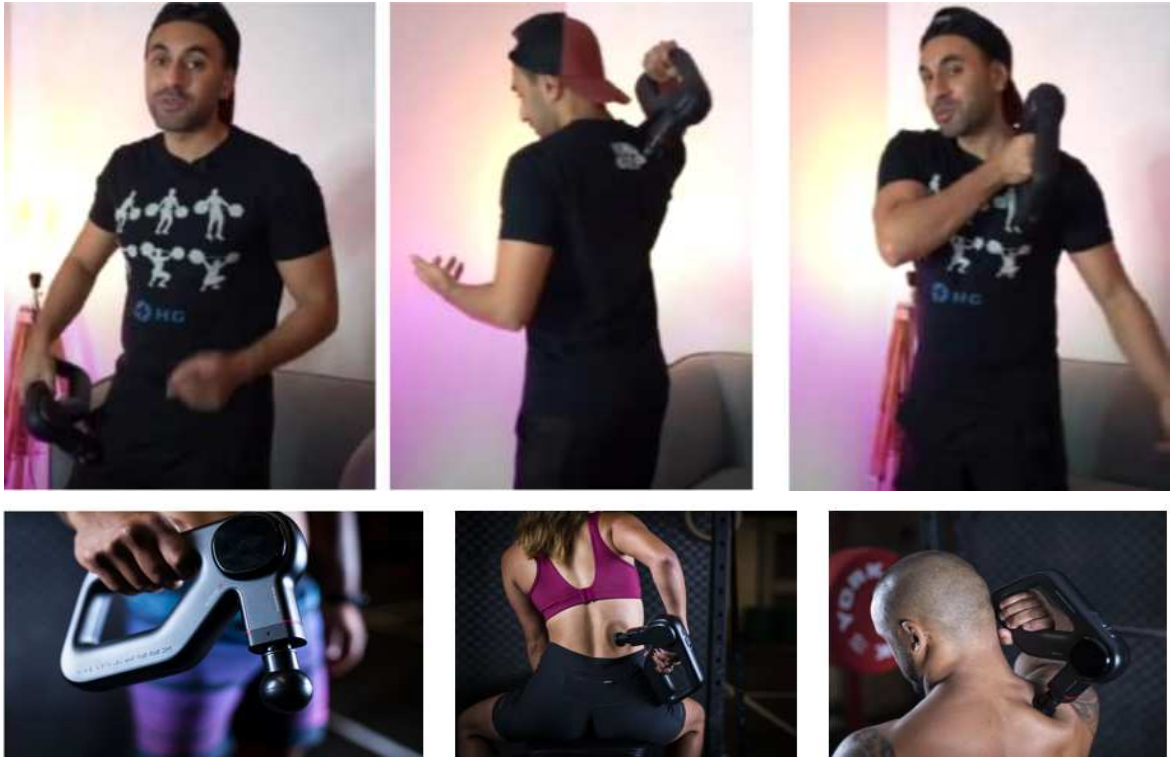
22. Defendants are offering percussive massage devices that infringe at least claim 1 of the '565 Patent, including at least the Infringing Product.

23. The Infringing Product is a percussive massage device.

24. As shown below, the Infringing Product includes a housing wherein the housing includes first, second and third handle portions that cooperate to at least partially define a handle opening, wherein the first handle portion defines a first axis, the second handle portion defines a second axis and the third handle portion defines a third axis, wherein the first, second and third axes are co-planar, and wherein the first handle portion is generally straight, wherein the second handle portion is generally straight, and wherein the third handle portion is generally straight.



25. As shown below in the snapshot images taken from a video promoted by Defendant Golovan and images taken from its website, <http://kraftgun.com/products/kata>, a user can grasp any of the first, second or third handle portions independently to use the Infringing Product.



26. The Infringing Product includes an electrical source, a motor positioned in the housing, a switch for activating the motor, and a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor.

27. Defendants infringe literally or under the doctrine of equivalents, or both.

28. Upon information and belief, at least since Plaintiff's March 19, 2021 letter, Defendants have knowingly and actively induced the infringement of one or more of the '565 Patent claims by, inter alia, marketing, promoting, and offering for use the Infringing Product, knowingly and intending that the use of the Infringing Product by Defendants' customers and by users infringes the '565 Patent. For example, Defendants intend to induce such infringement by, among other things, promoting users to purchase and use the Infringing Product knowing that its

purchase and use infringes one or more claims of the '565 Patent.

29. Upon information and belief, at least since Plaintiff's March 19, 2021 letter, Defendants have contributed to the infringement of the '565 Patent by their customers and users of the Infringing Product by, inter alia, making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringing the '565 Patent. The Infringing Product is not a staple article or commodity of commerce suitable for substantial non-infringing use and is known by Defendants to be especially made or especially adapted to the infringe the '565 Patent. As a result, Defendants' Infringing Product has been used by its customers and by users to infringe the '565 Patent. Defendants continue to engage in acts of contributory infringement of the '565 Patent even after receiving notice of its contributory infringement.

30. At no time has Theragun granted Defendants authorization, license, or permission to utilize the design claimed in the '565 Patent.

31. Theragun has been damaged by Defendants' acts of infringement of the '565 Patent and Theragun will continue to be damaged by such infringement unless enjoined by this Court. Theragun is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

32. Theragun is, and has been, irreparably harmed by Defendants' on-going infringement including the following harm which cannot be quantified or recouped through monetary damages: (1) lost market share that will be difficult, if not impossible, to recoup later as the Infringing Product becomes entrenched with retail sellers and trainers who recommend them to their clients, (2) loss of first mover advantage that Theragun enjoyed as the first company to

offer its innovative and patented percussive devices, (3) loss of Theragun's investment in developing the market for percussive devices, (4) negative effect on its reputation as innovator and pioneer, (5) the unquantifiable effect on lost sales of related products, (6) price erosion due to Defendants' Infringing Product being sold at a price point lower than Theragun's patented products, (7) diversion of resources to defend against loss of market share caused by sales of the Infringing Product, and (8) Defendants' unauthorized sales that are enticing others to offer for sale and sell infringing attachments that leads to additional irreparable harm described above.

33. Defendants' acts of infringement have been, and continue to be, willful and deliberate and therefore warrant the award of attorneys' fees pursuant to 35 U.S.C. § 285 and the award of enhanced damages pursuant to 35 U.S.C. § 284.

COUNT II
PATENT INFRINGEMENT OF THE '448 PATENT, 35 U.S.C. §§ 101 et seq.
(Against All Defendants)

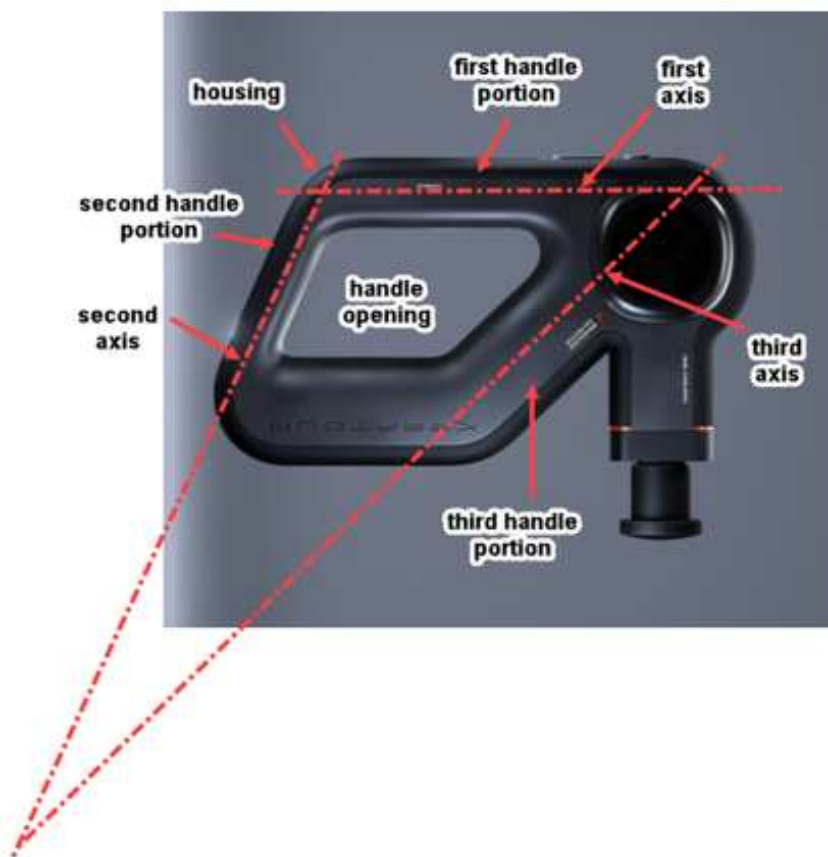
34. Theragun realleges paragraphs 1–20 as if set forth fully herein.

35. At all times herein mentioned the '448 Patent was and is valid and fully enforceable.

36. Defendants are offering percussive massage devices that infringe at least claim 6 of the '448 Patent, including at least the Infringing Product.

37. Defendants' Infringing Product is a percussive massage device.

38. As shown below, Defendants' Infringing Product includes a housing, wherein the housing includes first, second and third handle portions that cooperate to define a handle opening.



39. As shown above, Defendants' Infringing Product includes a first handle portion that defines a first axis, a second handle portion defines a second axis and a third handle portion defines a third axis, and wherein the first, second and third axes cooperate to form a triangle.

40. As shown above, the Infringing Product includes that the first handle portion is generally straight, the second handle portion is generally straight, and that the third handle portion is generally straight, such that a user can grasp any of the first, second or third handle portions independently to use the percussive massage device.

41. The Infringing Product includes an electrical source, a motor positioned in the housing, a switch for activating the motor, and a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor.

42. On information and belief, at least since the filing of this Complaint, Defendants have knowingly and actively induced the infringement of one or more of the '448 Patent claims

by, *inter alia*, marketing, promoting, and offering for use the Infringing Product, knowingly and intending that the use of the Infringing Product by Defendants' customers and by users infringes the '448 Patent. For example, Defendants intend to induce such infringement by, among other things, promoting users to purchase and use the Infringing Product knowing that its purchase and use infringes one or more claims of the '448 Patent.

43. On information and belief, at least since the filing of this Complaint, Defendants have contributed to the infringement of the '448 Patent by their customers and users of the Infringing Product by, *inter alia*, making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringing the '448 Patent. The Infringing Product is not a staple article or commodity of commerce suitable for substantial non-infringing use and is known by Defendants to be especially made or especially adapted to the infringe the '448 Patent. As a result, Defendants' Infringing Product has been used by its customers and by users to infringe the '448 Patent. Defendants continue to engage in acts of contributory infringement of the '448 Patent even after receiving notice of its contributory infringement.

44. Defendants infringe literally or under the doctrine of equivalents, or both.

45. At no time has Theragun granted Defendants authorization, license, or permission to utilize the inventions claimed in the '448 Patent.

46. Theragun has been damaged by Defendants' acts of infringement of the '448 Patent and Theragun will continue to be damaged by such infringement unless enjoined by this Court. Theragun is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

47. Theragun is, and has been, irreparably harmed by Defendants' on-going

infringement including the following harm which cannot be quantified or recouped through monetary damages: (1) lost market share that will be difficult, if not impossible, to recoup later as the Infringing Product becomes entrenched with retail sellers and trainers who recommend them to their clients, (2) loss of first mover advantage that Theragun enjoyed as the first company to offer its innovative percussive devices and patented attachments, (3) loss of Theragun's investment in developing the market for percussive devices and its patented attachments, (4) negative effect on its reputation as innovator and pioneer, (5) the unquantifiable effect on lost sales of related products, (6) price erosion due to Defendants' Infringing Product being sold at a price point lower than Theragun's patented products, (7) diversion of resources to defend against loss of market share caused by sales of the Infringing Product, and (8) Defendants' unauthorized sales that are enticing others to offer for sale and sell infringing attachments that leads to additional irreparable harm described above.

48. Defendants' acts of infringement, including continuing the infringing activities after receiving notice of Defendants' direct and indirect infringement, have been, and continue to be, willful and deliberate and therefore warrant the award of attorneys' fees pursuant to 35 U.S.C. § 285 and the award of enhanced damages pursuant to 35 U.S.C. § 284.

COUNT III
VIOLATION OF FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT
(Against All Defendants)

49. Theragun realleges and incorporates by reference all foregoing paragraphs as if fully set forth herein.

50. This is an action for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat., § 501.201 *et seq.*

51. Defendants have willfully, deliberately and intentionally sold and/or offered for sale percussive massage devices that infringe the '565 and '448 Patents, including at least the KRAFTGUN FORCE shown in Fig. 1 of this Complaint, thereby deceiving the consuming public

into believing that Defendants' products are in some way affiliated with the Plaintiff, when they are not.

52. Defendants' acts described above constitute materially false representations of fact that have caused confusion, mistake, or deception as to the source, origin, sponsorship, and affiliation of Defendants' goods in violation of Florida Statute, § 501.204.

53. Defendants continue to willfully offer for sale and sell products that infringe the '565 and '448 Patents, thereby misleading the consuming public in order to improperly benefit from Theragun's '565 and '448 Patents.

54. Defendants' acts as described above have been without right, license or permission from Theragun.

55. Defendants' conduct as described above has caused Theragun irreparable harm and actual damages in an amount to be determined at trial.

56. On information and belief, Defendants intend to continue their deceptive and unfair trade practices described herein.

57. Theragun has no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Theragun. Accordingly, Theragun is entitled to preliminary and/or permanent injunctive relief pursuant to Florida Statute, § 501.211.

58. Because of Defendants' willful, deliberate and intentional conduct, Theragun is entitled to recover, among other things, its actual damages, reasonable attorneys' fees, and costs under Fla. Stat., §§ 501.211 and 501.2105.

PRAYER FOR RELIEF

WHEREFORE, Theragun prays for judgment as follows:

A. For an order finding that the '565 and '448 Patents are valid and enforceable;

B. For an order finding that Defendants have infringed the '565 and '448 Patents directly, contributorily, and/or by inducement, literally or by equivalents, in violation of 35 U.S.C. § 271;

C. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '565 and '448 Patents directly, contributorily and/or by inducement, or otherwise engaging in acts of unfair competition;

D. For a judgment directing that any products in the possession, custody or control of Defendants which infringe the '565 and '448 Patents be delivered up and destroyed within 30 days of entry of judgment;

E. For a judgment directing Defendants to recall all such infringing products and any other materials sold, distributed, advertised or marketed which infringe the '565 and '448 Patents;

F. For an order directing Defendants to file with the Court, and serve upon Theragun's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which each of them has complied with the injunction;

G. For an order finding that Defendants' conduct alleged herein was willful and intentional and in conscious disregard of Theragun's rights;

H. For an order finding that Defendants' conduct alleged herein violates the Florida Deceptive and Unfair Trade Practices Act;

I. For compensatory damages in an amount to be proven at trial, including lost profits and/or reasonable royalty, in amounts to be fixed by the Court in accordance with proof, including general, statutory, enhanced, exemplary, treble, and/or punitive damages, as appropriate;

- J. For an order finding that this is an exceptional case, and awarding Plaintiff's reasonable attorney's fees according to proof;
- K. For an order awarding Theragun its costs of court; and
- L. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Dated: September 10, 2021.

Respectfully Submitted,

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Motion to Appear pro hac vice forthcoming