

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

FLOATSUP, LLC, a Montana limited liability company,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE A,

Defendants.

Case No. 1:24-cv-

COMPLAINT

Plaintiff, Floatsup LLC (“Floatsup”) hereby brings the present action against the Partnerships and Unincorporated Associations identified in Schedule A attached hereto (collectively, “Defendants”) and allege as follows:

JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 1, *et seq.*, 28 U.S.C. §§ 1338(a)-(b), 1331.

2. 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 direct their business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Online Marketplace Accounts identified in Schedule A attached hereto (collectively, the “Defendant Internet Stores”).

3. Defendants are subject to personal jurisdiction in this district because each Defendant directly targets consumers in the United States, including in Illinois, through at least the fully interactive commercial Internet stores operating under the Defendant domain names

and/or the Online Marketplace Accounts identified in **Schedule A** attached hereto (collectively, the “Defendants” or “Defendant Internet Stores”). Specifically, the Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can purchase products infringing Floatsup’s patented design and doing so by displaying and using Floatsup’s copyrighted photographs and trade dress. Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accepts payment in United States Dollars, and on information and belief, has sold infringing products to Illinois residents. Each of the Defendants are committing tortious and illegal activities directed towards the state of Illinois and causing substantial injury in Illinois, and Floatsup’s claims arise out of those activities.

4. Further, each Defendant has targeted Illinois residents by operating online stores that offer goods for sale to both United States and Illinois residents, accepting payment in U.S. dollars and, on information and belief, has sold products infringing Plaintiff’s patents to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

5. Alternatively, Defendants are subject to personal jurisdiction in this district under Federal Rule of Civil Procedure 4(k)(2) because (i) Defendants are not subject to jurisdiction in any state’s court of general jurisdiction; and (ii) exercising jurisdiction is consistent with the United States Constitution and laws.

INTRODUCTION

6. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff’s reputation and goodwill by making, using, selling, offering for sale, and/or importing into the United States for subsequent sale or use the same unauthorized and unlicensed

products, namely the products shown in **Exhibit 1** that infringe, inter alia, Plaintiff's utility and design patent ("**Infringing Products**").

7. Plaintiff owns all rights, title, and interest in the United States Patent No. US [REDACTED] issued on [REDACTED]. The [REDACTED] Patent protects Plaintiff's novel invention of a watercraft drinking vessel holder, which offers a unique method of retaining a drinking vessel on a watercraft and is configured to hold a can, cup, or water bottle for easy access during paddle boarding or water sports. The vessel holder attaches to paddle boards through multiple crisscrossing stretch cords that pass through elongated slots forming through the longitude of the vessel holder. It has a flat base designed to sit flush on the vessel, a sidewall projecting upwardly from the base with multiple slots extending along the longitudinal in a spaced apart parallel relationships.

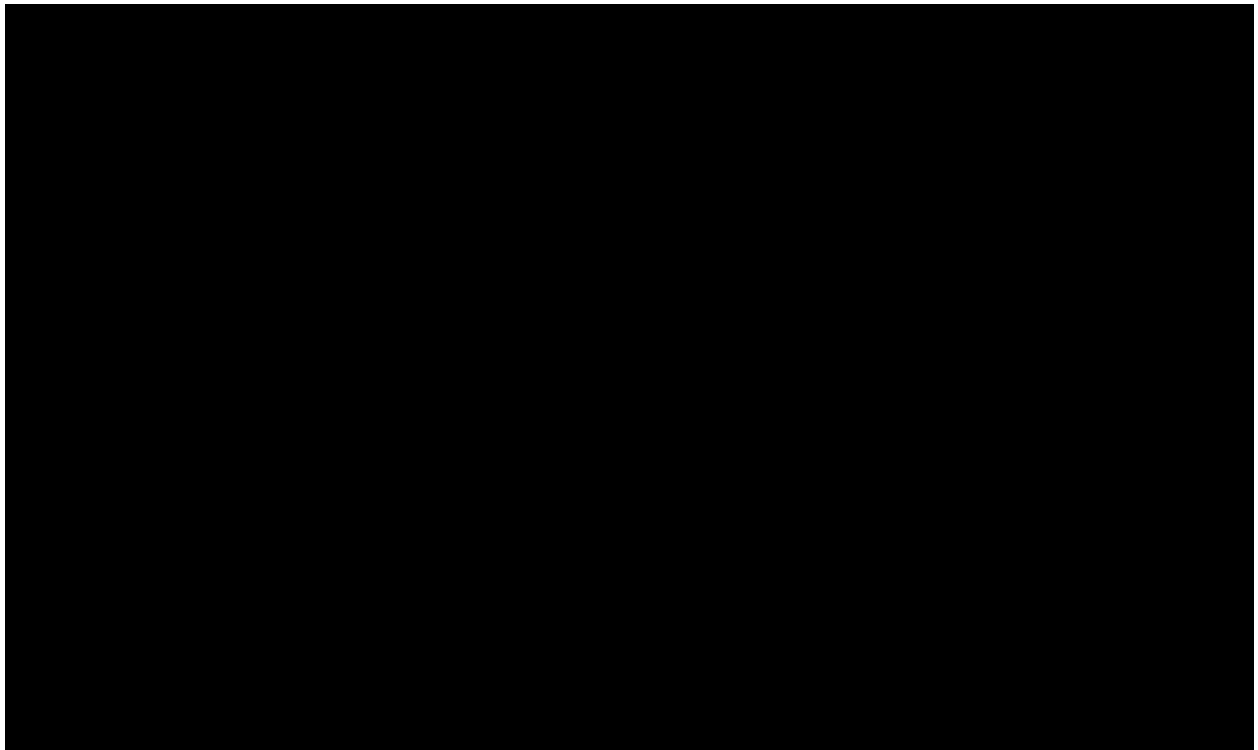
8. Plaintiff owns all rights, title, and interest in the United States Design Patent [REDACTED] issued on [REDACTED]. The [REDACTED] Patent (collectively, with the [REDACTED] Patent, "**Floatsup Patents**") protects Floatsup's original ornamental patented innovation ("**Floatsup Design**") manufactured for each of the Floatsup Products and shown in **Exhibit 2**.

9. A true and correct copy of the Floatsup Patents are attached hereto as **Exhibit 2**.

10. This action has also been filed to combat the e-commerce store operators who are infringing on Plaintiff's original copyrighted photographs ("**Subject Photographs**") by displaying, copying, or otherwise distributing the Subject Photographs in commercial advertisements of the Infringing Products. True and correct screen captures of the Defendants unauthorized display and/or use of the Subject Photographs is shown in **Exhibit 1** attached hereto. A true and correct copy of Plaintiff's copyrighted photographs are attached hereto as **Exhibit 3**.

11. This action is also brought to combat the e-commerce store operators who are using Floatsup original protectable trade dress by manufacturing, distributing, selling, and otherwise marketing Infringing Products featuring the non-functional protectable trade dress elements that are exclusive to Floatsup Products. True and correct screenshots of Defendants selling or offering Infringing Products for sale using Floatsup Trade Dress without authorization is shown in **Exhibit 1**.

12. A true and correct non-inclusive exemplar of the infringing conduct, i.e., trade dress, copyright, and patent, is shown below:



13. Clearly, each Defendant Seller is aware of Plaintiff's ownership in the patent, photographs, and trade dress. Despite such knowledge, each Defendant Seller identified in Schedule A continues to intentionally and willfully infringe on Plaintiff's rights. Such conduct continues to harm Plaintiff's business and rights.

14. The Defendant Internet Stores are designed to appear to be selling genuine products Floatsup Products, while actually selling Infringing Products to unknowing consumers.

15. The Defendants have also committed trade dress infringement, unfair competition, and false designation of origin, by representing themselves as an authorized retailer of genuine Floatsup Products, by, *inter alia*, using original Floatsup photographs and unlawfully displaying distinct non-functional trade dress elements in advertisements and on Infringing Products, suggesting Floatsup sponsorship, sale, and/or endorsement.

16. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their operation.

17. Plaintiff is forced to file this action to combat Defendants' infringement of its patented design, as well as to protect unknowing consumers from purchasing Infringing Products over the Internet. Plaintiff has been and continues to be irreparably damaged from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing its patented design as a result of Defendants' actions and seeks injunctive and monetary relief.

THE PARTIES:

The Plaintiff

18. Plaintiff is a Montana limited liability company, having its principal place of business at 421 East Marina Crest Lane, Whitefish, Montana 59937.

19. Plaintiff is a company that designs, manufactures, and distributes watersport accessories. Plaintiff's products can be purchased all over the world, and Plaintiff has marketed, advertised, promoted, and sold its products to consumers all over the United States.

20. Plaintiff is the inventor and owner of all rights, title, and interest in the Floatsup Patents shown in **Exhibit 2**. Plaintiff is in the business of manufacturing, creating, designing, and

selling products featuring the Floatsup Design (“**Floatsup Products**”). Floatsup is known for its distinctive Floatsup Design. This design is broadly recognized by consumers. Products associated with the Floatsup Design are associated with the quality and innovation that the public has come to expect from Plaintiff’s products.

21. Plaintiff sells products featuring the Floatsup Design through online retailers, such as their company website and other authorized retailers. Plaintiff has established its products as the first to market and has established a reputation and quality reviews. Plaintiff, through its affiliates and licenses, operates websites which promote and sell genuine products featuring the Floatsup Design, and which feature proprietary content, images, and videos exclusive to Plaintiffs.

The Defendants

22. The Defendants are individuals, partnerships, business entities, and unincorporated associations who, upon information and belief, reside in the People’s Republic of China. Defendants have the capacity to be sued under Federal Rule of Civil Procedure 17(b).

23. The Defendants of unknown makeup own and/or operate one or more Defendant Internet Stores identified in **Schedule A** under seller aliases identified therein, and other seller aliases not yet known to Plaintiff. Defendants have purposefully directed some portion of their illegal activities towards consumers in the state of Illinois through the advertisement, offer to sell, sale, and/or shipment of infringing goods to residents in the State.

24. Upon information and belief, Defendants have engaged in fraudulent conduct providing false and/or misleading information to the Internet based e-commerce platforms or domain registrar where they offer to sell and/or sell infringing products.

25. Upon information and belief, at all times relevant hereto, Defendants had actual or constructive knowledge of Plaintiff's rights, including the exclusive right to use and license such intellectual property rights.

JOINDER OF DEFENDANTS IN THIS ACTION IS PROPER

26. In recent years, Plaintiff has identified numerous fully interactive, e-commerce stores, including those operating under the Seller Aliases, which were offering for sale and/or selling Infringing Products to consumers in this Judicial District and throughout the United States. According to U.S. Customs and Border Protection (CBP), most infringing products now come through international mail and express courier services (as opposed to containers) due to increased sales from offshore online infringers. U.S. Customs and Border Protection, Intellectual Property Right Seizure Statistics, FY 2021 (<https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/202994 - FY 2021 IPR Seizure Statistics BOOK.5 - FINAL %28508%29.pdf>), at 28 attached hereto as **Exhibit 4**. The 2021 report noted that nearly 90 percent of all intellectual property seizures occur in the international mail and express environments with the majority of seized goods originating from Asia. *Id*; see also, *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States* prepared for The Buy Safe America Coalition by John Dunham & Associates.

27. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” **Exhibit 5**, Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age of the Internet*, 40 NW. J. INT’L L. & BUS. 157, 186 (2020); see also, report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office

of Strategy, Policy, and Plans (Jan. 24, 2020), attached as **Exhibit 6** and finding that on “at least some e-commerce platforms, little identifying information is necessary for [an infringer] to begin selling” and recommending that “[s]ignificantly enhanced vetting of third-party sellers” is necessary. Infringers hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual storefronts. *Id.* at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, infringers can have many different profiles that can appear unrelated even though they are commonly owned and operated. *Id.* at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of [infringement].” **Exhibit 5** at 186-187.

28. Defendants conduct business throughout the United States, including within Illinois and this Judicial District, through the operation of fully interactive, commercial online marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell, and, on information and belief, has sold and continues to sell the Infringing Products to consumers within the United States and including Illinois. Non-inclusive exemplars of these Infringing Products being offered for sale and sold by Defendants are shown in **Exhibit 1** attached hereto.

29. In the past, Plaintiff was able to police Infringing Products against identifiable infringers. The rise of online retailing, coupled with the ability of e-commerce sites to hide their identities, has made it nearly impossible for policing actions to be undertaken. Plaintiff has attempted takedown procedures to remove Infringing Products, but these efforts have proved to be unavailing as numerous additional seller profiles under new seller aliases continue to appear selling the same Infringing Products. Plaintiff previously brought a claim against a group of infringers,

but another network of infringers has recently appeared. The aggregated effect of the mass counterfeiting that is taking place has overwhelmed plaintiffs and its ability to police its copyrights against the hundreds of anonymous defendants which are selling illegal counterfeits at prices substantially below the cost of licensing the original and earning revenues that rightfully belong to Plaintiff.

30. The evidence supporting Plaintiff's claims proves a cooperative counterfeiting network using fake eCommerce store fronts designed to appear to be selling authorized products. To be able to offer the counterfeit products for sale substantially below the cost of a license to use the Subject Artwork, while still being able to turn a profit after absorbing the cost of manufacturing, printing, advertising, and shipping requires an economy of scale only achievable through a cooperative effort throughout the supply chain. As Homeland Security's recent report confirms, counterfeiters act in concert through coordinated supply chains and distribution networks to unfairly compete with legitimate artists while generating huge profits for the illegal counterfeiting network:

Historically, many counterfeits were distributed through swap meets and individual sellers located on street corners. **Today, counterfeits are being trafficked through vast e-commerce supply chains in concert with marketing, sales, and distribution networks.** The ability of e-commerce platforms to aggregate information and reduce transportation and search costs for consumers provides a big advantage over brick-and-mortar retailers. Because of this, sellers on digital platforms have consumer visibility well beyond the seller's natural geographical sales area.

The impact of counterfeit and pirated goods is broader than just unfair competition. **Law enforcement officials have uncovered intricate links between the sale of counterfeit goods and transnational organized crime. A study by the Better Business Bureau notes that the financial operations supporting counterfeit goods typically require central coordination,** making these activities attractive for organized crime, with groups such as the Mafia and the Japanese Yakuza heavily involved. Criminal organizations use coerced and child labor to manufacture and sell counterfeit goods. In some cases, the proceeds from

counterfeit sales may be supporting terrorism and dictatorships throughout the world.

...

Selling counterfeit and pirated goods through e-commerce is a highly profitable activity: production costs are low, millions of potential customers are available online, transactions are convenient, and listing on well-branded e-commerce platforms provides an air of legitimacy.

See Department of Homeland Security, Combating Trafficking in Counterfeit and Pirated Goods, Jan. 24, 2020, (<https://www.dhs.gov/publication/combating-trafficking-counterfeit-and-pirated-goods>), at 10, 19 (emphasis added) attached hereto as **Exhibit 6**.

31. As noted by the DHS, the counterfeit market is overwhelmingly controlled by a vast network of organized crime. In prior cases, defendant sellers have threatened to kill the plaintiff if they refused to withdraw their lawsuit arising from their sell of counterfeit products.

32. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the unauthorized products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants use aliases to avoid liability by going to great lengths to conceal both their identities as well as the full scope and interworking of their illegal network. Despite deterrents such as takedowns and other measures, the use of aliases enables counterfeiters to stymie authorities:

A counterfeiter seeking to distribute fake products will typically set up one or more accounts on online third-party marketplaces. The ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders. Rapid proliferation also allows counterfeiters to hop from one profile to the next even if the original site is taken down or blocked. On these sites, online counterfeiters can misrepresent products by posting pictures of authentic goods while simultaneously selling and shipping counterfeit versions.

...

Not only can counterfeiters set up their virtual storefronts quickly and easily, but they can also set up new virtual storefronts when their existing storefronts are shut down by either law enforcement or through voluntary initiatives set up by other stakeholders such as market platforms, advertisers, or payment processors.

Id. at 5, 11, 12.

33. Defendants also engaged in communications with each other to carry out infringing activities and evade liability. Specifically, Plaintiff is aware of websites such as *QQ.com*, *Sellerdefense.cn*, and others which sellers like the ones named here advise each other of newly filed copyright infringement cases involving the Infringing Products and collectively carry out tactics to evade liability for its wrongs.

34. eCommerce giant Alibaba has also made public its efforts to control counterfeiting on its platform. It formed a special task force that worked in conjunction with Chinese authorities for boots-on the ground effort in China to stamp out counterfeiters. In describing the counterfeiting networks it uncovered, Alibaba expressed its frustration in dealing with “vendors, affiliated dealers and factories” that rely upon fictitious identities that enable counterfeiting rings to play whack-a-mole with authorities. See Xinhua, *Fighting China’s Counterfeits in the Online Era*, China Daily (Sept. 19, 2017), available at www.chinadaily.com.cn/business/2017-09/19/content_32200290.htm (**Exhibit 7**).

35. Plaintiff has been and continues to be irreparably damaged through consumer confusion, dilution, loss of control over its reputation and goodwill as well as the quality of goods bearing the Floatsup Design, Subject Photographs, and trade dress. The rise of eCommerce as a method of supplying goods to the public exposes brand holders and creators that make significant investments in their products to significant harm from counterfeiters. See *Combating Trafficking in Counterfeit and Pirated Goods*, Jan. 24, 2020, (**Exhibit 6**) at 4, 8, 11.

36. Not only are the creators and copyright holders harmed, but the public is also harmed as well. See e.g., *id.* at 3, 4. See also Daniel Shapiro, *Testimony Before the U.S. – China Economic and Security Review Commission*, USCC, https://www.uscc.gov/sites/default/files/2024-03/Daniel_Shapiro_Testimony.pdf, Feb. 29, 2024 (**Exhibit 8**) at 10-11 (“As per the

February 2020 USPTO Counterfeit Report, U.S. businesses lose more than \$200 billion annually to counterfeiting and piracy. This economic impact is compounded by the loss of over 750,000 jobs, highlighting the significant detriment to the workforce and economy. [...] Moreover, counterfeit goods erode the value of legitimate brands. When brand owners lose the ability to command a price premium for their genuine branded goods, it results in diminished innovation.”).

37. The e-commerce counterfeiting ring is conducted simultaneously across multiple third-party platforms, as can be shown by Defendant seller advertisements. *See Exhibit 1.*

38. Plaintiffs’ investigation shows that the telltale signs of an illegal counterfeiting ring are present in the instant action. For example, Schedule A shows the use of store names by the Defendant Internet Stores that employ no normal business nomenclature and, instead, have the appearance of being made up, or if a company that appears to be legitimate is used, online research shows that there is no known address for the company. Thus, the Defendant Internet Stores are using fake online storefronts designed to appear to be selling genuine copies of Floatsup Design, using Plaintiff’s Photographs and Trade Dress, while selling inferior imitations of Floatsup Design. The Defendant Internet Stores also share unique identifiers, such as design elements, advertise using the same photographs, SEO tactics like keyword stuffing, and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants’ illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their illegal counterfeiting operation. Plaintiffs are forced to file this action to combat Defendants’ counterfeiting of Plaintiff’s registered Floatsup Patents, as well as to protect unknowing consumers from purchasing unauthorized copies and derivatives of the Floatsup Design over the internet.

39. Thus, upon information and belief, Defendants are an interrelated group of infringers working in active concert to knowingly and willfully make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use products that infringe directly and/or indirectly the Floatsup Patents in the same or series of transactions or occurrences.

40. Specifically, each of the Defendants have been involved in the same series of occurrences underlying the infringing activities, which this claim arises from. The series of occurrences include the manufacture, offer for sale, and sale of the Infringing Products. For example, Defendants all sell and/or offer for sale the same Infringing Products with minor variations, and use similar, if not identical, product images, descriptions, and videos as shown in **Exhibit 1**.

41. Defendants each use the same tactics to conceal their identities, which make it virtually impossible for Plaintiff to learn Defendants true identities and the exact interworking of their network. Indeed, Defendants go to great lengths to conceal their identities, often using multiple fictitious names and addresses to register and operate their network of Defendant Internet Stores.

42. On information and belief, Defendants regularly create new online marketplace accounts on various platforms using identities listed in Schedule A, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by Defendants to conceal identities and avoid being shut down.

43. Indeed, Plaintiff has taken numerous steps to notify the Defendant Internet Stores of their infringing conduct, and even temporarily had the Defendant Internet Stores removed from the third-party platform, only for the same listing to reappear under a new alias. Despite the new alias, the seller platform operated similar or nearly identical listings as the one removed.

44. If Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

45. Despite multiple notices from Plaintiff, Defendants, without any authorization or license, continue to knowingly and willfully offered for sale, sold, advertised, and/or imported into the United States for subsequent resale or use products that infringe directly and/or indirectly the Floatsup Patents, Floatsup Trade Dress, and Floatsup Photographs and continue to do so via the Defendant Internet Stores.

46. Joinder of all Defendants is permissible under Fed. R. Civ. P. 20(a)(2), which permits joinder of persons in an action where any right to relief is asserted against defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in this action. As stated above, joinder is proper here based on the logical relationship between the Defendants, the seller profiles, and the evidence of coordination amongst the sellers identified.

47. Each Defendant uses non-descriptive seller aliases making it difficult or impossible to identify their true identity, but upon information and belief, the sellers are acting simultaneously as part of a network of infringement to violate Plaintiff's rights.

48. Joinder of the multiple Defendants is permitted because Floatsup asserts rights to relief against these Defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and common questions of law or fact will arise in the action.

49. Joinder of the multiple Defendants serves the interests of convenience and judicial economy, which will lead to a just, speedy, and inexpensive resolution for Floatsup, Defendants,

and this Court.

50. Floatsup's claims against the multiple Defendants are all transactionally and logically related. All Defendants are engaging in the same systematic approach of establishing online storefronts to redistribute illegal products from the same or similar sources while maintaining financial accounts that the Defendants can easily conceal to avoid any real liability for their actions. All Defendants undertake efforts to conceal their true identities from Floatsup to avoid accountability.

51. All Defendants are engaging in the same infringing activities, i.e., displaying and offering Infringing Products for sale on third party platforms, at the same time and therefore are undeniably involved in the same series of transactions or occurrences giving rise to this claim at the same time.

52. Based on the Infringing Products quality and similarities in design, advertisement, and storefront, Plaintiff has reason to believe that the products are sourced from the same vendor, manufacturer, or facility. Additionally, the sellers identified in Schedule A self-identify its location either in the same city in China or cities within close proximity to each other. Further, the product listings feature the same photographs and advertisements, and only distribute the products in a select few color varieties, further supporting that all Defendants named in Schedule A obtain the Infringing Products from a common source.

53. Defendants' infringement of the Floatsup Patents in connection with the offering to sell, selling, or importing of the Infringing Products, including the offering for sale and sale of Infringing Products into Illinois, is irreparably harming Plaintiff.

FACTUAL ALLEGATIONS

54. Those Defendants infringing on Floatsup Trade Dress are identified in Schedule A

with the letter “T.” Those Defendants infringing on Plaintiff’s rights in the Subject Photographs are identified in Schedule A with the letter “C.” Those Defendants, infringing Plaintiffs rights in the Floatsup Patents are identified in Schedule A with the letter “P.”

55. Plaintiffs have distributed their patented products with its proper patent registration number on each product sold featuring the patented design.

56. Plaintiffs have identified numerous e-commerce stores, including the Defendant Internet stores, that offer for sale and/or are selling Infringing Products to consumers in this Judicial District and throughout the United States. E-commerce stores, including through stores like Defendants, have resulted in a sharp increase in the shipment of unauthorized products into the United States.

57. Plaintiff’s products are modern, visually pleasing to consumers, and have become popular to consumers within the watersport community, resulting in thousands of sales throughout the United States.

58. Through extensive advertising, promotion, and publicity of the Floatsup Products, Floatsup has also obtained and holds a trade dress in the overall appearance of the Floatsup Products. Specifically, the elements of Floatsup Products include non-functional and distinct elements which serve to identify Floatsup as the source of the product, including but not limited to the triple squiggly line on the bottom of each Floatsup Product and the tri-colored half-moon featured on product packaging (the “**Floatsup Trade Dress**”). As a result of the continued and widespread commercial use and success, in addition to advertisement, publicity, and promotion, the consuming public has come to recognize the Floatsup Trade Dress and associate it with a single source, Floatsup.

59. The Floatsup Trade Dress has acquired secondary meaning and consumers

associate the trade dress exclusively with Floatsup Products. The Floatsup Trade Dress has acquired secondary meaning based on the evidence of intentional and precise copying by Defendants, the continued and extensive use of Floatsup Trade Dress in Defendants' advertisements, Floatsup established place in the watersport accessories market, the duration of Floatsup continuous advertisements, sales, and manufacturing of Floatsup Products, and display on social media and number of sales.

60. The strength and recognition of the Floatsup Trade Dress is evidence from the considerable amount of publicity given to Floatsup Products. Floatsup has achieved valuable goodwill and secondary meaning in the Floatsup Trade Dress.

61. Floatsup did not manufacture or distribute the Infringing Products. Indeed, the Infringing Products are of inferior quality, differing size, and include materials that Floatsup does not manufacture or distribute.

62. Floatsup is informed and thereon alleges that after purchasing the Infringing Products from Defendants, Defendants manufactured or caused to be manufactured products infringing the Floatsup Trade Dress and Floatsup Patents.

63. Defendants unauthorized use of Floatsup Trade Dress is likely to cause confusion amongst customers based on the strength and prominence of the trade dress in the watersport accessory market, the nearly identical similarities between the genuine Floatsup Products and the Infringing Products, the proximity of the products with each other, the similarity of marketing channels used, and the likelihood of expansion. Defendants clearly acted intentionally and precisely in copying the color, size, detail, and shape of the Floatsup Trade Dress. As further explained below, this confusion is exacerbated by Defendants' advertisements, which regularly feature genuine Floatsup Products and Floatsup Subject Photographs and suggest that such trade

dress belongs to Defendants.

64. Plaintiff's goodwill among customers is uniquely tied to its Floatsup Products and the quality of each. Defendant's copying of Floatsup intellectual property not only allows Defendants to trade on the benefits of Floatsup investment, but also threatens to substantially diminish the goodwill that Floatsup has developed with consumers.

65. Additionally, Defendants have advertised genuine Floatsup Product as Defendants own in its advertisements, using the illegally using copies or reproductions of the Subject Photographs. Specifically, several Defendants continuously use original Subject Photographs depicting genuine Floatsup Products, e.g., by using, copying, and reproducing the Subject Photographs, in advertisements ("**Offending Advertisements**") for Infringing Products, suggesting to the general public that Defendants are authorized retailers of Floatsup Products.

66. Defendants' Offending Advertisements reproducing, displaying, copying, or otherwise distributing the Subject Photographs violate Floatsup's copyrights in those Subject Photographs, as well as creates a false perception that the Floatsup Trade Dress belongs to Defendants or are endorsed by Floatsup, allowing Floatsup to falsely trade upon Floatsup success and reputation.

67. Defendants' consistent use of Floatsup Subject Photographs and Trade Dress in advertisements allow Defendants to trade on the benefits of Floatsup investment and threatens to substantially diminish the goodwill that Floatsup has developed with consumers.

68. On information and belief, Defendants is advertising Floatsup Products on its Defendant Internet Store to improperly capitalize on the goodwill and acclaim of Floatsup Products while supplanting Floatsup within its consumer base.

69. Defendants concurrently employ and benefits from substantially similar marketing

and advertising strategies. For example, Defendants facilitate sales by designing the e-commerce stores operating the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. Defendant internet stores often include content and images that make it difficult for consumers to distinguish such stores from authorized retailers by using identical and stolen videos and images from authorized retailers' websites.

70. Plaintiffs have not licensed or authorized the Defendants to use the Floatsup Design nor are Defendants authorized retailers of such.

71. Upon information and belief, Defendants will continue to sell and offer for sale products infringing Floatsup's Patents, using Floatsup's Photographs and Floatsup Trade Dress, and therefore trading off the goodwill and reputation of the Floatsup if not preliminarily and permanently enjoined.

72. Defendants, through the sale and offer of the Infringing Products, are directly, and unfairly, competing with Floatsup's economic interests in the state of Illinois and causing Plaintiff harm in this jurisdiction.

73. The natural and intended byproduct of Defendants' actions is the erosion and destruction of the goodwill associated with Floatsup's intellectual property rights and the destruction of the legitimate market sector in which it operates.

74. Defendants maintain off-shore accounts and regularly move funds from their financial accounts to off-shore bank accounts outside this Court's jurisdiction to avoid payment of any monetary judgment awarded to Plaintiffs.

COUNT I
For Infringement of Floatsup Patent [REDACTED] (35 U.S.C. § 271)

75. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

76. Defendants are making, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products, as shown in **Exhibit 1** that incorporate and infringe directly and/or indirectly on the elements making up the utility design claimed in the Floatsup Utility Patent shown in **Exhibit 2** and given registration number [REDACTED]

77. The [REDACTED] Patent protects Plaintiff's method of manufacturing a watercraft drinking vessel holder, which offers a unique method of retaining a drinking vessel on a watercraft and is configured to hold a can, cup, or water bottle for easy access during paddle boarding or water sports. The vessel holder attaches to paddle boards through multiple crisscrossing stretch cords that pass through elongated slots forming through the longitude of the vessel holder. It has a flat base designed to sit flush on the vessel, a sidewall projecting upwardly from the base with multiple slots extending along the longitudinal in spaced apart parallel relationships.

78. Plaintiff has manufactured and distributed the products with notice of its registration in the product by including the registration number on each product and its packaging, giving clear and conspicuous notice to the public of its registration.

79. Plaintiffs utilize the Floatsup [REDACTED] Patent when manufacturing and selling genuine products featuring similar utilitarian designs as the Floatsup [REDACTED] Patent, causing the Infringing Products to function identically without license or authorization.

80. Defendants have infringed the [REDACTED] Patent by manufacturing and selling products that feature the protected design or colorable imitation thereof without authorization.

81. Defendants have infringed the Floatsup [REDACTED] Patent through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of the exclusivity and the ability to

exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283.

82. Unless a preliminary and permanent injunction is issued enjoining Defendants and all others acting in active concert therewith from infringing the Floatsup Patent, Plaintiff will be greatly and irreparably harmed.

83. Plaintiff is entitled to recover damages adequate to compensate for infringement, including Defendants' profits under 35 U.S.C. § 289 and any other damages appropriate under 35 U.S.C. § 284.

COUNT II
For Infringement of Floatsup Patent US [REDACTED] (35 U.S.C. § 289)

84. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

85. Plaintiff owns all rights, title, and interest in the design patent registered under US D1,021,562 ('562 Patent) shown in **Exhibit 2** hereto.

86. Defendant has infringed Plaintiff's [REDACTED] Patent by applying the [REDACTED] ented design, or a colorable imitation thereof, to articles of manufacture, including at least those products shown in **Exhibit 1** hereto, for the purpose of sale and/or by selling, offering, or exposing for sale an article of manufacture to which the patented design shown in [REDACTED] Patent in **Exhibit 2** hereto has been applied or colorable imitation thereof.

87. Defendant manufactures and offers for sale Infringing Products featuring the same ornamental design protected by the [REDACTED] Patent, specifically, as a water vessel cup holder that features two slits for easy securance onto paddleboards by the crisscrossing of wires.

88. Defendant has infringed the Floatsup [REDACTED] Patent through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused

Plaintiff to suffer irreparable harm resulting from the loss of the exclusivity and the ability to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283.

89. Unless a preliminary and permanent injunction is issued enjoining Defendant and all others acting in active concert therewith from infringing the Floatsup [REDACTED] Patent, Plaintiff will be greatly and irreparably harmed.

90. Plaintiff is entitled to recover damages adequate to compensate for infringement, including Defendants' profits under 35 U.S.C. § 289 and any other damages appropriate under 35 U.S.C. § 284.

COUNT III

For Copyright Infringement of the Subject Photographs – Against Only Those Defendants Identified Accordingly in Schedule A

91. Floatsup repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.

92. Floatsup brings claims for copyright infringement against each Defendant with the letter "C" under the "Claims" column in Schedule A next to its name.

93. Floatsup alleges that each of those Defendants identified, accessed the Subject Photograph by without limitation, receiving the Subject Photograph from a party authorized to use the Subject Photograph, or through viewing Floatsup's website, or through one of Floatsup's many online advertisements or profiles, publications, or features. Access is further evidenced by the exact reproduction of the Subject Photograph on the Offending Advertisements.

94. The Defendants, and each of them, infringing Floatsup's copyright in the Subject Photographs by, without limitation, copying, reproducing, publishing, and displaying the Subject Photographs on its e-commerce store for commercial benefit, as set forth above, without Plaintiff's authorization or consent.

95. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

96. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits which they would not have otherwise realized by for their infringement of Plaintiff's rights in the Subject Photograph. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of its rights in the Subject Photograph in an amount to be established at trial.

COUNT IV

For Trade Dress Infringement, False Designation of Origin, Passing Off, and Unfair Competition (15 U.S.C. § 1125(a)) – Against Only Those Defendants Identified Accordingly in Schedule A

97. Floatsup repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegation contained in the preceding paragraphs.

98. Floatsup brings claims for trade dress infringement, false designation of origin, passing off, and unfair competition against each Defendant identified with the letter "T" under the "Claims" column in Schedule A next to its name.

99. Defendants advertisements, offers for sale, sale, promotion, distribution, and/or manufacture of Infringing Products, in direct competition with Floatsup, constitute common law trade dress infringement, at least because Defendants use of Floatsup Trade Dress and/or colorable imitations thereof is likely to cause consumer confusion as to the origin and/or sponsorship affiliation of its Infringing Products, at least by creating the false and misleading impression that its Infringing Products are manufactured by, authorized by, or otherwise associated with Floatsup.

100. Floatsup Trade Dress is entitled to protection under common law. Floatsup Trade Dress includes unique, distinctive, and non-functional elements, including the three "wave"

marking, the half circle with “wave” markings inside, and the tear drop hole featured on the top of each of the Floatsup Products.

101. Floatsup has extensively and continuously promoted and used its trade dress throughout the United States such that it has become a well-known indicator of the originality and quality of products.

102. Floatsup Trade Dress has acquired substantial secondary meaning in the watersport marketplace. Moreover, Plaintiff’s trade dress acquired this secondary meaning before Defendant’s commenced its unlawful use of Plaintiff’s trade dress in connection with its Infringing Products.

103. Defendants have misappropriated several of Floatsup Trade Dress by copying several elements of the Floatsup Products. Defendants also misappropriated Floatsup Trade Dress by copying several elements of the trade dress in its Offending Advertisements and Infringing Products.

104. Defendant’s manufacture, promotion, and distribution of Infringing Products and Offending Advertisements containing elements that copy a combination of several elements of the Plaintiff’s trade dress is likely to cause confusion, mistake, or deceive consumers as to the affiliation, connection, or association of the Infringing Products with the Floatsup brand, or to the origin, sponsorship, or approval by Floatsup.

105. Defendants use of the Floatsup Trade Dress without authorization is in furtherance of their willful, deliberate, and bad faith scheme to trade upon the extensive consumer goodwill and recognition Floatsup has established in the trade dress, and sow consumer confusion between the parties and their products.

106. Defendant’s use of Floatsup Trade Dress and/or colorable imitations thereof has

caused and, unless enjoined, will continue to cause substantial and irreparable injury to the goodwill and reputation for quality associated with Floatsup Products.

107. Defendant's manufacture, promotion and distribution of the Infringing Products that copy a combination of several elements of the Floatsup Trade Dress enables Defendants to benefit unfairly from Plaintiff's reputation and success.

108. Defendants' use of the Floatsup Trade Dress without authorization from Floatsup is likely to dilute the distinctive quality of the Floatsup Trade Dress, decrease the capacity of that trade dress to identify and distinguish Floatsup Products and to cause harm to Floatsup business reputation. Defendants' acts complained of herein constitute trade dress dilution in violation of 15 U.S.C. § 1125(c).

109. Defendants use of Floatsup Trade Dress and/or colorable imitations thereof has been intentional, willful and malicious. Defendant's bad faith is evidenced, at least, by Defendants direct copying Floatsup Products and continued disregard for Floatsup rights.

110. Defendants' actions constitute false designation of origin, passing off, and unfair competition in violation of 15 U.S.C. § 1125(a).

111. Defendants knew of the trade dress when they designed, created, distributed, and otherwise displayed the Offending Advertisements and Infringing Products. Accordingly, Defendants' infringement has been and continues to be intentional and willful.

112. Floatsup has been and will continue to be irreparably harmed and damaged by Defendants' conduct, and Floatsup lacks an adequate remedy at law to compensate for this harm and damage.

113. Defendants have made and will continue to make, substantial profits and gain from their use of the Floatsup Trade Dress in the United States, to which they are not entitled in law or

equity.

114. Floatsup has also suffered damages as a direct and proximate result of Defendants' infringement of the Floatsup Trade Dress in an amount to be proven at trial, including Defendants' profits and/or gains of any kind resulting from its acts of infringement.

115. Because Defendants' actions have been willful, Floatsup is entitled to enhanced and exemplary damages, including treble its actual damages, to an award of costs, and this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek relief as follows:

- a. That Defendants, their agents, servants, employees, officers, attorneys, successor, and assigns, and all persons acting in concert with Defendants, or on their behalf, be enjoined, in this and all other judicial districts in the United States, preliminarily during the course of litigation and permanently from:
 - i. Making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use any products not authorized by Plaintiffs that include any reproduction, copy or colorable imitation of the design claimed in the Floatsup Patents and Floatsup Trade Dress;
 - ii. Aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon the Floatsup Design and Floatsup Trade Dress;
 - iii. Effecting assignments, transfers, or forming new entities or associations or utilizing any other devise for the purpose of circumventing or otherwise avoiding the prohibitions set forth above.

- b. Entry of an Order that, upon Plaintiffs' request, those with notice of the injunction, including, without limitation, that the third-party marketplace platforms which the Defendant Internet Stores operate disable and cease display of any advertisements by or associated with Defendants and the sale of Infringing Products;
- c. That Defendants deliver for destruction all Infringing Products;
- d. A judgment in favor of Plaintiffs that Defendants have infringed the Floatsup Design, Floatsup Trade Dress, and Subject Photograph;
- e. That Plaintiffs be awarded such damages as it shall prove at trial against Defendants that are adequate to compensate Plaintiffs for infringement of the Floatsup Patents, and all of the profits realized by Defendants, or others acting in concert or participation with Defendants, from Defendants' unauthorized use and infringement of the Floatsup Design;
- f. That Plaintiff be awarded from Defendants, as a result of Defendants' use and infringement of the Floatsup Patents, three times Plaintiffs' damages therefrom and three times Defendants' profits therefrom, after an accounting under 35 U.S.C. § 284;
- g. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;
- h. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. § 101 *et seq.*;
- i. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff of Plaintiff, plus any other monetary advantage gained by the Defendants, through their infringement, the exact sum to be proven at the time of

trial as available under 17 U.S.C. § 504, 15 U.S.C. § 1117, and any other applicable law;

- j. Reasonable funds for corrective advertising;
- k. That Plaintiff be awarded pre-judgment interest as allowed by law;
- l. That Plaintiffs be awarded their reasonable attorneys' fees and costs; and
- m. Award any and all other relief that this Court deems just and proper.

DATED: October 7, 2024

Respectfully submitted,

/s/ Trevor W. Barrett
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