

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

ADVANTUS, CORP.,  
a Florida corporation, and  
LAURA STARMER BARKER,  
f/k/a Laura Starmer, an Individual,

Plaintiffs,

v.

**Case No. 3:13-cv-240-J-99MMH-TEM**

T2 INTERNATIONAL, LLC,  
a Missouri limited liability company,

Defendant.

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**SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE  
RELIEF AND DEMAND FOR JURY TRIAL**

Plaintiffs, Advantus, Corp., and Laura Starmer Barker, f/k/a Laura Starmer (collectively “Advantus”), sue Defendant T2 International, LLC (“T2”) for federal trademark infringement, patent infringement, and Florida common law unfair competition, and allege as follows:

**Jurisdiction, Venue, and Parties**

1. Advantus is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Jacksonville, Florida. Advantus is a manufacturer and distributor of products in the office, craft and hobby, industrial supply market, mass market and specialty markets, and since 2010, has manufactured and sold high-end, high quality recreational pool and water floats.

2. Barker resides in, and is a citizen of, the State of Oregon. Barker is the inventor, patentee, and licensor of the Buoyant Cushion Patent more particularly described below.

3. On information and belief, T2 is a limited liability company organized and existing under the laws of the State of Missouri, with its principal place of business located in

Mooresville, North Carolina. T2 is a self-described “product development company” and is a competitor of Advantus to the extent that it manufactures and sells pool and water floats.

4. Advantus sues T2 for claims arising under 15 U.S.C. § 1114 and 15 U.S.C. §1125, and 35 U.S.C. § 271 and 281. This Court therefore has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 (as this action asserts claims under the Lanham Act), 28 U.S.C. § 1338(a) (as this complaint asserts claims of enforcement as to a federal patent and trademark), and 28 U.S.C. § 1331 (as this case presents federal questions for the Court to resolve). This Court has supplemental jurisdiction over the Florida common law unfair competition claim pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over T2 in that T2 is a Missouri corporation whose principal place of business is North Carolina, and T2 has sufficient minimum contacts with the State of Florida. More specifically, T2 is regularly engaged in selling products within the State of Florida to include the acts complained of herein, and T2 has harmed Advantus in the State of Florida by placing infringing products into the stream of commerce with the knowledge or understanding that such products are sold in the State of Florida, including in this district. Indeed, as discussed more particularly below, Advantus discovered T2’s infringement while one of Advantus’ officers was shopping at a club style, members only, retail store in Jacksonville, Florida. T2 has purposely availed itself of doing business in the State of Florida and the claims asserted herein against T2 arise from the activities of T2 in Florida. As such, although unnecessary given the pure federal questions at issue, Florida’s long-arm statute, Section 48.193, Florida Statutes, would also be satisfied.

6. Venue is appropriate in this jurisdiction pursuant to 28 U.S.C. § 1391(b)(2).

**General Allegations**

**Advantus has the Exclusive Rights to  
Floating Luxuries® and the Buoyant Cushion Patent**

7. In 2009, while staying at a resort in South Florida, Advantus' president discovered a Floating Luxuries® pool float. It was unique among the pool floats he had previously seen inasmuch as, at that time, pool floats were constructed of either foam-like material or inflatable vinyl. Comparatively, Floating Luxuries® pool floats are functionally unique, and they have the appearance, comfort and durability of high quality premium products, using Sunbrella® marine-grade fabric on the top surface (which fabric is both resistant to water and to fading from ultraviolet radiation), are stuffed with high density, high count virgin styrene beads with a mesh bottom, float in conformance with the user's body contours, and can be easily removed from the pool without water absorption or weight gain.

8. Advantus investigated the product and discovered that Floating Luxuries® was a federally registered trademark and that a patent was pending on the technology. Advantus further investigated whether there were any comparable products already in the market in competition with the Floating Luxuries® buoyant cushion type floats. While there were numerous pool floats being sold, some more expensive than others, Advantus discovered that there was nothing on the market comparable to the Floating Luxuries® buoyant cushion type floats.

9. Following up to its due diligence, Advantus commenced to acquire the Floating Luxuries® federally registered trademark and the patent pending on the buoyant cushion technology.

10. On December 28, 2009, Advantus acquired valuable intellectual property rights via the Trademark and Patent License Agreement at **Exhibit "A"** (the "License"). Under the

License, Advantus acquired the exclusive rights to the trademark Floating Luxuries®, Registration No. 4117524. A duplicate of the Floating Luxuries® federal trademark registration is attached at **Exhibit “B.”** Advantus also acquired through the License, the exclusive rights to the then pending patent application from which it could manufacture the Floating Luxuries® product line. The United States Trademark and Patent Office thereafter approved the patent application, and Advantus is the exclusive licensee of United States Patent 8,167,672 B2 (attached as **Exhibit “C”**)(the “Buoyant Cushion Patent”).

11. The genius of the Buoyant Cushion Patent, at its simplest and that which distinguishes it from all prior art, is the combination of a styrene bead filler (which does not absorb water), a weather resistant fabric top and a more rigid mesh bottom to allow the ingress and egress of water. Through this combination, the Floating Luxuries® pool and water floats are as aesthetically pleasing and durable just as are awnings and other marine grade products such as bimini tops and boat covers used on virtually every type of boat in the market. Nonetheless, because of the styrene beads and mesh bottoms, they are comfortable while still flexible and lightweight, do not gain water weight when removed from the water, and do not have a risk of mold or mildew growth.

12. Advantus has continuously been the exclusive licensee of the Buoyant Cushion Patent and the Floating Luxuries® trademark at all times material.

**Advantus Makes Floating Luxuries® a Premier and Successful Brand  
of High End Luxury Pool Floats**

13. Since acquiring the Floating Luxuries® brand, Advantus has invested approximately \$750,000 in marketing the product line and has successfully manufactured and sold luxury pool floats, and related products, derived from the Buoyant Cushion Patent, including the King Kai, Kai, Kai Infinity, Kai Water Hammock, and Kai Seat Lounge, all of

which it markets and sells under the trademark Floating Luxuries®. Advantus has sold this product line to resorts, retailers, direct sales to the public, and catalogue re-sellers, having even successfully been featured on the coveted front cover of a Frontgate catalogue.

14. Advantus, and its Licensor, were the first entities to use or trademark Floating Luxuries® in association with the sale of high-end high quality pool and water floats. As a result of Advantus' continued sale of luxury pool and water floats under the Floating Luxuries® brand since 2010, the trademark has become widely known, and Advantus has become identified in the public mind as the manufacturer of the products to which the trademark applies.

15. As a result of the care and skill by Advantus in producing the Floating Luxuries® product line, it has developed a well-deserved reputation for excellence in durability and craftsmanship. Specifically, Advantus uses a high quality marine grade Sunbrella® fabric for the top of each float, a firm high quality mesh for the bottom, high quality, small size (for comfort) styrene beads for the stuffing, and strong and durable stitching for the seams in manufacturing these products. Advantus has grown Floating Luxuries® from \$10,000 in sales by its prior owner in 2009, to \$1,700,000 in sales in 2012.

### **T2's Infringement**

16. In 2010, T2's president visited an Advantus trade show booth and admired the Floating Luxuries® product line. Advantus disclosed the pending patent application to T2's president at that time.

17. Earlier this year, Advantus discovered that T2 is marketing for sale within the United States, a pool float that T2 calls the "Luxury Lounger." Specifically, Advantus personnel observed the Luxury Lounger for sale at a club style, members only, retailer ("Big Box") in Jacksonville, Florida in January 2013.

18. T2 does not have a registered trademark for “Luxury Lounger”.

19. Prior to January 2013, Big Box and Advantus were negotiating about the possibility of Advantus selling the Floating Luxuries® product line into Big Box.

20. Big Box pursued these sales discussions during 2011 and 2012 and expressed substantial interest in purchasing and selling various Floating Luxuries® products to its retail club members.

21. Big Box wanted to resell Advantus’ Floating Luxuries® products at a margin of between 10% to 14%. Advantus steadfastly refused to authorize the resale of certain of its products to Big Box if, by Advantus’ calculation, the resulting retail price would hurt the non-club retailers and cataloguers to whom Advantus sells the products. Advantus mandated this condition because sales of certain products to Big Box of the Floating Luxuries® under such circumstances would have caused all of the retailers and cataloguers to whom Advantus was already selling the products to cease buying Floating Luxuries® products.

22. Moreover, due to the high cost of the material components for the Floating Luxuries® product line, the least expensive solid surface float type product Advantus has, the Kai Infinity, had a retail sales price of about \$129.95. Advantus could not manufacture certain Floating Luxuries® products of the same quality with a production cost that allowed Advantus to sell to Big Box at its desired price point or at an acceptable retail price to Advantus.

23. The Luxury Lounger is a buoyant cushion float which, just like the patented Floating Luxuries® floats, has a water resistant fabric top coating, a mesh bottom to allow the ingress and egress of water, and styrene beads which create floatation for the device but which does not itself allow for the absorption of water. The Luxury Lounger is neither patented, nor does it appear that T2 has applied for a patent for it. Therefore, it appears that T2 is now selling

to Big Box, and others, a product that infringes on the Buoyant Cushion Patent, specifically infringing upon independent claim of patent number 1 and dependent claims of patent numbers 2, 3, 4, 8, 10, 11, and 16.

24. Subsequent to the filing of the initial Complaint, Advantus discovered that T2 offers for sale the “Skye Float Disc,” a product which also infringes upon the Buoyant Cushion Patent.

25. The Skye Float Disc is a buoyant cushion float which, just like the patented Floating Luxuries® floats, has a weather-resistant fabric top coating, a mesh bottom to allow the ingress and egress of water, and styrene beads which create floatation for the device but which does not itself allow for the absorption of water. The Skye Float Disc is neither patented, nor does it appear that T2 has applied for a patent for it. The Skye Float Disc infringes the Buoyant Cushion Patent, specifically infringing upon, at minimum, independent claim of patent number 1.

26. T2 markets its infringing products by emphasizing the very essence of the utility of the Buoyant Cushion Patent - proclaiming that the Skye Float Disc has “a premium Sunbrella™ Canvas top and a quick-drying mesh bottom.”

27. Subsequent to the filing of the Amended Complaint, Advantus discovered that T2 is manufacturing and selling the Pure Sky Float, Pure Skye XL Float, Maggie Blue, and Neo Papasan, all of which infringe claims set forth within the Buoyant Cushion Patent.

28. T2 sells multiple versions of the Luxury Lounger, Maggie Blue, and Neo Papasan with different mesh and fabric combinations. Advantus’ patent infringement claims as to these products apply to the “Spuncrylic & Mesh” and “Sunbrella & Mesh” versions of these products, and any version which employs a weather-resistant fabric top in conjunction with a mesh bottom that is more rigid than the weather-resistant fabric top.

29. The Pure Sky Float and Pure Skye XL Float are further near-perfect imitations of Advantus' Floating Luxuries® Kai and King Kai floats, both of which are embodiments of the Buoyant Cushion Patent.

30. T2 makes the Pure Sky Float with the exact same shape and dimensions as the Kai, the exact same design, including copying the Kai's strap handle and stitching patterns, and T2 constructs it in the same manner as Advantus, and sells it in near identical colors. The Pure Skye XL Float is also virtually visually indistinguishable from the Floating Luxuries® King Kai.

31. T2 also recently released a product called the "Neo Hammock." When compared to the Floating Luxuries® Kai Water Hammock, a uniquely-designed product that Advantus has sold for several years, the Neo Hammock appears identical. Advantus has sold the Kai Water Hammock since 2010 and knows of no other similar floats in the industry.

32. T2 now sells knockoffs of no fewer than four (4) Advantus' Floating Luxuries® products, the Kai, King Kai, Kai Water Hammock, and Kai Seat Lounge, which evidences an overall scheme and intent to cause confusion and deceive as to the origin of T2's products. T2's conduct has now grown to a comprehensive copying of Advantus' Floating Luxuries® product line. Further, T2 deceptively named its Pure Sky Float, Pure Skye XL Float, Skye Float Disc, and Neo Hammock to trade off and derive benefit from Floating Luxuries® Kai, King Kai, Kai Seat Lounge, and Kai Water Hammock product line and products.

33. In addition to infringing upon Advantus' patent rights, the "Luxury Lounger," by creating its own mesh bottom, fabric top pool float with the name Luxury Lounger and appearing to copy the very essence of the uniqueness of the Floating Luxuries® products, infringes upon Advantus' trademark rights and registration of Floating Luxuries® and in fact creates confusion as to the source of origin of the Luxury Lounger product.



34. Advantus is also the exclusive licensee of Kai Lounge®, Registration Number 4,117,596. A duplicate of the Kai Lounge® federal trademark registration is attached at **Exhibit “D.”**

35. When T2 began selling the Skye Float Disc, it chose the name “Skye,” which rhymes with the “Kai” name used in Floating Luxuries® floats and accessories.

36. When pronounced, “Skye” is in fact just “Kai” with an “s” added to the beginning of the word. T2’s choice of this rhyming and nearly identical name to label and sell a patent-infringing product again evidences T2’s systematic copying of the Floating Luxuries® product line and manifest intent to derive benefit from the efforts and money Advantus has spent building the Floating Luxuries® mark.

37. The Luxury Lounger and Skye Float Disc by T2 are lower quality knockoffs as compared to the Floating Luxuries® products. Specifically, where Advantus uses Sunbrella® marine grade fabric for the top of its Floating Luxuries® product lines, T2 uses a far less expensive (and less durable) furniture grade Sunbrella® fabric. Further, the more expensive marine grade fabric that Advantus uses is more resistant to a wet environment, to salt water, and the inherent deleterious effects of water than is the less expensive furniture grade fabric that T2 is using for its Luxury Lounger. As a result of the lower material costs, T2 can sell at a significantly lower price point but is also selling a much less durable product.

38. Additionally, the cost of styrene beads is the same regardless of the size of the bead. Thus, the smaller bead size (used by Advantus) has the same manufacturing cost as a larger approximately four millimeter styrene bead (used by T2 Intl.) due to the amount of product being the same, and air being used to make the bead bigger. Thus, by using larger styrene beads in the Luxury Lounger, T2 is able to also lower production costs by using fewer

beads for the same space. However, using fewer but larger styrene beads in the same amount of space means that there is less comfort and less buoyancy.

39. T2, by making a less expensive but also a lower quality product, sells to Big Box at a price cheap enough for Big Box to sell at a retail price point of \$89.99. By way of comparison, Advantus' Floating Luxuries® Kai Seat has a price point of \$129.00 despite its smaller size than the Luxury Lounger.

40. The Luxury Lounger, as a cheap knockoff of the Floating Luxuries® line, creates two significant harms to Advantus. First, it creates confusion as to origin for consumers shopping at retailers and cataloguers. Further, because of the Luxury Lounger's outward appearance and packaging claims, it appears to be part of the Floating Luxuries® product line, ostensibly, but not actually using the same grade of Sunbrella® fabric, while priced below comparable Floating Luxuries® brand products, which harms and unfairly competes with both Advantus and its retailers as it diverts consumers for Floating Luxuries® products and sells them a product that will not be as durable and comfortable as a Floating Luxuries®.

41. In addition, by making the less comfortable, less durable, less buoyant competing product, with confusion as to origin, customers dissatisfied with the Luxury Lounger will inevitably not buy Advantus' more expensive, more comfortable, more durable Floating Luxuries® products and are even likely to discourage others from buying Floating Luxuries® products. This will dilute and harm Advantus' mark and goodwill in Floating Luxuries®, a product line designed for the high-end, high quality, pool and water float market.

42. Moreover, T2's use of the term "Luxury Lounger" to market and sell a substantially similar product, while lower in quality, in competition with Advantus' Floating

Luxuries® product line is calculated to trade off of or obtain the goodwill attributable to Advantus' higher quality products.

43. On January 25, 2013, counsel for Advantus sent a letter to T2 demanding that it, among other things, immediately cease and desist from infringing on the Buoyant Cushion Patent. A duplicate of the January 25, 2013 cease and desist letter is attached at **Exhibit "E."**

44. On February 8, 2013, counsel for Advantus sent counsel for T2 a second letter additionally demanding, among other things, that T2 immediately cease and desist in using the trademark or moniker "Luxury Lounger" to market its floating lounge. A duplicate of the February 8, 2013 supplemental cease and desist letter is attached at **Exhibit "F."**

45. As of the filing of this Second Amended Complaint, T2 has failed to comply with the terms and conditions of either the January 25<sup>th</sup> or February 8<sup>th</sup> cease and desist letters thereby resulting in Advantus instituting this litigation, and it also appears that T2 has expanded its infringing conduct since the initial Complaint and the Amended Complaint

46. Further, T2 prominently represents to its customers and prospective consumers that the Luxury Lounger is "Made in the USA." This claim is literally false as T2 assembles all of the Luxury Lounger in China save adding the beads.

47. This intentional, false, and misleading advertisement has resulted in an unfair competitive advantage to T2 as Advantus' Floating Luxuries® are actually made in the United States, a fact which Advantus proudly advertises and believes would give it a competitive advantage over the Luxury Lounger with both distributors and the consuming public. When T2 falsely advertises that the Luxury Lounger is "Made in the USA," when in fact substantial parts of it are assembled in China, Advantus loses its competitive advantage on this issue, while T2 exploits the substantial economic benefit of using cheap Chinese labor.

48. This false advertising is misleading to the public and violates federal and state laws.

49. Advantus has hired the undersigned counsel to prosecute its claims and agreed to pay counsel a reasonable fee for its services.

50. The exact amount of the profits made by T2 as a result of its infringement of Advantus' Buoyant Cushion Patent is unknown and cannot be ascertained without an accounting.

51. Similarly, the exact amount of profits made by T2 as a result of its infringement of the Floating Luxuries® trademark, or a colorable imitation of same, is unknown and cannot be ascertained without an accounting.

52. The exact amount of profits made by T2 as a result of its unfair competition is unknown and cannot be ascertained without an accounting.

**COUNT I**  
**(Trademark Infringement)**

53. Advantus sues T2 for trademark infringement pursuant to 15 U.S.C. § 1114.

54. Advantus reincorporates paragraphs 1 through 52 as if fully set forth herein.

55. T2 is using the name Luxury Lounger in commerce in connection with the sale, offering for sale, distribution, and advertising of a pool float that is substantially similar in design to Advantus' Floating Luxuries® product line.

56. Luxury Lounger is a colorable imitation of the Floating Luxuries® trademark and products.

57. T2's use of Luxury Lounger to market its pool float in this regard is likely to cause confusion, or to cause mistake, or to deceive, and does in fact deceive as to the origin of its product with Advantus' products marketed and sold under the name Floating Luxuries®. In this

regard, T2's products copy all of the features which made the Floating Luxuries® a highly-regarded, unique pool float with an excellent reputation.

58. In that this case involves directly competing goods, Luxury Lounger is sufficiently similar to Floating Luxuries® that consumer confusion can be expected to occur in the future.

59. T2 has actual knowledge of Advantus' products, and even sold to the very retailer (Big Box) at the price point Big Box wanted, at a time when Advantus was negotiating with Big Box and could not sell the higher-priced genuine article at the same price point. T2's infringement therefore is, and at all times material has been, intentional.

**WHEREFORE**, Advantus requests this Court grant the following relief against Defendant T2 International, LLC:

(i) T2 and its employees and agents be enjoined during the pendency of this action, and permanently afterwards, from selling, or offering for sale, in the United States any pool float bearing the mark "Luxury Lounger" or any imitation of Advantus' trademark:

(ii) T2 account for and pay over to Advantus all profits realized by T2 from the sales of the Luxury Lounger product or any imitation of Advantus' trademark, and/or Advantus' lost profits from the diverted sales;

(iii) Advantus be awarded treble damages against T2 in accord with 15 U.S.C. § 1117;

(iv) Advantus receive its costs to include its attorneys' fees in accord with 15 U.S.C. § 1117; and

(v) Advantus be granted such other and further relief as may be just and proper.

**COUNT II**  
**(Trademark Infringement – Passing Off)**

60. Advantus sues T2 for passing off pursuant to 15 U.S.C. § 1125.

61. Advantus reincorporates paragraphs 1 through 52 as if fully set forth herein.

62. Advantus has expended substantial sums to acquire the exclusive rights to the registered trademarks Floating Luxuries® and Kai Lounge®, as well as the exclusive rights to make, use, and sell products based on the Buoyant Cushion Patent.

63. T2's use of the names Luxury Lounger, Skye Float Disc, Pure Sky Float, and Pure Skye XL Float to market and sell substantially similar, but inferior quality products, creates a misrepresentation among consumers that the Luxury Lounger, Skye Float Disc, Pure Sky Float, and Pure Skye XL Float are high quality Floating Luxuries® products.

64. Consumers who purchase the Luxury Lounger, Skye Float Disc, Pure Sky Float, and Pure Skye XL Float, which are sold at price points substantially lower than comparable Floating Luxuries® floats, will potentially cost Advantus a sale, purchase an inferior product likely to dissatisfy, cause dissatisfaction with Advantus' retailer and catalogue clients who cannot compete with the price points, and Advantus will as a result suffer a dilution and reduction of the value of its trademarks.

**WHEREFORE**, Advantus requests this Court grant the following relief against Defendant T2 International, LLC:

(i) T2 and its employees and agents, be enjoined during the pendency of this action, and permanently afterwards, from selling, or offering for sale, in the United States, the Luxury Lounger, Skye Float Disc, Pure Sky Float, and Pure Skye XL Float, and any other pool float bearing the mark Floating Luxuries®, Kai Lounge®, or any imitation of those trademarks;

(ii) T2 account for and pay over to Advantus all profits realized by T2 from the sales of the Luxury Lounger, Skye Float Disc, Pure Sky Float, and Pure Skye XL Float products, or any imitation of Advantus' trademarks, and/or Advantus' lost profits from the diverted sales;

- (iii) Advantus receive its costs to include attorneys' fees incurred in this action; and
- (iv) Advantus be granted such other and further relief as may be just and proper.

**COUNT III**  
**(Patent Infringement – 35 U.S.C. § 281)**

65. Advantus sues T2 for patent infringement pursuant to 35 U.S.C. §§ 271 and 281.

66. Advantus reincorporates paragraphs 1 through 52 as if fully set forth herein.

67. T2 is manufacturing and selling the Luxury Lounger, Skye Float Disc, Pure Sky Float, Pure Skye XL Float, Maggie Blue, and Neo Papasan, all of which infringe numerous of Advantus' claims set forth within the Buoyant Cushion Patent.

68. T2's infringement is occurring during the term of the Buoyant Cushion Patent.

69. T2 does not have authority to use the Buoyant Cushion Patent.

70. T2 continues to manufacture and sell the infringing products despite actual knowledge of Advantus' claims of such patent and its violation is intentional.

**WHEREFORE**, Plaintiffs request this Court grant the following relief against Defendant T2 International, LLC:

(i) A preliminary injunction enjoining T2 and its employees and agents from making, selling, using, and offering for sale its Luxury Lounger, Skye Float Disc, Pure Sky Float, Pure Skye XL Float, Maggie Blue, and Neo Papasan pool floats, which are infringements of Advantus' Buoyant Cushion Patent, and from engaging in patent infringement as set forth in this Complaint and a final injunction to run the length of the Patent regarding the Luxury Lounger, Skye Float Disc, Pure Sky Float, Pure Skye XL Float, Maggie Blue, and Neo Papasan.

(ii) An order requiring T2 to account for and pay Advantus damages for patent infringement, including interest on damages, to include treble damages in accord with 35 U.S.C. § 284;

(iii) An order granting Advantus' costs and reasonable attorneys' fees be assessed against T2, in accord with 35 U.S.C. § 285; and

(iv) Advantus be granted such other and further relief as may be just and proper.

**COUNT IV**

**False Advertising Pursuant to the Lanham Act, 15 U.S.C. § 1125**

71. Advantus hereby realleges and incorporates by reference the allegations in paragraphs 1 through 52 above.

72. Advantus sues T2 for violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), and seeks relief for T2's false and misleading representations of fact in connection with the advertising and promotion of its goods sold in interstate commerce.

73. T2 has engaged in false advertising and has falsely represented the manufacturing country of origin of the Luxury Lounger, which is sold and distributed throughout the United States, in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

74. Specifically, T2 prominently represents to its customers and prospective consumers that the Luxury Lounger is "Made in the USA." Such representations may be referred to collectively hereafter as T2's "Made in USA Claims." The Made in USA claims are set forth on the Luxury Lounger's packaging. A photograph of the Luxury Lounger packaging is attached hereto as **Exhibit G**.

75. T2's Made in USA Claims, as set forth on the Luxury Lounger's packaging, are not qualified by any disclosure as to the foreign origin of any of the Luxury Lounger's components.

76. T2 substantially made the Luxury Lounger that it sold to Big Box in China, with Sunbrella® material and a mesh of Chinese origin, which materials T2 purchased and delivered



in China. T2 then had a Chinese factory sew the Luxury Lounger and shipped them to the United States where T2 had a factory in Missouri fill the Luxury Lounger with beads.

77. Because significant and substantial portions of T2's floats are not made in the United States, T2's Made in USA Claims are literally false.

78. The Federal Trade Commission has stated that a manufacturer can only make an unqualified "Made in USA" claim if the product is "all or virtually all" of domestic origin. That is, the product should contain no – or negligible – foreign content. T2's Made in the USA Claims therefore also violate FTC standards concerning claims of domestic origin.

79. T2 is knowingly and intentionally misleading its customers and ultimate consumers to believe the Luxury Lounger is manufactured in the United States, when in fact it is not.

80. The untrue statements described above deceived customers or had the tendency to deceive a substantial portion of the targeted audience (i.e., purchasers of pool floats).

81. T2 knew or reasonably should have known that its advertisements and statements were false and would influence purchasing decisions.

82. T2's deception is material, in that such conduct is clearly for commercial purposes to influence purchasing decisions of consumers.

83. T2's conduct is likely to confuse, mislead, or deceive purchases or potential purchases and thus constitutes false advertising.

84. Through its acts alleged herein, T2 has caused, is causing, and threatens to continue to cause injury to Advantus, as Advantus' Floating Luxuries® are made in the USA. Thus, while both companies proudly make the claim "Made in the USA" on their competing

products, T2 puts Advantus at a further competitive disadvantage, as T2 gets the benefit of its advertising, but in fact only bears the expense of much cheaper Chinese labor.

85. Advantus has been and is likely to continue to be injured as a result of the false or misleading advertisements in the form of related declining sales and loss of goodwill.

**WHEREFORE**, Advantus requests this Court grant the following relief against Defendant T2 International, LLC:

(i) That T2 be ordered to cease and desist from claiming that the Luxury Lounger is Made in the USA, and making any other false or misleading statements for purposes of advertising and selling the Luxury Lounger, whether on its website or elsewhere, in writing or otherwise;

(ii) Wherever such false statements have occurred, that T2 put in place corrective advertising which admits that T2's claim that its Luxury Lounger is Made in the USA is inaccurate;

(iii) That T2 provide an accounting of all direct and indirect revenue received from the sale of the Luxury Lounger beginning on the date T2 began claiming the Luxury Lounger was Made in the USA;

(iv) Advantus be awarded its damages incurred to date, including but not limited to its lost profits due to T2's false advertising;

(v) That T2 be ordered to cancel, take down, cease and desist from all advertising and promotion claiming the Luxury Lounger is Made in the USA, including but not limited to all online and traditional print advertising and all such activities in relation to trade shows, conferences and similar events;

(vi) That in accordance with the law, Advantus be awarded treble its damages, T2's profits made from its false and misleading advertising, subject to the principles of equity, punitive damages, compensatory damages, pre-judgment interest, and Advantus' costs of suit and reasonable attorneys' fees; and

(vii) That Advantus have such other and further relief, including without limitation equitable relief, as the Court deems just and proper.

**COUNT V**  
**Florida Common Law Unfair Competition**

86. Advantus hereby realleges and incorporates by reference the allegations in paragraphs 1 through 52 above

87. Advantus sues T2 for unfair competition under Florida common law.

88. Advantus and T2 are competitors and compete for a common pool of customers.

89. T2 has engaged in false advertising and has additionally systematically copied numerous Floating Luxuries® products.

90. T2 sells knockoffs of no fewer than four (4) Advantus' Floating Luxuries® products, which evidences an overall scheme and intent to cause confusion and deceive as to the origin of T2's products, and T2's conduct has now grown to a comprehensive copying of Advantus' product line.

91. T2 deceptively named its Luxury Lounger, Pure Sky Float, Pure Skye XL Float, Skye Float Disc, and Neo Hammock to trade off and derive benefit from the Floating Luxuries® Kai, King Kai, Kai Seat Lounge, and Kai Water Hammock product line and products.

92. The synergistic effect of multiple elements of copying by T2 rises to the level of unfair competition.

93. T2's activities are likely to cause confusion amongst consumers as to the origin of T2's products.

94. T2's conduct in copying Advantus' product line is contrary to honest practices in commercial matters.

95. Such actions caused damages to Advantus in the form of lost sales and good will.

**WHEREFORE**, Advantus requests this Court grant the following relief against Defendant T2 International, LLC:

(i) T2 and its employees and agents be enjoined from using the names Pure Sky Float, Pure Skye XL Float, Skye Float Disc, Luxury Lounger, and Neo Hammock, and from falsely advertising that its Luxury Lounger is made in the USA;

(ii) That T2 provide an accounting of all direct and indirect revenue received from the Pure Sky Float, Pure Skye XL Float, Skye Float Disc, Luxury Lounger, and Neo Hammock;

(iii) Advantus be awarded actual damages, including lost profits, from the sales it lost to due to T2's acts of unfair competition; and

(iv) Advantus be granted such other and further relief, including without limitation equitable relief, as the Court deems just and proper.

**Demand for Jury Trial**

Advantus requests trial by jury on all issues so triable.

**DATED** this 3rd day of July, 2013.

By: /s/ Alan S. Wachs  
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**Attorneys for Plaintiffs**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via the CM/ECF system upon E. Lanny Russell, Esq., Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville, Florida 32202 and Al Allan, Esq., Allan IP Litigation, 409 East Boulevard, Suite 201, Charlotte, North Carolina 28203, this 3rd day of July, 2013.

/s/ Alan S. Wachs  
Attorney