

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 11 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: [Signature]
DEP CLERK

PAMBRA'S, L.L.C.

PLAINTIFF

V.

CASE NO. 4:14 cv 349 JLH

DR. LEONARD'S HEALTHCARE CORP.

DEFENDANT

COMPLAINT

Plaintiff, Pambra's L.L.C., for its complaint against Defendant, Dr. Leonard's Healthcare Corp., states:

This case assigned to District Judge Holmes
and to Magistrate Judge Ray

PARTIES

1. Plaintiff Pambra's, L.L.C. ("Pambra's") is an Arkansas limited liability company with its principal place of business in Little Rock, Arkansas.

2. Defendant Dr. Leonard's Healthcare Corporation ("Dr. Leonard's Healthcare") is a Delaware corporation with its principal place of business in Edison, New Jersey. Dr. Leonard's Healthcare can be served with this Complaint through its registered agent, Corporation Service Company, at 300 Spring Building, 300 S. Spring Street, Suite 900, Little Rock, Arkansas 72201.

JURISDICTION AND VENUE

3. This is an action for design patent infringement. The Court has subject matter jurisdiction over the design patent infringement claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Dr. Leonard's Healthcare because it does substantial business in this forum, including regularly doing and soliciting business in Arkansas and in this District, deriving substantial revenue from goods provided to individuals in Arkansas and in this District, and selling and offer for sale infringing goods in Arkansas and in this District. This Court also has personal jurisdiction over Dr. Leonard's Healthcare because Dr. Leonard's Healthcare is registered to do business in Arkansas and has a registered agent for purposes of accepting service of process in this District.

5. Venue is proper in the Eastern District of Arkansas pursuant to 28 U.S.C § 1391(b) and 28 U.S.C. § 1400(b) because acts of infringement took place in this District and Dr. Leonard's Healthcare is subject to personal jurisdiction in this Court.

BACKGROUND FACTS

6. In response to the growing population of obese people in the United States and the risk of rashes and infection developing under the lower abdominal fold of skin of obese people, Pambra's developed a tummy liner. The tummy liner is a cotton-based liner that is designed to be worn under the lower abdominal fold of skin of obese people to keep the skin dry and clean.

7. Pambra's has sold and continues to sell its tummy liner through its website and through direct mail catalogs operated by third parties. As a result of its creation of the first tummy liner and its success in the marketplace, the relevant

purchasing public associates tummy liners with Pambra's. Pambra's has been featured on ABC's national news program, *World News Tonight*.

8. Dr. Leonard's Healthcare is a leading direct mail marketer of healthcare, comfort, and convenience products. Dr. Leonard's Healthcare manages two catalogs: the "Dr. Leonard's" catalog and the "Carol Wright Gifts" catalog. In addition to direct mail catalogs, Dr. Leonard's Healthcare sells products through the "Dr. Leonard's" website at www.drleonards.com and the "Carol Wright Gifts" website at www.carolwrightgifts.com.

9. One of the products sold by Dr. Leonard's Healthcare through its websites and catalogs is a tummy liner.

COUNT I – DESIGN PATENT INFRINGEMENT

10. Pambra's adopts, realleges and incorporates all of the allegations and facts stated in Paragraphs 1-9 of this Complaint.

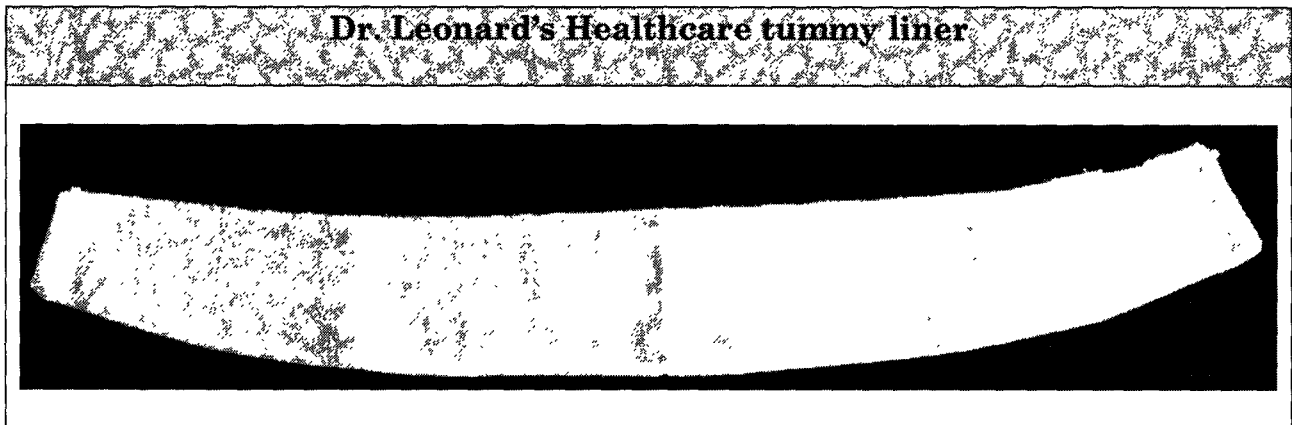
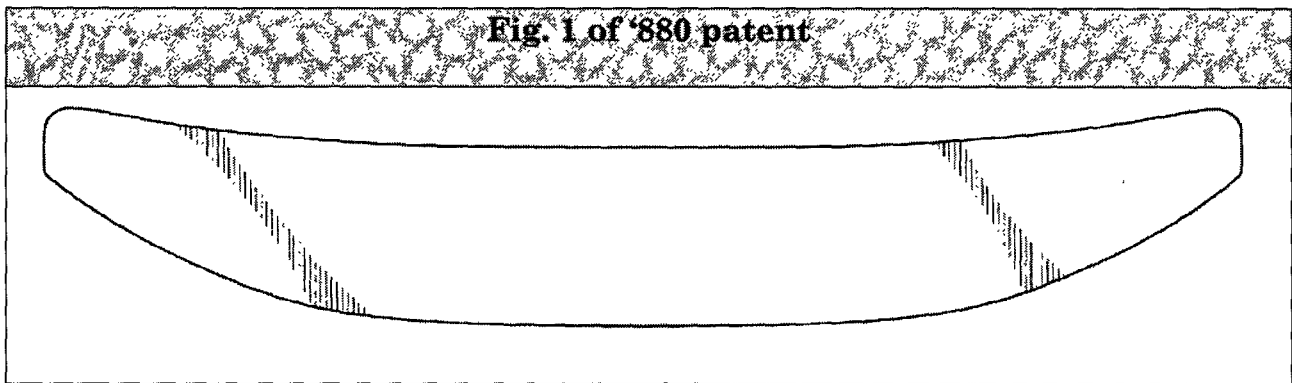
11. Pambra's is the owner by assignment of all right, title, and interest in and to U.S. Patent No. D694,880 ("the '880 patent"), entitled "Tummy Liner." The '880 patent was issued on December 3, 2013. A true and correct copy of the '880 patent is attached as Exhibit A.

12. Between December 3, 2013 and January 29, 2014, Dr. Leonard's Healthcare offered for sale and sold tummy liners (hereinafter, "the Dr. Leonard's Healthcare tummy liners") embodying the tummy liner design of the '880 patent and in violation of Pambra's rights. The Dr. Leonard's Healthcare tummy liners

were offered for sale and sold through the “Dr. Leonard’s” catalog and website, as well as through the “Carol Wright Gifts” catalog and website.

13. The Dr. Leonard’s Healthcare tummy liners offered for sale and sold were identical to or substantially the same as the tummy liner design covered by the ‘880 patent.

14. Below is a comparison between Fig. 1 of the ‘880 patent and the Dr. Leonard’s Healthcare tummy liner offered for sale and sold between December 3, 2014 and January 29, 2014:



15. In the eye of the ordinary observer, giving attention as purchasers of tummy liners usually give, the resemblance between the design of the Dr. Leonard’s

Healthcare tummy liners and the design set forth in the '880 patent is such as to deceive the ordinary observer, and cause an ordinary observer to purchase the Dr. Leonard's Healthcare tummy liner supposing it to be the product and design set forth in the '880 patent.

16. Dr. Leonard's Healthcare was given notice of Pambra's claim of rights to the tummy liner design through a letter dated May 7, 2012, which enclosed a copy of the design patent application that would result in the '880 patent. Dr. Leonard's Healthcare was also given notice that the '880 patent issued through a letter dated December 9, 2013. Despite its full knowledge of Pambra's exclusive rights to the tummy liner design covered by the '880 patent, Dr. Leonard's Healthcare continued to offer for sale and sell infringing tummy liners through January 29, 2014. Dr. Leonard's infringement of the '880 patent, therefore, was willful and deliberate.

WHEREFORE, Plaintiff Pambra's prays for relief, as follows:

A. A judgment that Dr. Leonard's Healthcare has infringed the claim of the '880 patent and that such infringement was willful.

B. An award of Dr. Leonard's Healthcare's profits resulting from Dr. Leonard's Healthcare's infringement of the '880 patent under 35 U.S.C. § 289.

C. An award of actual damages, including all pre-judgment and post-judgment interest at the maximum rate permitted by law.

D. An award of treble damages under 35 U.S.C. § 284 based on Dr. Leonard's Healthcare's willful infringement.


- E. An award of costs and attorneys' fees under 35 U.S.C. § 285; and
- F. Such further relief as this Court deems proper.

JURY DEMAND

Plaintiff Pambra's, L.L.C. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

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EXHIBIT A



US00D694880S

(12) **United States Design Patent** (10) **Patent No.:** **US D694,880 S**
Haven (45) **Date of Patent:** **** Dec. 3, 2013**

(54) **TUMMY LINER**
(75) Inventor: **Pamela A. Haven**, Bentonville, AR (US)

D294,650 S * 3/1988 De Beys D2/706
D327,771 S * 7/1992 Young D2/609
D574,085 S * 7/2008 Lucchetti D24/190
D601,706 S * 10/2009 Bauerfeind et al. D24/189

(73) Assignee: **Pambras's LLC**, Little Rock, AR (US)

OTHER PUBLICATIONS

(**) Term: **14 Years**

<http://pambras.com/products/original-tummy-liner/> Nov. 8, 2009.*

(21) Appl. No.: **29/398,768**

* cited by examiner

(22) Filed: **Aug. 4, 2011**

Primary Examiner — T. Chase Nelson

(51) **LOC (9) Cl.** **24-04**

Assistant Examiner — Michelle E Wilson

(52) **U.S. Cl.** **D24/124**

(74) *Attorney, Agent, or Firm* — Richard Blakely Glasgow

(58) **Field of Classification Search**
USPC **D2/600-609; 2/60, 116, 127, 129, 130,**
2/137, 138; D24/124-125, 188-193;
602/41-47, 52, 58; 604/304, 306, 307;
428/40.1, 43, 57, 139, 343, 352;
424/447-449

(57) **CLAIM**

I claim the ornamental design of the tummy liner, as shown.

See application file for complete search history.

DESCRIPTION

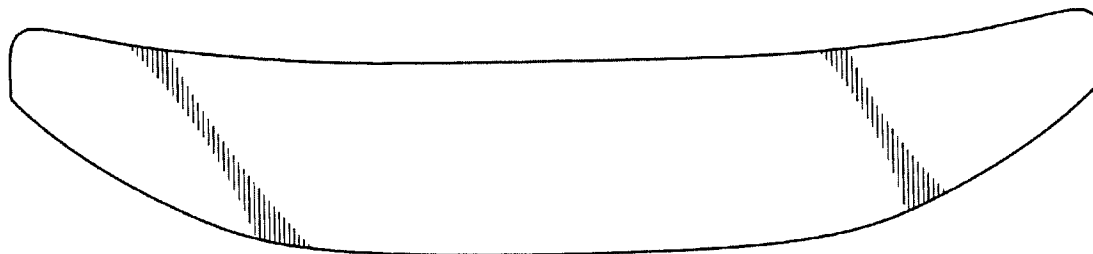
(56) **References Cited**

FIG. 1 is a front elevation view of the tummy liner.
FIG. 2 is a left side elevation view of the tummy liner of FIG. 1.
FIG. 3 is a top plan view of the tummy liner of FIG. 1; and
FIG. 4 is a bottom plan view of the tummy liner of FIG. 1.
The broken lines shown in the drawings indicate structure and features which form no part of the claimed design.

U.S. PATENT DOCUMENTS

3,068,486 A * 12/1962 Gleeson 2/129
3,374,785 A * 3/1968 Gaylord, Jr. 602/18

1 Claim, 1 Drawing Sheet



U.S. Patent

Dec. 3, 2013

US D694,880 S



FIG. 3

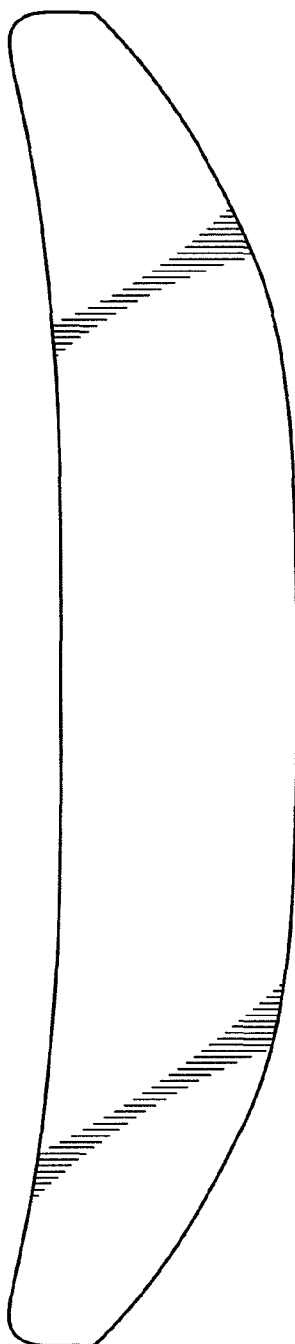


FIG. 1

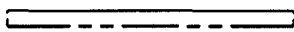


FIG. 2



FIG. 4