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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

SQUATTY POTTY, LLC,

Plaintiff,

v.

STEP AND GO HEALTH, LLC

Defendants.

COMPLAINT

Case No. 2:14-cv-00491-DBP

Judge: Dustin B. Pead

JURY DEMANDED

Plaintiff, Squatty Potty, LLC, by and through its counsel, Gurr and Brande, PLLC, hereby brings this Complaint against the Defendant, Step and Go Health, LLC, and alleges as follows:

THE PARTIES

1. Plaintiff, Squatty Potty, LLC, is an active Utah Limited Liability Company with its principal place of business at 1135 W 1130 N Ste. 1, Saint George, Utah 84770.

2. Upon information and belief, Defendant Step and Go Health, LLC, is a California Limited Liability Company with its principal place of business at 520 E Santa Anita Ave, Burbank, California 91501.

JURISDICTION AND VENUE

3. Squatty Potty, LLC (“Plaintiff”), files this action against Defendant, Step and Go Health, LLC (“Defendant”), for design patent infringement under the patent laws of the United States; for trade dress infringement under the Lanham Act (15 U.S.C. § 1051 *et seq.*) and under the common law of the state of Utah; and for related claims of unfair competition under the common law of the state of Utah. This Court has subject matter jurisdiction over the patent claim under 28 U.S.C. § 1338(a) and over the trade dress claim under 28 U.S.C. §§ 1331 and 1338(b), and over the remaining claims under §§ 1338(b) and 1367(a).
4. This Court has personal jurisdiction over the Defendant because Defendant, upon information and belief, has committed acts of infringement in Utah and/or has regularly solicited business or derived substantial revenue from goods promoted, advertised, sold, used, and/or consumed in the state of Utah, specifically having sold the Step and Go stool in Utah that infringes Plaintiff’s intellectual property in the state of Utah and has purposefully availed itself of the privilege of doing business in the state of Utah.
5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.
6. Trial by jury is demanded.

GENERAL ALLEGATIONS

7. Plaintiff is the owner, by virtue of assignment, of the entire right, title and interest in and to U.S. Design Patent D677,478, entitled “Toilet Stool” and which was filed on August 23, 2012 and granted on March 12, 2013 (referred to herein as the ‘478 patent). (See Exhibit A).
8. Plaintiff operates a growing business in Saint George, Utah and sells product worldwide.
9. Plaintiff has invested substantial time and resources into developing its product line of toilet stools and associated goods.
10. Plaintiff’s ECCO toilet stool (the subject of the ‘478 patent) has a distinctive design that features a U-shaped back portion, arched sidewalls, as well as other design features. In combination, these features create a distinctive and unique appearance which customers and retailers recognize as the trade dress of the ECCO toilet stool and associate it exclusively with Plaintiff.

First Cause of Action
(Direct Infringement of the ‘478 Patent by Step and Go Health, LLC)

11. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 10 above, as though fully set forth herein.
12. Plaintiff is the owner of the ‘478 Patent, which is valid and enforceable.

13. Upon information and belief, Defendant, has infringed and continues to infringe the '478 Patent by making, designing, selling, and/or offering for sale its toilet stool that applies the design of the '478 Patent or a colorable imitation thereof, in violation of 35 U.S.C. §271(a).
14. An ordinary observer, given such attention as a purchaser usually gives, would be deceived by the substantial similarity between the design of the toilet stool made, designed, sold, and/or offered for sale by Defendant and the patented design in the '478 Patent.
15. An ordinary observer would be induced to purchase the infringing toilet stool, either through Defendant's websites, online retailers, or in person (if such a retail outlets exists), due to Defendant's stool being substantially the same as the designs embodied and protected under the '478 Patent.
16. Plaintiff sent a cease and desist letter, dated June 11, 2013 to Defendant, informing it of the '478 patent.
17. Defendant has refused to cease its infringing activities.
18. Defendant's deliberate and willful actions in infringing the design of Plaintiff's '478 Patent, have caused and will continue to cause irreparable harm to Plaintiff unless permanently enjoined pursuant to 35 U.S.C. §283.
19. Defendant has also profited from, and continues to profit from, its infringing stool.

20. Plaintiff has suffered pecuniary damages in amounts to be determined at trial as a result of Defendant's willful infringement of the '478 patent, pursuant to 35 U.S.C. §§284 and 289.

Second Cause of Action
(Trade Dress Infringement – the Lanham Act § 43(a))

21. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above, as though fully set forth herein.
22. Plaintiff is entitled to legal protection of its ECCO toilet stool's trade dress under § 43(a) of the Lanham Act, which trade dress includes without limitation a distinctive design that features a U-shaped back portion, arched sidewalls, has an angled footrest, textured outlines of shoes/feet on the surface, a logo on the front center, and is white in color.
23. Plaintiff is further entitled to legal protection of its Bamboo toilet stool's trade dress under § 43(a) of the Lanham Act.
24. Plaintiff's ECCO and Bamboo toilet stools' trade dress have acquired secondary meaning as consumers have come to recognize the toilet stools as identifying Plaintiff as the source of the high quality toilet stools.
25. Defendant's toilet stools have so closely imitated and/or copied Plaintiff's ECCO and Bamboo toilet stools that the consuming public have been confused and will continue to be confused as to the source or origin of Defendant's toilet stools and will erroneously believe that the Defendant's stools came from Plaintiff.

26. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, Plaintiff's ECCO and Bamboo toilet stools and Defendant's toilet stools are substantially the same and the resemblance is such so as to deceive an ordinary observer, including an ordinary observer to purchase Defendant's toilet stools supposing them to be Plaintiff's toilet stools.
27. On information and belief, Defendant's copying of Plaintiff's toilet stools' trade dress was intentional.
28. Defendant intended to create a toilet stool confusingly similar in appearance to Plaintiff's toilet stool, and accompanies the sale with a confusingly similar tri-fold brochure.
29. Further, Defendant mimics Plaintiff's advertising material, including photographs, angles of photography, artwork, etc.
30. Defendant's toilet stools and Plaintiff's toilet stools are strikingly similar, substantially duplicated, virtually identical, substantially identical, remarkably similar, essentially duplicated, and/or closely imitated.
31. Defendant's acts of trade dress infringement have caused and continue to cause damages and injury to Plaintiff.
32. Plaintiff may recover for its damages an award to compensate Plaintiff for injuries and damages it has sustained as a result of Defendant's conduct which violates § 43(a) of the Lanham Act.
33. Because Defendant's acts were intentional, willful, and/or deliberate, Plaintiff is entitled to an award of treble damages under § 43(a) of the Lanham Act.

34. Plaintiff is entitled to an award of pre-judgment interest for the damages sustained as a result of Defendant's wrongful conduct.
35. Defendant's wrongful, malicious, fraudulent, deliberate, willful, and/or intentional conduct makes this an exceptional case entitling Plaintiff to an award of attorney's fees and costs under the Lanham Act.
36. Plaintiff has no adequate remedy at law; Plaintiff has suffered and continues to suffer irreparable harm as a result of Defendant's acts, and is therefore entitled to permanent injunctive relief to enjoin Defendant's wrongful conduct.

Third Cause of Action
(Federal Unfair Competition, False Designation of Origin, Passing Off, and False Advertising - the Lanham Act § 43(a))

37. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 36 above, as though fully set forth herein.
38. The unauthorized use by Defendant of Plaintiff's ECCO toilet stool trade dress through the sale of its unauthorized toilet stool, is likely to cause the public to mistakenly believe that Defendant's products originate from, are endorsed by, or are in some way affiliated with Plaintiff and thus constitute unfair competition, false designation of origin, and passing off.
39. In addition, Plaintiff's ECCO toilet stool trade dress is likely to lose its significance as an indicator of origin if Defendant is allowed to continue its infringement.
40. Defendant has used Plaintiff's ECCO toilet stool's trade dress, as well as other trade dresses held by Plaintiff (such as the Bamboo), in connection with false and misleading

descriptions or representations of fact in promoting Defendant's toilet stools, thereby misrepresenting the nature, characteristics, source, and qualities of its goods, services or commercial activities. Defendant's actions are thus in violation of § 43(a) of the Lanham Act.

41. As set forth above, on information and belief, Defendant's misconduct is part of a deliberate plan to trade off the valuable goodwill established by Plaintiff and has been carried out in willful disregard of Plaintiff's rights and thereby constitutes a violation of § 43(a) of the Lanham Act.

Fourth Cause of Action
(Common Law Unfair Competition, Misappropriation, and Trade Dress Infringement - Unfair Practices Act, Utah Code Ann. § 13-5-1 et seq.)

42. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 41 above, as though fully set forth herein.
43. By its aforesaid conduct, calculated to increase business and profits by deceiving and confusing members of the public, Defendant continues to misappropriate the valuable goodwill of Plaintiff's toilet stools' trade dress, to infringe Plaintiff's rights therein and unfairly compete with Plaintiff under the common laws of Utah.
44. Defendant's use of Plaintiff's toilet stools' trade dress to promote, mark, or sell products constitutes an unfair practice under Utah Code Ann. § 13-5-1 et seq.
45. Defendant's use of Plaintiff's toilet stools' trade dress is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused, and is causing, injury to Plaintiff's retailers and consumers.

Request for Relief

Based on the foregoing, Plaintiff respectfully requests that the Court:

- A. Enter judgment in favor of Plaintiff and against Defendant on all claims;
- B. Enter judgment and permanently enjoin and restrain Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, importing, selling or offering for sale, or otherwise distributing any product that infringes the '478 Patent.
- C. Enter a judgment against Defendant for direct infringement of Plaintiff's toilet stool's trade dress;
- D. Order an accounting for Plaintiff's damages and/or for Defendant's profits derived and/or related to Defendant's infringement of the '478 Patent;
- E. Order an assessment of interest and costs against Defendant;
- F. Find this to be an exceptional case and to award reasonable attorneys' fees to Plaintiff; and
- G. Award Plaintiff such other relief as the Court deems just and proper.

DATED this 2nd day of July, 2014

/s/ Robert A. Gurr
Robert A. Gurr
Attorney for Plaintiff