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8 *Attorneys for Plaintiff Shipping and Transit, LLC*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SHIPPING AND TRANSIT LLC, a Florida  
12 Limited Liability Corporation,

13 Plaintiff,

14 vs.

15 FRESHPAIR, INC., a Delaware  
16 Corporation; and DOES 1 through 10,  
17 Inclusive,

18 Defendants.  
19  
20

Case No. 2:15-cv-08638-JVS-AS

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

Complaint Filed: November 5, 2015

Trial Date: N/A

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 For its Complaint, Plaintiff Shipping and Transit, LLC (“Plaintiff”), by and  
3 through the undersigned counsel, alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff is a company organized and existing under the laws of Florida and  
6 having an address at 711 SW 24<sup>th</sup>, Boynton Beach, Florida 33435.

7 2. On information and belief, defendant Freshpair Inc. (“Defendant”) is a  
8 corporation existing under the laws of Delaware.

9 3. The true names and capacities of the Defendants sued herein as DOES 1  
10 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
11 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is  
12 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
13 Court to amend this Complaint to reflect the true names and capacities of the DOE  
14 Defendants when such identities become known.

15 **JURISDICTION AND VENUE**

16 4. This is a suit for patent infringement arising under the patent laws of the  
17 United States, Title 35 of the United States Code § 1 *et seq.*

18 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
19 1338(a).

20 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and  
21 1400(b).

22 7. Upon information and belief, Defendant conducts substantial business in  
23 this forum, directly or through intermediaries, including: (i) at least a portion of the  
24 infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in  
25 other persistent courses of conduct and/or deriving substantial revenue from goods and  
26 services provided to individuals in this forum.

27 ///

28 ///

**THE PATENT-IN-SUIT**

1  
2 8. On July 15, 2008, United States Patent No. 7,400,970 (“the ’970 Patent”),  
3 entitled, “System and method for an advance notification system for monitoring and  
4 reporting proximity of a vehicle” was duly and legally issued by the United States  
5 Patent and Trademark Office. A true and correct copy of the ’970 Patent is attached as  
6 Exhibit A to this complaint.

7 9. Plaintiff is the assignee and owner of the right, title and interest in and to  
8 the ’970 Patent including the right to assert all causes of action arising under said  
9 patents and the right to any remedies for infringement of them.

10 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,400,970**

11 10. Plaintiff repeats and realleges the allegations of paragraphs 1 through 9 as  
12 if fully set forth herein.

13 11. Without license or authorization and in violation of 35 U.S.C. § 271(a),  
14 Defendant has infringed and continues to infringe the ’970 Patent by making, using,  
15 offering for sale and/or selling within this district and elsewhere in the United States a  
16 computer based notification system that enables communication with a user that is  
17 designed to receive delivery of a package and provides a means for requesting entry by  
18 user of a package identification number.

19 12. Specifically, Freshpair’s ship notice/manifest, sometimes referred to as the  
20 Advanced Shipment Notice (ASN), or the 856 EDI document, is generated when a user  
21 at a computer system elects to purchase an item via Defendant’s website and enters an  
22 email address as part of the purchase process. The Defendant explains by purchasing  
23 they will be provided “order confirmation” and more importantly “shipment  
24 confirmation” by selecting to purchase from their website. When a user selects the  
25 Standard USPS, Priority or APO/FPO and US Territories method of shipping (Express  
26 Shipping of Defendant’s products via FedEx is expressly excluded from the allegations  
27 herein) when purchasing an item from Defendant’s website, a user necessarily is  
28 required to elect a shipping method that allows tracking. Once this election is made,

1 and as the order is processed, shipment confirmations are sent based on a tracking input  
2 when the package starts its route (likely pick-up, placed on conveyer belt and/or  
3 scanned out to loading dock/out of warehouse, etc.) to its destination (delivery address).

4 Freshpair

5 WOMEN » MEN » EXPERT ADVICE »

Search

6 **NEW CUSTOMER DISCOUNT! TODAY ONLY: 15% OFF** Discount applied in cart

7 customer care

8 customer care  
9 returns

frequently asked questions

10 This process is evidenced on Defendant's Frequently Asked Questions web page:

11 **How will my order be shipped?**

12 We will ship your order via the United States Postal Service or via  
13 FedEx. We ship United States Postal Service to P.O. Boxes,  
14 APO/FPO addresses. We offer free shipping on all U.S. orders,  
15 including Alaska and Hawaii, and low flat rate shipping to other  
16 countries. The minimum for shipping offers does not include e-gift  
17 cards, since those are not physically shipped.

18 **“When will I receive my order?”**

19 Orders for in stock items being shipped via FedEx (2 Business Day  
20 or 1 Business Day) are shipped same day if placed before 3pm EST,  
21 excluding weekends and holidays. Due to our extensive selection of  
22 styles, sizes and colors, some items may be periodically  
23 backordered. We will contact you within 24 hours (not including  
24 weekends and holidays) if any portion of your order is backordered.  
25 Once your order has shipped, we will send you an email  
26 confirmation including a tracking number. Please click here to view  
27 shipping methods and transit times.”

28 **“Part of my order is backordered. Will you ship what you have  
or will I have to wait for the entire order?”**

We will ship the portion of your order that is in stock and issue a  
shipping confirmation and tracking number. We will inform you of  
the item(s) on backorder so you have the option to change the color  
and style.”

1 13. Plaintiff is entitled to recover from Defendant the damages sustained by  
2 Plaintiff as a result of Defendant's infringement of the '970 Patent in an amount subject  
3 to proof at trial, which, by law, cannot be less than a reasonable royalty, together with  
4 interest and costs as fixed by this Court under 35 U.S.C. § 284.

5 14. Prior to the filing of this Complaint, Plaintiff, by letter dated June 10,  
6 2015, informed Defendant of Defendant's infringement of the '970 Patent.

7 15. Thus, Defendant has been on notice of the '970 Patent since at least the  
8 date it received Plaintiff's letter dated June 10, 2015.

9 16. Upon information and belief, Defendant has not altered its infringing  
10 conduct after receiving Plaintiff's letter dated June 10, 2015.

11 17. Upon information and belief, Defendant's continued infringement despite  
12 its knowledge of the '970 Patent and the accusations of infringement has been  
13 objectively reckless and willful.

14  
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests that this Court enter judgment against  
17 Defendant as follows:

18 A. An adjudication that Defendant has infringed the '970 patent;

19 B. An award of damages to be paid by Defendant adequate to compensate  
20 Plaintiff for Defendant's past infringement of the '970 patents and any continuing or  
21 future infringement through the date such judgment is entered, including interest, costs,  
22 expenses and an accounting of all infringing acts including, but not limited to, those  
23 acts not presented at trial;

24 C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an  
25 award of Plaintiff's reasonable attorneys' fees;

26 D. To the extent Defendant's conduct subsequent to the date of its notice of  
27 the '970 patent is found to be objectively reckless, enhanced damages pursuant to 35  
28 U.S.C. § 284 for its willful infringement of the '970 patent; and

1 E. An award to Plaintiff of such further relief at law or in equity as the Court  
2 deems just and proper.

3  
4 Respectfully submitted this 16th day of November, 2015

5 NEWPORT TRIAL GROUP

6  
7 By: /s/ Tyler J. Woods

8 Tyler J. Woods  
9 Attorney for Plaintiff  
10 Shipping and Transit, LLC

11 **JURY DEMAND**

12 Plaintiff demands a trial by jury on all issues so triable pursuant to Federal Rule  
13 of Civil Procedure 38.

14  
15 Respectfully submitted this 16th day of November, 2015

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18 By: /s/ Tyler J. Woods

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20 Attorney for Plaintiff  
21 Shipping and Transit, LLC