

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

<p>BEDGEAR, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COMFORT REVOLUTION, LLC</p> <p style="text-align: center;">Defendant.</p>	§ § § § § § § § § § § § §	<p>Case No.: 1:15-cv-____</p> <p><u>COMPLAINT</u></p> <p>JURY TRIAL DEMANDED</p>
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COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which plaintiff, Bedgear, LLC (“Bedgear”), by its counsel, Bryan Cave LLP, makes the following allegations in support of its Complaint against defendant, Comfort Revolution, LLC (“Comfort Revolution”):

PARTIES

1. Bedgear is a Delaware limited liability company with its principal place of business at 110 Bi-County Blvd., Suite 101, Farmingdale, NY, 11735. Bedgear draws on its proprietary technology to innovate and develop various bedding products and accessories, including pillows, mattress protectors, and bed sheets. Among other things, Bedgear’s bedding products provide advanced functional properties that enhance performance and facilitate recovery during sleep. As a result of its innovations, Bedgear has become the market leader in the performance bedding industry.

2. On information and belief, Comfort Revolution is a Delaware limited liability company with its principal place of business at 187 Route 36, Suite 205, West Long Branch, NJ 07764.

3. Comfort Revolution manufactures, imports, offers for sale, sells, and/or distributes bedding products, including pillows, that infringe Bedgear's patents.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Comfort Revolution is subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the New York Long Arm Statute, due at least to its substantial ongoing business activities in this forum, including regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in New York and this District.

6. On information and belief, Comfort Revolution has itself, and through various third party retailers, repeatedly transacted business with customers in New York and within this District, and has advertised, promoted, sold, and shipped infringing products into New York, including this District, without Bedgear's authorization or permission. By way of example, on information and belief, third party retailers through which Comfort Revolution distributes, offers for sale, and sells infringing products within this District include, a Bed Bath & Beyond store, located in Westbury, NY, and a Macy's Department store, located in Garden City, NY. On information and belief, Comfort Revolution operates a showroom located at 230 Fifth Avenue, New York, NY where it advertises, promotes, offers for sale and/or sells infringing products.

7. On information and belief, Comfort Revolution also maintains and operates one or more websites on the Internet, including a website at: <http://www.comfortrevolution.com>,

which are operational twenty-four (24) hours a day, seven days a week, are accessible to and regularly accessed by residents of this District and other persons throughout the United States, and through which Comfort Revolution advertises, promotes, offers for sale, and sells its products. On information and belief, Comfort Revolution has, through its websites and/or other authorized third party websites, repeatedly transacted business with customers throughout the United States, including customers within this District, and has advertised, promoted, offered for sale, sold, and shipped infringing products into this District without Bedgear's authorization or permission. Further, on information and belief, Comfort Revolution has derived substantial revenue from interstate commerce and has interjected itself into this District by its operation of a nationwide business through commercial websites and third party distributors or resellers whereby Comfort Revolution has sold and continues to sell infringing products.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) at least because Comfort Revolution is subject to personal jurisdiction in this District, does business in the State of New York and this District, and has committed and continues to commit acts of infringement in this District.

BACKGROUND

Bedgear's Bedding Innovations

9. Bedgear is a leading manufacturer of specialty bedding products and sleep essentials, including pillows and pillow covers, pillow protectors, mattress protectors and encasements, mattress toppers, blankets, and bed sheets.

10. Bedgear's philosophy is centered around designing, developing, and delivering bedding products that provide individuals with improved recovery during sleep in order to enhance their active lifestyles.

11. Bedgear was founded by nationally-recognized entrepreneur, Eugene Alletto, whose two decades of prior expertise with home furnishings and textiles laid the foundation for Bedgear's unique approach to fabrics and manufacturing techniques, as well as its innovations across a wide array of specialty bedding products.

12. Since its inception, Bedgear has been dedicated to developing and perfecting bedding products and sleep essentials that are engineered using advanced textile fabrication techniques. Bedgear utilizes these proprietary technologies and techniques to provide consumers with a variety of high-tech, high-quality bedding products that have new and improved functional characteristics designed to improve sleep quality.

13. Due to its many innovations and novel high-tech approach to bedding products, Bedgear is well-known for being a pioneer of performance bedding.

14. For example, Bedgear has been referred to in the media as "the company that invented 'performance sleep,'" based on its performance branded line of bedding products. (Bloomberg, "Small to Big" video segment, "The Company That Invented 'Performance Sleep,'" November 4, 2014). Bedgear and its performance branded bedding products have also been featured on numerous other media networks and outlets, including NBC (NBC Weekend Today New York, "Best Gifts for Mother's Day," May 3, 2015), KHONTV (KHONTV, "Is Your Pillow Right For You," February 27, 2015), FIOS1 (FIOS1, "Money & Main\$treel," January 29, 2015), ABC (ABC World News Now, "Sweet Dreams – High-Tech Bedding," October 23, 2014), and The Daily (The Daily news app, "Sleeping on a Fortune," December 11, 2012).

15. Bedgear has also been selected as the specialty bedding partner of a number of nationally-recognized professional sports teams, including the New York Mets, the Detroit Tigers, the San Diego Padres, the Denver Broncos, and the New York Islanders.

16. One area in which Bedgear has devoted considerable resources and effort is in creating and developing pillows and pillow covers. Bedgear's founder, Eugene Alletto, came up with the idea of performance pillows and invented ground-breaking solutions that substantially improve an individual's sleep environment and sleep quality through novel pillow designs and innovative fabrics and materials.

17. Bedgear was the first to develop and introduce a line of performance pillows that utilize and implement these significant innovations. Among other things, Bedgear's inventive performance pillows provide improved head and neck support for different types of sleepers, enhance ventilation and air flow through the pillows, and provide a cooling and wicking effect during use.

18. Bedgear has protected various aspects of its inventive solutions and cutting-edge technologies with a range of intellectual property rights. In particular, as a result of its significant innovations, Bedgear has been granted a number of patents by the U.S. Patent and Trademark Office ("the Patent Office"), which protect various aspects of its novel performance pillows.

19. Among the patents that Bedgear has been awarded is U.S. Patent No. 8,646,134 ("the '134 Patent"), entitled "Pillow with Gusset of Open Cell Construction." The '134 Patent was filed on June 22, 2012 and issued on February 11, 2014.

20. Bedgear is the owner by assignment of the '134 Patent, with ownership of all substantial rights in the '134 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '134 Patent is attached hereto as Exhibit A.

21. The claims of the '134 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain of these novel pillows include a cover having two opposing panels, a gusset that perimetrically bounds and joins the two panels and is formed of an open cell construction, and a compliant fill material that is disposed within the cover.

22. Bedgear's patents on this technology also include U.S. Patent No. 8,887,332 ("the '332 Patent"), entitled "Pillow with Gusset of Open Cell Construction." The '332 Patent was filed on December 16, 2013 and issued on November 18, 2014.

23. Bedgear is the owner by assignment of the '332 Patent, with ownership of all substantial rights in the '332 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '332 Patent is attached hereto as Exhibit B.

24. The claims of the '332 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain of these novel pillows include two panels that both include an edge defining a perimeter, and a gusset that joins the two panels, which includes a material having greater porosity than a porous material that is included in the two panels.

25. Bedgear's patents on this technology also include U.S. Patent No. 9,015,883 ("the '883 Patent" and, together with the '134 and '332 Patents, "the Asserted Utility Patents"), entitled "Pillow with Gusset of Open Cell Construction." The '883 Patent was filed on July 10, 2014 and issued on April 28, 2015.

26. Bedgear is the owner by assignment of the '883 Patent, with ownership of all substantial rights in the '883 Patent, including the right to exclude others and to sue and recover

damages for the past and future infringement thereof. A true and correct copy of the '883 Patent is attached hereto as Exhibit C.

27. The claims of the '883 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain of these novel pillows include two panels both of which include an edge defining a perimeter, a gusset that joins the two panels, and an inner cavity that is defined by the inner surfaces of the two panels and the gusset. In certain embodiments, the pillow is configured to have air enter the cavity through pores in the two panels and exit the cavity through pores in the gusset.

28. Bedgear's innovative pillow solutions and designs are also protected by a number of design patents issued by the Patent Office, including, but not limited to, U.S. Design Patent No. D672,183 ("the '183 Patent" or "Asserted Design Patent"), entitled "Pillow with Mesh Gusset." The '183 patent was filed on December 29, 2011, and issued on December 11, 2012.

29. Bedgear is the owner by assignment of the '183 Patent, with ownership of all substantial rights in the '183 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '183 Patent is attached hereto as Exhibit D.

30. The claim of the '883 Patent is directed to a new and improved ornamental design for a pillow that includes a mesh gusset, as shown in the patent figures.

31. The Patent Office examined the Asserted Utility Patents and the Asserted Design Patent over a period of several years. After this thorough examination, the Patent Office found that the inventions described and claimed in the Asserted Utility Patents and the Asserted Design Patent are both new and not obvious in light of prior patents, publications, and other references.

32. Bedgear filed its initial patent application on this technology on June 22, 2011, and the first of the Asserted Utility Patents, the '134 Patent, issued on February 11, 2014. The applications that issued as the '332 and '883 Patents, were published, and available to the public, on April 10, 2014 and October 30, 2014, respectively.

33. Bedgear began selling performance pillow and pillow cover products that utilize its patented technology and designs in 2011.

34. As a result of its proprietary technology and products, Bedgear has become known as the leader in performance pillows and other performance bedding products. Bedgear's innovative performance pillows have received considerable media attention and industry recognition, and have achieved significant commercial success.

Comfort Revolution's Infringing Activities

35. On information and belief, Defendant Comfort Revolution is a furniture and bedding company, which manufactures, imports, sells, offers for sale, and/or distributes, a range of bed products, including mattress frames, mattresses, toppers, pads, pillows, and pillow covers.

36. On information and belief, Comfort Revolution has sold and continues to sell a number of pillow and/or pillow cover products having a mesh gusset, including, but not limited to, a Hydraluxe AirTM Cooling Fiber Pillow, a LuxLiving Talalay Latex Pillow, and a LuxLiving Memory Foam Lux Gel Pillow, that are described as being designed to increase airflow and ventilation and improved cooling effects

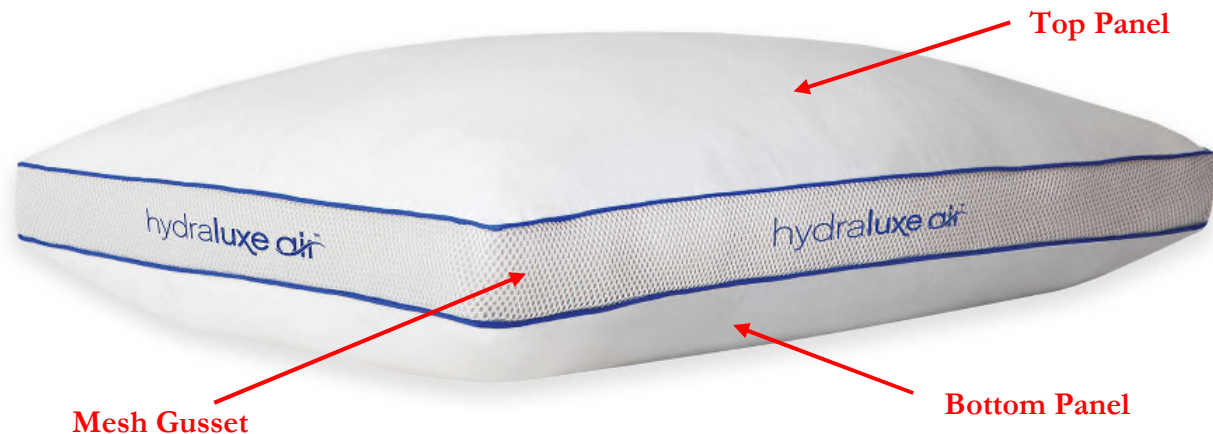
37. On information and belief, Comfort Revolution's LuxLiving Talalay Latex Pillow and LuxLiving Memory Foam Lux Gel Pillow products have been, and continue to be, distributed, offered for sale, and/or sold exclusively by a third party, MattressFirm Inc., under its

private-label “LuxLiving” brand. See <http://www.mattressfirm.com/lux-living-only-at-mattress-firm.aspx>.

38. On information and belief, Comfort Revolution’s pillow and/or pillow cover products, including, but not limited to, its Hydraluxe Air™ Cooling Fiber Pillow, infringe Bedgear’s Asserted Utility Patents and Asserted Design Patent. Comfort Revolution’s Hydraluxe Air™ Cooling Fiber Pillow, and any equivalent products manufactured, distributed, offered for sale or sold under different names by, or on behalf of, Comfort Revolution are referred to herein as the “Accused Products.”

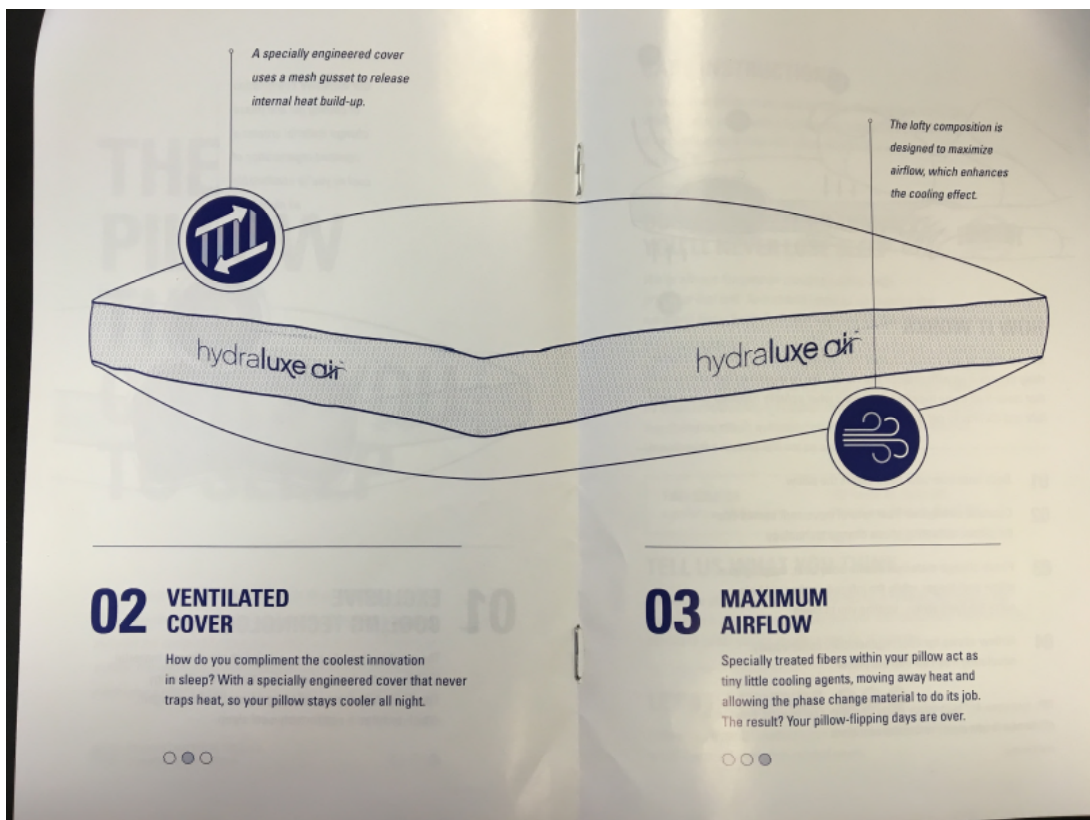
39. On information and belief, the Accused Products include, among other things, pillows having a cover with two or more panels that are joined together by a gusset and an inner cavity that includes a fill material. On information and belief, certain of these Accused Products include a gusset that perimetrically bounds two panels, is made of a material with greater porosity than the panels, and/or has an open cell construction. On information and belief, certain of these Accused Products are configured to allow air to flow into a cavity through pores in the panels and out of the cavity through pores in the gusset.

40. By way of example, Comfort Revolution’s so-called Hydraluxe Air™ Cooling Fiber Pillow is shown below (with annotations to highlight certain elements):

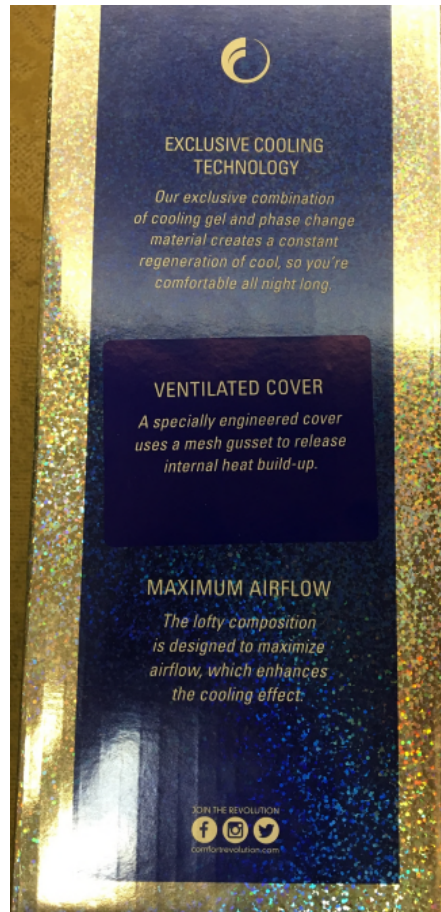


41. The pillow had two panels, a top panel and a bottom panel, both made from the same type of material, and a mesh gusset positioned between the two panels that surrounds the entire pillow and is made from a different type of material.

42. According to the informational insert and product packaging materials provided by Comfort Revolution with its Hydraluxe Air pillow (examples of which are shown below), the pillow is designed to improve ventilation, airflow, and cooling effects:



Pages 4-5 from the informational insert included with the Hydraluxe Air™ product.



Side view of the Hydraluxe Air™ product packaging.

43. According to these materials, the Hydraluxe Air™ pillow includes a “ventilated cover,” in the form of a “specially engineered cover [that] uses a mesh gusset to release internal heat build up,” and a “composition [that] is designed to maximize airflow, which enhances the cooling effect.”

44. On information and belief, Comfort Revolution’s Hydraluxe Air™ Cooling Fiber Pillow product includes, among other things, a cover that has two opposing panels (e.g., top and bottom panels) both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset that includes a fill material.

45. On information and belief, the gusset in the Hydraluxe Air™ Cooling Fiber Pillow is made of a material that has a greater porosity than the material of the two opposing panels.

46. On information and belief, the Hydraluxe Air™ Cooling Fiber Pillow product enables air to enter the inner cavity through pores in the two opposing panels and exit the inner cavity through pores in the gusset.

47. Comfort Revolution has not sought permission to use Bedgear's patented inventions and is not licensed under any of the Asserted Utility Patents or the Asserted Design Patent. As a result, Comfort Revolution has infringed and continues to infringe Bedgear's patents by making, using, selling, offering for sale or importing its Accused Products and/or having its Accused Products made, sold, offered for sale, distributed, or imported on its behalf by third parties, such as manufacturers, resellers and distributors.

48. Although Bedgear is entitled by law to keep the Accused Products out of the marketplace and to prevent the entry of lower quality infringing goods from irreparably eroding the marketplace, and Bedgear is prepared to fully pursue legal relief to abate such harm, prior to filing this lawsuit Bedgear attempted in good faith to work cooperatively with Comfort Revolution to determine if a business solution would be possible.

49. On October 23, 2015, Bedgear sent a letter to Comfort Revolution (the "October 23rd Letter"), which notified Comfort Revolution of certain intellectual property rights owned by Bedgear, including the Asserted Utility Patents and the Asserted Design Patent, and explained that Comfort Revolution's Accused Products were infringing Bedgear's intellectual property.

50. In response, Comfort Revolution sent two letters, dated October 26, 2015 and November 9, 2015, in which it asserted that its products do not infringe the Asserted Utility

Patents or the Asserted Design Patent because of certain alleged distinctions. On information and belief, these alleged distinctions are inaccurate and/or irrelevant.

51. On information and belief, since receiving the October 23rd Letter, Comfort Revolution has continued to manufacture, market, distribute, offer, and/or sell the Accused Products.

52. On information and belief, Comfort Revolution has been aware of Bedgear's performance pillow products and patents and chose to disregard and knowingly infringe Bedgear's intellectual property rights. At least since its receipt of the October 23rd Letter, Comfort Revolution has been fully aware of Bedgear's rights in the Asserted Utility Patents and the Asserted Design Patent and has continued to act despite an objectively high likelihood that its actions constitute infringement of the Asserted Utility Patents and the Asserted Design Patent and knew or should of known of that objectively high risk.

53. Bedgear is forced to file this lawsuit to protect its patented technology and innovations and seek redress for Comfort Revolution's ongoing, willful infringement.

Comfort Revolution's Infringement Irreparably Harms Bedgear

54. Bedgear is harmed by Comfort Revolution's use of Bedgear's patented technologies in a way that cannot be remedied by monetary damages alone. Comfort Revolution has received substantial revenue and increased market share by selling and distributing (and having others sell and distribute) products that practice the technology and/or design described in the '134, '332, '883, and '183 Patents and without having to incur the costs of developing or licensing this technology.

55. On information and belief, Comfort Revolution's infringement has caused Bedgear to suffer irreparable harm due to, among other things, lost business opportunities, lost

market share, and price erosion. Even if Comfort Revolution were to subsequently pay past due royalties, lost profits, or other damages, there is no reason to believe that Comfort Revolution would stop infringing, and it would still enjoy the market share it has developed while infringing upon, the '134, '332, '883, and '183 Patents. Due to the difficulty in predicting whether, if at all, Bedgear can recover this market share, Bedgear's harm cannot be compensated by payment of monetary damages alone.

COUNT I
(Infringement of U.S. Patent No. 8,646,134)

56. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

57. On February 11, 2014, the Patent Office duly and legally issued the '134 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '134 Patent, including the right to recover damages for past and future infringement.

58. Comfort Revolution has infringed and continues to infringe the '134 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '134 Patent.

59. For example, Comfort Revolution has infringed and continues to infringe the '134 Patent by making, using, selling, offering for sale, and/or importing its Hydraluxe Air™ Cooling Fiber Pillow product that includes each and every feature recited in at least claims 11, 12, 13, and 15 of the '134 Patent.

60. As a direct and proximate result of Comfort Revolution's infringement of the '134 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover

damages from Comfort Revolution to compensate for such infringement, in an amount to be determined at trial.

61. By receipt of the October 23rd Letter, at least, Comfort Revolution's ongoing acts of infringement of the '134 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '134 Patent, and Comfort Revolution has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '134 Patent and Comfort Revolution knew or should of known of that objectively high risk. At least since receiving the October 23rd Letter, Comfort Revolution's acts constitute willful and deliberate infringement.

62. To the extent that facts uncovered during discovery show that Comfort Revolution's past infringement of the '134 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

63. The acts of infringement by Comfort Revolution identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until Comfort Revolution is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

COUNT II
(Infringement of U.S. Patent No. 8,887,332)

64. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

65. On November 18, 2014, the Patent Office duly and legally issued the '332 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '332 Patent, including the right to recover damages for past and future infringement.

66. Comfort Revolution has infringed and continues to infringe the '332 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '332 Patent.

67. For example, Comfort Revolution has infringed and continues to infringe the '332 Patent by making, using, selling, offering for sale, and/or importing its Hydraluxe AirTM Cooling Fiber Pillow product, that includes each and every feature recited in at least claims 1, 6-9, 16, 22, 29, 31, and 34 of the '332 Patent.

68. As a direct and proximate result of Comfort Revolution's infringement of the '332 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from Comfort Revolution to compensate for such infringement, in an amount to be determined at trial.

69. By receipt of the October 23rd Letter, at least, Comfort Revolution's ongoing acts of infringement of the '332 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '332 Patent, and Comfort Revolution has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '332 Patent and Comfort Revolution knew or should of known of that objectively high risk. At least since receiving the October 23rd Letter, Comfort Revolution's acts constitute willful and deliberate infringement.

70. To the extent that facts uncovered during discovery show that Comfort Revolution's past infringement of the '332 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

71. The acts of infringement by Comfort Revolution identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until Comfort Revolution is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

COUNT III
(Infringement of U.S. Patent No. 9,015,883)

72. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

73. On April 28, 2015, the Patent Office duly and legally issued the '883 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '883 Patent, including the right to recover damages for past and future infringement.

74. Comfort Revolution has infringed and continues to infringe the '883 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '883 Patent.

75. For example, Comfort Revolution has infringed and continues to infringe the '883 Patent by making, using, selling, offering for sale, and/or importing its Hydraluxe AirTM Cooling Fiber Pillow product, that includes each and every feature recited in at least claims 1-10 and 14 of the '883 Patent.

76. As a direct and proximate result of Comfort Revolution's infringement of the '883 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from Comfort Revolution to compensate for such infringement, in an amount to be determined at trial.

77. By receipt of the October 23rd Letter, at least, Comfort Revolution's ongoing acts of infringement of the '883 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '883 Patent, and Comfort Revolution has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '883 Patent and Comfort Revolution knew or should of known of that objectively high risk. At least since receiving the October 23rd Letter, Comfort Revolution's acts constitute willful and deliberate infringement.

78. To the extent that facts uncovered during discovery show that Comfort Revolution's past infringement of the '883 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

79. The acts of infringement by Comfort Revolution identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until Comfort Revolution is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

COUNT IV
(Infringement of U.S. Design Patent No. D672,183)

80. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

81. On December 11, 2012, the Patent Office duly and legally issued the '183 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '183 Patent, including the right to recover damages for past and future infringement.

82. Comfort Revolution has infringed and continues to infringe the '883 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more Accused Products, including, but not limited to, its Hydraluxe Air™ Cooling Fiber Pillow product, that are substantially similar to claimed design of the '183 Patent.

83. As a direct and proximate result of Comfort Revolution's infringement of the '183 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from Comfort Revolution to compensate for such infringement, in an amount to be determined at trial.

84. By receipt of the October 23rd Letter, at least, Comfort Revolution's ongoing acts of infringement of the '183 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '183 Patent, and Comfort Revolution has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '183 Patent and Comfort Revolution knew or should of known of that objectively high risk. At least since receiving the October 23rd Letter, Comfort Revolution's acts constitute willful and deliberate infringement.

85. To the extent that facts uncovered during discovery show that Comfort Revolution's past infringement of the '183 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

86. The acts of infringement by Comfort Revolution identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until Comfort Revolution is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. By way of example, Comfort Revolution's acts have damaged, and will continue to damage, Bedgear's business and reputation. On information and belief, Comfort Revolution is a competitor and its acts of infringement were intended to exploit Bedgear's reputation and goodwill in the marketplace. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

PRAYER FOR RELIEF

Wherefore, Bedgear respectfully requests that this Court enter judgment and provide relief as follows:

A. That Comfort Revolution has infringed, and continues to infringe, the '134, '332, '883, and '183 Patents;

B. That Comfort Revolution, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith, either directly or indirectly, be permanently enjoined from any further direct, indirect and/or joint infringement of the '134, '332, '883, and '183 Patents pursuant to 35 U.S.C. § 283;

C. That Comfort Revolution be ordered to account for and pay to Bedgear the damages resulting from Comfort Revolution's infringement of the Asserted Utility Patents and the Asserted Design Patent, including lost profits, costs and expenses, together with pre-judgment and post-judgment interest thereon, and all other damages permitted pursuant to 35

U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured and costs, and in any event an amount no less than a reasonable royalty;

D. That Comfort Revolution be ordered to account for and pay to Bedgear all profits resulting from Comfort Revolution's sale of any and all products that infringe the Asserted Design Patent pursuant to 35 U.S.C. § 289, and all other damages permitted pursuant to 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured and costs;

E. That Comfort Revolution be ordered to account for any infringing sales not presented at trial and an award by the Court of additional damages to Bedgear for any such infringing sales;

F. That this case be adjudged to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding Bedgear its reasonable attorney's fees and costs incurred in connection with this action; and

G. That Bedgear be awarded any and all further legal and equitable relief that the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Bedgear hereby respectfully requests a trial by jury on all issues in this action so triable by right pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: December 14, 2015

Respectfully submitted,

BRYAN CAVE LLP

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