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Timely Inventions, LLC  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 TIMELY INVENTIONS, LLC, a  
Delaware Limited Liability Company

12 Plaintiff,  
13

14 vs.

15 WYNIT DISTRIBUTION, LLC, a  
New York Limited Liability Company

16 Defendant.  
17

Case No. 2:16-cv-01323

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

18 Plaintiff Timely Inventions, LLC (“Timely” or “Plaintiff”) through its  
19 undersigned counsel, brings this action against Defendant Wynit Distribution,  
20 LLC (“Defendant”). In support of the Complaint, Plaintiff alleges as follows:

21 **JURISDICTION**

22 1. This is an action for patent infringement in violation of the patent  
23 laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has exclusive subject  
24 matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

25 2. This Court has personal jurisdiction over Defendant Wynit  
26 Distribution, LLC. Defendant has conducted and does conduct business within  
27 the State of California. Defendant, directly or through subsidiaries or  
28 intermediaries, including distributors, retailers, and others, ships, distributes,

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1 offers for sale and sells its products in the United States, the State of California,  
2 and the Central District of California. Defendant, directly and through  
3 subsidiaries or intermediaries, including distributors, retailers and others, has  
4 purposefully and voluntarily placed one or more of its infringing products, as  
5 described below, into the stream of commerce in the Central District of  
6 California. On information and belief, these infringing products have been and  
7 continued to be purchased and used by businesses, including Costco, in the  
8 Central District of California. Defendant has committed acts of patent  
9 infringement within the State of California and, more particularly, within the  
10 Central District of California. Defendant is registered to do business in California  
11 and has an agent for service of process located in this District.

12 3. Venue is proper under 28 U.S.C. § 1391(b).

### 13 **THE PARTIES**

14 4. Plaintiff Timely Inventions, LLC is a limited liability company  
15 organized and existing under the laws of the State of Delaware having a principal  
16 place of business in Dover, Delaware.

17 5. On information and belief, Defendant Wynit Distribution, LLC is a  
18 limited liability company organized under the laws of the State of New York  
19 having a principal place of business in Greenville, South Carolina.

### 20 **FACTUAL BACKGROUND AND NATURE OF ACTION**

21 6. There are two patents at issue in this action: United States Patent No.  
22 7,861,865 (“’865 Patent”), and United States Patent No. 6,152,305 (“’305  
23 Patent”).

24 7. The ’865 Patent is titled “PACKAGING ASSEMBLY,” and was  
25 issued by the United States Patent and Trademark Office on January 4, 2011. A  
26 true and correct copy of the ’865 Patent is attached as Exhibit A.

27 8. Timely owns by assignment the entire right, title, and interest in and  
28 to the ’865 Patent. As the owner of the entire right, title, and interest in and to the

1 '865 Patent, Timely possesses the right to sue and to recover for infringement of  
2 the '865 Patent.

3 9. The '305 Patent is titled "PACKAGING ASSEMBLY, AND  
4 RELATED METHOD, FOR SHIPPING AND DISPLAYING A PLURALITY  
5 OF PRODUCTS," and was issued by the United States Patent and Trademark  
6 Office on November 28, 2000. A true and correct copy of the '305 Patent is  
7 attached as Exhibit B.

8 10. Timely owns by assignment the entire right, title, and interest in the  
9 '305 Patent. As the owner of the entire right, title, and interest in and to the '305  
10 Patent, Timely possesses the right to sue and to recover for infringement of the  
11 '305 Patent.

12 11. Defendant has infringed and continues to infringe one or more  
13 claims of the '865 Patent and one or more claims of the '305 Patent by engaging  
14 in acts that constitute infringement under 35 U.S.C. § 271 *et seq.*

15 12. Defendant has infringed and continues to infringe the '865 Patent by  
16 manufacturing, making, using, offering for sale, and/or selling within the United  
17 States certain products which embody, or in combination embody, one or more  
18 claims of the '865 Patent.

19 13. Defendant has infringed and continues to infringe the '305 Patent by  
20 manufacturing, making, using, offering for sale, and/or selling within the United  
21 States certain products which embody, or in combination embody, one or more  
22 claims of the '305 Patent.

23 14. On information and belief, Defendant's FITBIT packaging assembly  
24 which Defendant sells through Costco, and all reasonably similar products, meet  
25 all of the limitations of at least claims 1 and 19 of the '865 Patent and at least  
26 claim 24 of the '305 Patent (the "Accused Products"). As such, Defendant is  
27 infringing the '865 Patent and '305 Patent in violation of 35 U.S.C. § 271.

28 15. A representative and preliminary infringement claim chart for claims

1 1 and 19 of the '865 Patent and the Accused Products is attached as Exhibit C and  
2 is incorporated by reference to this Complaint.

3 16. A representative and preliminary infringement claim chart for claim  
4 24 of the '305 Patent and the Accused Products is attached as Exhibit D. and is  
5 incorporated by reference to this Complaint.

6 **FIRST CLAIM FOR RELIEF**

7 **(Patent Infringement of U.S. Patent No. 7,861,865)**

8 17. Plaintiff incorporates by reference the foregoing paragraphs of this  
9 Complaint as if fully set forth herein.

10 18. On information and belief, Defendant, alone or by directing and  
11 controlling others, has manufactured, used, imported, offered for sale, and/or sold  
12 and continues to sell in this district and elsewhere in the United States, the  
13 Accused Products which infringe at least claims 1 and 19 of the '865 Patent, as  
14 identified in Exhibit C in violation of 35 U.S.C. § 271.

15 19. On information and belief, the acts of infringement of Defendant will  
16 continue unless enjoined by this Court.

17 20. Timely is being damaged by Defendant's infringement of the '865  
18 Patent and is being and will continue to be irreparably damaged unless  
19 Defendant's infringement is enjoined by this Court.

20 21. On information and belief, Defendant's infringement of the '865  
21 Patent is and has been willful. This is an exceptional case warranting an award of  
22 treble damages under 35 U.S.C. § 284 and an award of its reasonable attorneys'  
23 fees and costs for the maintenance of this action under 35 U.S.C. § 285.

24 22. As a result of Defendant's past and on-going infringement of the  
25 '865 Patent, Timely has suffered, and continues to suffers, monetary damages.

26 **SECOND CLAIM FOR RELIEF**

27 **(Patent Infringement of U.S. Patent No. 6,152,305)**

28 23. Plaintiff incorporates by reference the foregoing paragraphs of this

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1 Complaint as if fully set forth herein.

2 24. On information and belief, Defendant, alone or by directing and  
3 controlling others, has manufactured, imported, used, offered for sale, and/or sold  
4 and continues to sell in this district and elsewhere in the United States, the  
5 Accused Products which infringe at least claim 24 of the '305 Patent in violation  
6 of 35 U.S.C. § 271.

7 25. On information and belief, the acts of infringement of Defendant will  
8 continue unless enjoined by this Court.

9 26. Timely is being damaged by Defendant's infringement of the '305  
10 Patent and is being and will continue to be irreparably damaged unless  
11 Defendant's infringement is enjoined by this Court.

12 27. On information and belief, this is an exceptional case warranting an  
13 award of treble damages under 35 U.S.C. § 284 and an award of its reasonable  
14 attorneys' fees and costs for the maintenance of this action under 35 U.S.C. §  
15 285.

16 28. As a result of Defendant's past and on-going infringement of the  
17 '305 Patent, Timely has suffered, and continues to suffer, monetary damages.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

20 1. That this Court adjudge and declare:

21 a. That it has jurisdiction of the parties and of the subject matter  
22 of this action;

23 b. That United States Patent No. 7,861,865 Patent is valid and  
24 owned by Timely Inventions, Inc., and that United States Patent No. 6,152,305 is  
25 valid and owned by Timely Inventions, Inc.;

26 c. That Defendant has committed acts of patent infringement by  
27 its manufacture, importation, use, offer for sale and/or sale of the Accused  
28 Products;

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- 1           2.     That Defendant's infringement is willful;
- 2           3.     That Defendant and all affiliates, subsidiaries, officers, employees,
- 3 agents, representatives, licensees, successors, assigns, and all those acting in
- 4 concert with, or for or on behalf of Defendant, be enjoined from further infringing
- 5 United States Patent No. 7,861,865 and United States Patent No. 6,152,305.
- 6           4.     That Defendant be required by mandatory injunction to deliver up to
- 7 Timely for destruction any and all of the Accused Products in Defendant's
- 8 possession, custody or control, as well as any promotional literature and
- 9 packaging which display the Accused Products;
- 10          5.     That Plaintiff be awarded damages covered by the acts of patent
- 11 infringement of Defendant in an amount not less than a reasonable royalty
- 12 pursuant to 25 U.S.C. § 284 or in an amount equal to Defendant's profits pursuant
- 13 to 35 U.S.C. § 289, whichever is greater and that such damages be trebled in
- 14 accordance with the provisions of 35 U.S.C. § 284;
- 15          6.     That Defendant pay Plaintiff prejudgment interest on all
- 16 infringement damages;
- 17          7.     That Plaintiff recover their costs in this action, including attorneys'
- 18 fees; and
- 19          8.     That Plaintiff has such other or further relief as the Court may deem
- 20 just and proper.

21     DATED: February 25, 2016

Respectfully submitted,

LEWIS ROCA ROTHGERBER  
CHRISTIE LLP

By /s/ G. Warren Bleeker  
G. Warren Bleeker

Attorneys for Plaintiff,  
Timely Inventions, LLC

**DEMAND FOR JURY TRIAL**

Plaintiff Timely Inventions, LLC, pursuant to Federal Rule of Civil Procedure 38, hereby demands a trial by jury of all issues so triable.

DATED: February 25, 2016

Respectfully submitted,

LEWIS ROCA ROTHGERBER  
CHRISTIE LLP

By /s/ G. Warren Bleeker  
G. Warren Bleeker

Attorneys for Plaintiff,  
Timely Inventions, LLC

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