

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 0:15cv61511-COOKE/TORRES**

BETTER AIR INTERNATIONAL LIMITED,

Plaintiff,

v.

ROEI BEN HAIM,  
TAL BEN HAIM,  
ROBERT MEIROVICH,  
and  
BETTER AIR USA, INC. d/b/a AIRBIOTICS, INC.  
and, d/b/a AIRBIOTICS USA, LLC

Defendants.

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**SECOND AMENDED COMPLAINT**

Plaintiff, Better Air International Limited (“BAI” or “Plaintiff”), brings this action against Defendants Roei Ben Haim (“RBH”), Tal Ben Haim (“TBH”), Robert Meirovich (“RM”) and Better Air USA, Inc. d/b/a Airbiotics, Inc. and d/b/a Airbiotics USA, LLC (“AIRBIOTICS”) (collectively the “Defendants”), to declare that U.S. Pat. No. 8,986,610 (the “‘610 Patent”) [Exhibit A] invalid and that BAI is not infringing the ‘610 Patent, to recover damages for Defendants’ violations of Florida’s Patent Troll Prevention Act, Lanham Act and Florida Unfair Competition & False Advertising, Tortious Interference, Deceptive and Unfair Trade Practices, Trade Libel, and Conversion of BAI’s property, Misappropriation of BAI’s trade secrets and in Correction of the Inventorship of the ‘610 Patent, and states and alleges as follows:

**PARTIES**

1. Plaintiff BAI is a limited liability company established in Hong Kong. BAI conducts business in South Florida and in this District.

**ASSOULINE & BERLOWE, P.A.**

1800 N. Military Trail, Suite 160, Boca Raton, Florida 33431 • Telephone: (561) 361-6566 • Facsimile: (561) 361-6466

2. Defendant RBH is the original assignee and current owner of the '610 Patent.

3. RBH resides at 1945 S. Ocean Dr., UNIT 508, Hallandale, FL 33009.

4. RBH previously worked at Better Air, Inc. in Israel ("BAIL") a predecessor in interest and/or sister operation to BAI.

5. RBH has misappropriated and stolen confidential information and trade secrets from BAI.

6. While employed by BAI, RBH used the following signature blocks on his emails:

Roei ben haim  
Better-air  
Director of business development  
North America

7. For example, on, Monday, July 1, 2013, on behalf of BAI, RBH wrote to a potential U.S. investor:

It is not far fetched, that should Better Air team execute well on our plan, than [sic] Better Air should become the leading provided of the Indoor air quality to both the business and the consumer markets (our consumer product are [sic] due by October) and our name should be associated with air quality as XEROX was for printing . . . We are conducting tests in prestigious hospitals supervised by leading world experts in the area of Bacterial [sic] contamination, Allergies [sic] and environmental hazards; We have completed the first phase of this trial with very encouraging results and upon completion of the second phase, we believe we should be able to offer the medical industry a proven solution for antibiotic resistant bacteria which is the cause of millions of death every years [sic]

8. Defendant TBH is RBH's brother, business partner, and co-conspirator (collectively TBH and RBH are the "Ben Haims").

9. TBH resides at 16461 NE 34 Ave., North Miami Beach, FL 33160.

10. Like RBH, TBH also at one time worked for and contracted with BAI. See below their prior business cards:

**ROEI BEN HAIM**  
Director of Business Development  
North America

+3057337709  
roei@better-air.com [www.Better-air.com](http://www.Better-air.com)

19707 turnberry way suit #10h Aventura fl 33180  
"We believe you have the right to choose the Air you Breath"



**TAL BEN HAIM**  
Director of Business Development  
Europe

+44 7817777667  
tal@better-air.com [www.Better-air.com](http://www.Better-air.com)

64 New Cavendish Street. London W1G8TB  
"We believe you have the right to choose the Air you Breath"



11. Through their family, the Ben Haims own approximately twenty percent of the shares in BAI, but have been terminated as an employees and contractors of BAIL and BAI.

12. RM is the CEO of AIRBIOTICS and co-conspirator and business partner of the Ben Haims.

13. RM resides at 3251 N 37th St., Hollywood, FL 33021.

14. RM interviewed with BAI in 2014 and is well aware of BAI's intellectual property rights and branding. On January 26, 2014 RM wrote Michael Hoffman of BAI:

Dear Michael . . .

First let me start by thanking you for your hospitality and the opportunity that you gave me to listen to me :)

As i expressed in our short meeting :) I truly believe that your product is not only has huge financial opportunity, but even more then this, and even more exiting is to change the industry and provide world class costumer experience and fresh&exciting product to people that seeking a better life.

I am big believer that everything happens for reason and there is some kind of

special energy that brought us to the same table today.

When people ask me what makes the company successful I reply, “Clear direction and strong leadership, and i believe its can be created in Better-Air and i would like to be part of your team and launch it in north america and from there to the entire world.

...

if you both feel the same lets get together soon and get busy & discuss next steps for my role on the company [BAI].

15. Defendant AIRBIOTICS is incorporated in Delaware, has offices in Florida, and regularly conducts business in this District.

16. AIRBIOTICS has offices at: 19707 Turnberry Way Aventura, FL 33180 and 3251 N. 37th Street; Hollywood, Florida 33021; 16461 NE 34<sup>th</sup> Avenue, North Miami Beach, FL 33160; and, 1945 S. Ocean Dr., UNIT 508, Hallandale, FL 33009.

17. Defendants intend to directly financially benefit by making false and misleading statements to the Plaintiff, its distributors, customers, representatives, agents and other BAI Affiliates (the “BAI Affiliates”) to hinder access to Plaintiff’s device based upon bogus claims of infringement of Defendants’ ‘610 Patent. Defendants, in concert, have knowingly falsely represented the character of the Plaintiffs goods and Defendants’ competing goods. Together each of the Defendants have unlawfully converted and used Plaintiff’s property and misappropriated its trade secrets.

### **JURISDICTION AND VENUE**

18. This action is for declaratory judgment of patent invalidity and non-infringement.

19. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

20. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338(b), and 1367.

21. This Court has original jurisdiction, of all actions arising under the Lanham Act, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties. 15 U.S.C. § 1121(a).

22. This Court has personal jurisdiction over Defendants, because AIRBIOTICS, RBH, TBH and RM reside in this District, regularly transact business in this District, and have asserted the '610 Patent in this District.

23. Defendants' actions are done willfully and intentionally in violation of Plaintiff's rights with the intention to specifically harm the Plaintiff, its' representatives and distributors within this District.

24. Most of the important witnesses in this action reside in Florida.

25. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

#### **GENERAL ALLEGATIONS FOR ALL CLAIMS**

26. Defendant RBH and AIRBIOTICS at one time both claimed to be the owners of the '610 Patent. However, now only Defendant RBH claims to own the '610 Patent and the Defendants have represented such to this Court.

27. The Defendants know of related United States offers for sale, marketing, and/or other public disclosures that existed more than a year prior to the earliest priority date for application for the '610 Patent.

28. Defendants RBH and AIRBIOTICS have directly and wrongfully accused BAI of infringing the '610 Patent in Florida. For example, Defendants targeted BAI and the BAI Affiliates in Florida through "bad faith" demand letters sent on or about April 29, 2015; April 30, 2015; June 12, 2015; and, July 21, 2015 (collectively the "Bad Faith Demands"). The Bad Faith Demands contain misrepresentations of fact and law. Each accuses Plaintiff and BAI Affiliates of

patent infringement. The Bad Faith Demands threaten patent litigation in Florida based upon the use, import and sale of BAI's BA-008 (the "Accused Device").

29. Plaintiff is the manufacturer of the Accused Device.

30. TBH and RM also contributed to the Bad Faith Demands.

31. For example, on or about, April 29, 2015,<sup>1</sup> the Defendants, through Thomas P. Arden of the law firm of Young Basile Hanlon & MacFarlane, PC ("Young Basile"), sent a demand letter addressed and/or copied to Amazon (the Amazon.com online retailer), Michael Hoffman, Better Air North America, LLC, Taly Dery, Simon Dery, Better Air North Intern'l, Ltd, Eran Danino, Global Impact, Inc. and Star Marketing Partners, LLC. [DE 24-1] (the "First Demand") stating:

we examined an Ecological Balancing System (BA008) and determined that it practices the '610 Patent . . . The Ecological Balancing System (BA008) *contains at least one actuator . . . and at least one sensor operatively associated with said at least one actuator . . .*<sup>2</sup>

32. Then, on or about June 12, 2015, through the same counsel, Defendants again sent a letter this time addressed and/or copied to Taly Dery, Hoffman, Better Air North America, Simon Dery, and Start Cosmetics, Inc. [DE 24-2] (the "Second Demand") stating:

Better Air North America is wilfully [sic] *infringing a patent* issued to Mr. Roei Ben Haim by selling and/or offering for sale the BioZone Probiotics Ecological Balancing System (BA008) . . . *Airbiotics and Mr. Ben Haim will be forced to sue you for injunctive relief and damages in Florida state court . . .*<sup>3</sup>

33. Finally, on or about July 21, 2015, Defendants through the same counsel, sent another demand letter, this time addressed and/or copied to Taly Dery, Simon Dery, Better Air

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<sup>1</sup> There is evidence a similar letter was also sent on April 30, 2015.

<sup>2</sup> Emphasis added.

<sup>3</sup> Emphasis added.

North America, and Michael Hoffman [DE 24-4] (the “Third Demand”) (collectively with the First Demand and Second Demand (the “Defendants’ Demands”), stating:

[u]nless we hear from you in three days we will be initiating legal proceedings . . . Better Air North America is *willfully infringing a patent issued to Mr. Ben Haim* and that you and Better Air are liable to Airbiotics . . . Airbiotics and Mr. Ben Haim will be forced to sue you and your husband. We will seek a preliminary injunction requiring you *to cease marketing and selling the BA008* and additionally seek all damages available under the law, including punitive damages for your intentional and reckless conduct.<sup>4</sup>

34. BAI is in the business of, amongst other things, providing and creating healthier, more sustainable indoor spaces through the use of environmental probiotics.

35. RBH is not the inventor of the invention described in the ‘610 Patent. To the extent the ‘610 Patent teaches anything new, it was conceived of by Michael Hoffman (“Hoffman”) and engineers in Israel for BAIL and BAI.

36. RBH was tasked by BAI with obtaining patent rights for BAI in United States based upon BAI’s inventions conceived of and developed in Israel.

37. In fact, BAI’s president Michael Hoffman personally communicated with the attorney of record for the application for the ‘610 Patent, David Barman, regarding the application for the ‘610 Patent because RBH was to apply for the invention on behalf of BAI and needed Hoffman’s input to describe the invention.

38. In preparing the application for the ‘610 Patent, Barman contacted Hoffman because Hoffman and BAI had the confidential information and understanding of the invention and results of related testing needed to obtain the patent rights in the United States. Hoffman was better able to describe the technology to patent attorney Barman than RBH. Hoffman provided

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<sup>4</sup> Emphasis added.

the information to patent attorney Barman because Hoffman understood that RBH and Barman were applying for a patent on behalf of BAI.

39. Barman and the Ben Haims were aware that Prolitec, S.A. (“Prolitec”) had patents on similar technology and that the scope of the claims could not lawfully include the prior art described by Prolitec.

40. Specifically, Richard Weening, founder and CEO of Prolitec, is identified as the inventor of Weening, Richard, System and method of controlling Operation of a Liquid Diffusion Appliance, U.S. Appl. No. 13/090,240 filed April 19, 2011 (the “Weening Application”).

41. The Ben Haims were well aware of Richard Weening, the subject of the Weening Application, and Prolitec’s other products and patents, and of commercial devices that use a sensor to detect various environmental conditions.

42. For example, on January 15, 2014, *just seven (7) days before the filing of the application for the ‘610 Patent*, Hoffman (writing to Barman and the Ben Haims) specifically reminded Barman and the Ben Haims that the BA-008 does not use a sensor and that the Weening Prior Art has both an inlet and outlet:

we [the Ben Haims, Barman and Hoffman] spoke about a way to automatically adjust treatment to ever changing conditions and I have stipulated that our [the BA-008] current process is nothing like that . . . [if] a real time unit which could measure bacterial contamination on the spot, than [sic] we can talk about automatic adjustment but . . . [Weening] tried to apply for patent . . . (your call [Barman] - I should refrain from placing a judgment on feasibility - your job [Barman]) . . . we use the Venturi effect - a known physical law of nature that when you compressed air into [inlet] a sealed container with liquid the pressure seeks an exit and if you provide a very narrow exit [outlet], than the liquid droplets is broken to tiny particles and when small enough, than it becomes a fine mist (one controls the size of mist droplets by the size of the exit hole . . .)

43. This email came less than eleven (11) hours after Hoffman summarized to the Ben Haims and Barman:



[the] Prolitec . . . language about threshold [in the Weening Prior Art] is to address their [Prolitec's] area of expertise (and only area although they make claims to other areas [including probiotics]) which is perfume distribution[.] With perfume, if you provide too much - it is a burden on the senses . . . too little and our . . . human nose could not enjoy it[.] Hence, the need to be accurate with perfume . . . [the Weening Prior Art] is . . . a way to measure the space and [using a sensor] adjust to such[.] With us [Better Air] . . . time amount is sufficient

44. Hoffman's exchange with Barman and the Ben Haims during application for the '610 Patent is relevant, because, Claim 1 of the Weening Prior Art, U.S. Pat. Appl. No 13/090,240 claims:

. . . a venturi in fluid communication with the liquid reservoir, and the venturi in fluid communication with a source of compressed gas, and wherein operation of the diffusion means comprises release of the pressurized gas into the venturi [inlet]. . . to draw liquid from the reservoir into the venturi where the liquid mixes with the gas . . . then dispersing the gas and liquid mixture into the space [outlet]

45. Thus, an inlet, outlet and pressurized gas source are inherent in the Weening Prior Art's application of the Venturi Effect, as is "at least one actuator . . . and at least one sensor operatively associated with said at least one actuator" (the "Sensor Limitation").

46. The Ben Haims and Barman were notified in writing of the materiality of the Weening Prior Art one week before applying for the '610 Patent. However, neither of the Ben Haims nor attorney Barman disclosed BAI's products, the Prolitec Products or the Prolitec patents to the United States Patent and Trademark Office ("USPTO") during application for and prosecution of the '610 Patent. This is evidenced by the file wrapper for the '610 Patent.

47. Defendants and Mr. Arden alleged to BAI and the BAI Affiliates that the Accused Device infringes at least claim 1 of the '610 Patent.

48. Both independent claims of the '610 Patent, claims 1 and 11, require a sensor.

49. RBH's inclusion of the "Sensor Limitation", in all of the claims of the '610 Patent was an express response to the patent examiner's rejection and statement that the addition of the Sensor Limitation to the claims would make the patent allowable.

50. The Defendants are aware that the Accused Device functions by emitting an aerated probiotic solution at programmed frequencies to actively emit probiotic solution into the atmosphere for a specific time period based on the operational setting selected on the Accused Device.

51. Unlike all of the claims of the '610 Patent, the Accused Device does not include any components that evidence a sensor to trigger emission of the probiotic solution into the atmosphere.

52. Moreover, the user manual for the Accused Device does not illustrate or describe the use of a sensor.

53. Contrary to Defendants' false allegations, the Accused Device operates on a timer mechanism, not a sensor.

54. Defendant RBH's misrepresentations in the application for the '610 Patent and Defendants' intentional interference with BAI's distributors, representatives, and agents in the United States is causing BAI irreparable harm. Specifically, Defendants and their attorneys have sent false letters accusing BAI and BAI Affiliates of patent infringement, misappropriation of trade secrets and unfair competition.

55. Defendants' and their attorneys' Bad Faith Demands are patently false and calculated in bad faith to interfere, hinder and disrupt BAI's sales and entry in the United States market.

56. Unless enjoined, Defendants will continue to cause BAI irreparable harm.

57. BAI is obligated under its contracts with its United States representatives and distributors to take action against Defendants' libelous allegations of infringement which have caused and continue to cause BAI damages including attorneys' fees and costs.

58. Defendants also now know of the above facts and Prior Art and other Prior Art, but baselessly continue to assert the '610 Patent against BAI for the Accused Device.

### **CIVIL CONSPIRACY AND ALTER EGO**

59. Each of the Defendants conspired with each other to misappropriate BAI's trade secrets, intellectual property, confidential information, design documents, product specification, business plans and marketing information and to use that property and information to unfairly compete and interfere with the business BAI (the "Civil Conspiracy").

60. Together, in furtherance of the Civil Conspiracy, the Defendants planned to convert, misappropriate, and use property of BAI to interfere with BAI, its affiliates and its marketing and sale of the Accused Device, and BAI's entry into the U.S. market.

61. Each of the Defendants acted together, in concert, willfully and maliciously.

62. The Defendants formed their plans before the creation of Airbiotics and their plans in furtherance of their Conspiracy began before the formation of Airbiotics.

63. Airbiotics is a mere tool in furtherance of the Conspiracy as it was organized and operated for the improper and fraudulent purpose of using the physical and intellectual property converted and misappropriated from BAI, including BAI's trade secrets, invention, prototypes and trademarks to unfair compete with BAI while unjustly enriching the Defendants.

64. Airbiotics was formed to defraud BAI, to evade Defendants existing obligations to BAI, to protect Defendants' knavery and crime.

65. Moreover, at least at the time of the filing of this action Airbiotics was thinly

capitalized and RBH, TBH and RM used the property they misappropriated from BAI without regard to the corporate identity.

66. When sending the Bad Faith Demands, each Defendant knew that the design for the Airbiotic1 was derived from confidential design documents for the Accused Device that were misappropriated by the Defendants.

67. Prior to sending the Demand letters RBH and TBH knew the Accused Device did not have a sensor, because BAI told them so when they had fiduciary duties to BAI.

68. Prior to sending the Demand letters the Defendants also hired engineers to reverse engineer the Accused Device and were well aware that it did not have a sensor as required to be covered by the '610 Patent.

69. Each of the Defendants knew that each of the Demand Letters were sent in Bad Faith, particularly the Bad Faith Demand Letter sent on July 21, 2015.

70. All of the Defendants herein have acted willfully and maliciously sought and have or stand to obtain a direct financial benefit from their collective unlawful actions against BAI.

71. Each Defendant contributed to the acts complained herein.

72. The Defendants have acted in concert. Together, the Defendants are jointly and severely liable for their acts in furtherance of the Conspiracy.

73. All conditions precedent to bring this action have occurred, been satisfied and, or waived.

**COUNT I**  
**DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 8,986,610**  
(as to Roei Ben Haim only)

74. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

75. The '610 Patent is invalid under 35 U.S.C. § 101 et seq., and fails to meet the patentability standards under 35 U.S.C. § 112, and/or because it is anticipated by, or obvious in view of the prior art under 35 U.S.C. §§ 102 and 103.

76. There exists a real and actual controversy between BAI and Defendants concerning the validity of the '610 Patent.

77. BAI is entitled to a declaratory judgment that the '610 Patent is invalid.

78. Given the prior art known to them, Defendants know or should know that the claim of the '610 Patent that Defendants asserted against BAI is invalid.

79. Due to the exceptional circumstances of this case, the Court should award BAI its attorneys' fees from Defendants pursuant to 35 U.S.C. § 285.

WHEREFORE, BAI respectfully requests this Court: i) enter a declaratory judgment and decree holding that the '610 Patent is invalid; and ii) grant such relief as is just, fair, and equitable.

**COUNT II**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PAT. NO. 8,986,610**  
(as to Roei Ben Haim only)

80. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

81. The Accused Device does not have a sensor.

82. BAI has not infringed and is not infringing the '610 Patent.

83. The BAI Products have substantial non-infringing uses.

84. There exists a real and actual controversy between BAI and Defendants concerning the infringement of the '610 Patent.

85. BAI is entitled to a declaratory judgment that it has not directly or indirectly

infringed and is not infringing the '610 Patent.

86. Due to the exceptional circumstances of this case, the Court should award BAI its attorneys' fees pursuant to 35 U.S.C. § 285.

WHEREFORE, BAI respectfully requests this Court: i) enter a declaratory judgment and decree holding that the '610 Patent is not infringed by BAI; and ii) grant such further relief as is just, fair, and equitable.

**COUNT III**  
**LANHAM ACT UNFAIR COMPETITION AND**  
**FALSE AND DECEPTIVE ADVERTISING**  
(as to Airbiotics only)

87. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

88. Defendants, through their counsel, in the names of RBH and AIRBIOTICS, have written to BAI Affiliates and accused the Accused Device of infringing their trade dress and design. However, Defendants know they own no trade dress or design embodied in the Accused Device.

89. The Bad Faith Demands were authorized and ratified by TBH and RM, which had the ability to control the sending of the Bad Faith Demands.

90. Notably, while claiming trade dress in their design, Defendants tell the Court that they are not selling their device. Consequently, as a matter of law, Defendants cannot have any acquired distinctiveness in their design and their allegations to BAI Affiliates that BAI's product, the Accused Device infringes Defendant's trade dress is false.

91. In fact, Defendants unlawfully copied BAI's "patent pending" design from confidential design documents that they acquired from BAI.

92. Defendants also falsely claim, in interstate commerce, that "Airbiotics invented

and pioneered its patented BioZone Probiotics™ - the concept of deploying safe environmental probiotic protection against harmful indoor contaminants and allergens that can flourish indoors.” However, Defendants do not have any patent on BioZone Probiotics™.

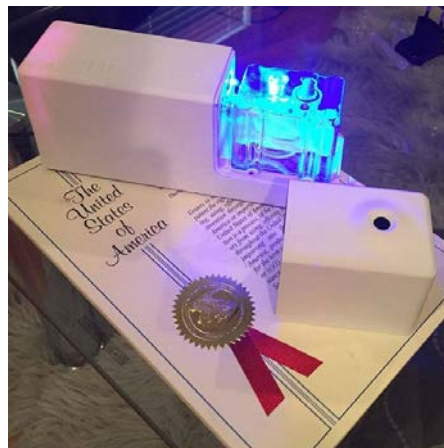
93. In fact, internationally, BioZone is a trademark of BAI for its Probiotics that Defendants copied from BAI.

94. Airbiotics falsely advertises that “[i]ntroducing Airbiotic 1, the world’s first and only probiotic solution for protecting indoor environments. Utilizing patented StaBiotics™ technology, Airbiotic 1 emits a safe, all-natural probiotic that works to restore the natural balance of your indoor environment – both in the air and on the surfaces you come in contact with.” The Airbiotic 1 is not the first or only probiotic solution for protecting indoor environments, and the Defendants have not patented the use of “StaBiotics” technology.

95. Airbiotics falsely advertises “Airbiotics’ Microbial BioZone Probiotics™ is the only technology in the world based on the Environmental Probiotic Concept.”

96. Airbiotics falsely advertises “Airbiotic 1 emits our patented probiotic mist into the air.” Defendants have no patent on a probiotic mist.

97. On their website, social media, facebook, Instagram, Defendants falsely advertise the Airbiotic 1 as patented:



98. Defendants have released false and misleading videos regarding the Airbiotic1:



99. On Robert Meirovich's website, <http://RobertMeirovich.me>, Defendant Meirovich falsely advertises:

Robert Is The CEO Of AirBiotics Usa, Owners of The Greatest Probiotics Technology On Earth AirBiotics USA is . . . backed by a group of innovative entrepreneurs and over 10 years of proven research and development. Their first market-ready, *patented device*, the Air Biotics 1, is scheduled to launch in the USA in 2015 . . .

(emphasis added). The Airbiotic1 does not practice the '610 Patent.

100. Meirovich also falsely advertises:

now leading and guiding the company [Airbiotics] as it transforms into a premier national brand . . . AirBiotics is an emerging technology that combines proven probiotic solutions with a new revolutionary, patented device called AirBiotic 1. . .

101. TBH is one of the financial bakers of Airbiotics. TBH stands to directly benefit from the false advertising and continues to contribute to, finance, back Defendants' false and deceptive advertising scheme knowing that it is patently false and deceptive.



102. TBH was also involved in and copied on correspondence regarding application for '610 Patent and knows that it was to be registered to BAI.

103. While RBH and TBH were representing BAI, Robert Meirovich was consulted with BAI and provided with confidential information from BAI.

104. RM and the Ben Haims know or should know that the Airbiotic1 is a copy of BAI's Accused Device.

105. In fact RM and the Ben Haims obtained stolen design documents, products specifications, marketing and pricing information from BAI on false presences and outright theft.

106. Also, as CEO of Airbiotics, RM was fully aware of, and directed in concert with the other Defendants, the false advertising herein.

107. Defendants have intentionally chosen to use branding that is similar and colorable imitations of the branding and trademarks that is used by BAI internationally.

108. For example, internationally, BAI uses the branding "Better Air" for its Accused Device and automated probiotic dispersal products, cartridges and solutions.

109. BAI used the following design mark:



110. Internationally, BAI uses various marks such as BioZone Probiotics, NEP - Natural Environmental Probiotics, "Your air your choice", Ecological Balancing System which Defendants have copied or use confusingly similar marks in their advertising and marketing.

111. When contracted and employed by Plaintiff, Defendants used these and other

marks to identify Plaintiff's goods and services.

112. Defendants' tradename and false and misleading statements are likely to confuse consumers and constitute unfair competition and false advertising.

113. Defendants' published statements made in connection with the Accused Device and their competing goods and services (e.g., the Airbiotic<sup>1</sup>) are false or misleading descriptions and representations of fact, which are in commercial advertising and promotion, misrepresentative of the nature, characteristics, qualities, Defendants' and BAI's goods, services, or commercial activities.

114. Defendants' deception in their advertising and Bad Faith Demands has created a cloud on title and has and is likely to cause Plaintiff's customers and distributors to withhold trade which economically injures the Plaintiff.

115. Defendants' false advertising and statements have caused an injury to Plaintiff's commercial interest in its reputation and sales.

116. BAI is being harmed by Defendants' false and misleading advertising and promotion.

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Airbiotics from further unfair competition and false advertising; ii) award BAI damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

**COUNT IV**  
**FLORIDA COMMON LAW UNFAIR COMPETITION AND**  
**FALSE AND DECEPTIVE ADVERTISING**  
(as to Airbiotics only)

117. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73 and 88-116, above.

118. Airbiotics false and misleading statements in Florida are likely to confuse consumers in Florida and constitute unfair competition.

119. Airbiotics published statements made in connection with the Accused Device and their competing goods and services are false or misleading descriptions and representations of fact, which are in commercial advertising and promotion, misrepresentative of the nature, characteristics, qualities, Defendants' and BAI's goods, services, or commercial activities.

120. Plaintiff has been damaged by Airbiotics intentional, bad faith, false and misleading descriptions of Plaintiffs goods and Defendants competing products.

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Airbiotics from further unfair competition and false advertising; ii) award BAI damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

**COUNT V**  
**FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES**  
(as to Airbiotics only)

121. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73 and 88-116, above.

122. Airbiotics have, in bad faith, unfairly and deceptively targeted BAI with bogus demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets made against BAI and the BAI Affiliates in relation to the Accused Device.

123. Airbiotics falsely advertises its own products as patented when they know that their products do not practice the '610 Patent and that the '610 Patent is unenforceable.

124. Airbiotics' actions harm BAI as Defendants' competitor and are deceptive and misleading to consumers, including BAI Affiliates, and constitute deceptive unfair trade practices under Florida law.

125. Airbiotics deceptive and unfair trade practices has caused Plaintiff reputational, economic and irreparable harm.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Airbiotics from further deceptive and unfair trade practices; ii) award BAI damages, costs and attorneys' fees pursuant to Fla. Stat. § 501.2105; and iii) grant such relief as is just, fair, and equitable.

**COUNT VI**  
**CONVERSION OF PROTOTYPES, CONFIDENTIAL DOCUMENTS, AND**  
**CONFIDENTIAL INFORMATION**  
(as to Airbiotics only)

126. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

127. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took highly confidential documents and other materials, including but not limited to: BA-008 equipment, files, data, customer lists, parts lists, and supply lists (collectively the "Better Air Property") relating to the BA-008 and Better Air's business.

128. A frame from one of the surveillance recordings from that night appears below showing the Ben Haims working in concert to steal confidential and documents and information from BAI.



129. Then, the Ben Haims absconded from Israel to Florida with the confidential information in furtherance of their plan to unlawfully compete and tortuously interfere with BAI.

130. The Better Air Property was kept in a locked office and monitored by a security system.

131. The Ben Haims were not authorized to access the Better Air Property or remove it from Better Air's offices.

132. The Ben Haims along with the other Defendants, RM and AIRBIOTICS, have knowingly used the stolen information in Florida to unlawfully interfere and compete with BAI in United States and abroad.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Airbiotics from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT VII**  
**CONVERSION of the '610 Patent**  
(as to Airbiotics only)

133. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

134. Through trick and deceit, RBH embezzled the '610 Patent in his own name when in fact he was directed to acquire it for BAI.

135. In fact, RBH requested and was reimbursed from BAI for the application costs and attorneys' fees for the '610 Patent and a related PCT application.

136. After the '610 Patent issued from the USPTO, RBH permitted AIRBIOTICS to reap the benefits of the monopoly rights granted under the '610 Patent.

137. AIRBIOTICS uses BAI's patented technology and claims rights to the '610 Patent as part of its business.

138. AIRBIOTICS has knowingly used the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI in United States and abroad.

139. Such action by AIRBIOTICS is inconsistent with BAI's ownership in the '610 Patent and underlying technology.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Airbiotics from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT VIII**  
**CORRECTION OF NAMED INVENTOR OF '610 PATENT**

(as to Roei Ben Haim only )

140. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1 through 73, above.

141. Michael Hoffman and/or other engineers on the behalf of BAI and BAIL conceived of the subject matter of the '610 Patent.

142. Michael Hoffman and/or the other engineers have assigned or are obligated to assign all their rights in the invention to BAI.

143. It was error for Defendants RBH and AIRBIOTICS to withhold from the USPTO the name of the proper inventors in the '610 Patent.

144. Pursuant to 35 U.S.C. § 256(a)-(b), the Court may order correction of the patent on notice and hearing of all parties concerned and the Director shall issue a certificate accordingly.

WHEREFORE, BAI respectfully requests that if this Court determines that '610 Patent is otherwise valid, that it: a) order the Director of the USPTO to correct the patent as is proper; and ii) grant such relief as is just, fair, and equitable.

**COUNT IX**  
**TORTIOUS INTERFERENCE WITH ACTUAL**  
**AND PROSPECTIVE BUSINESS RELATIONSHIPS**  
**(as to Airbiotics only)**

145. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

146. BAI entered into an agreement with Better Air North America, LLC, a Florida entity, to market and sell the BA-008 and other BAI products in the U.S. market. See Exhibit B.

147. Airbiotics knows of this agreement.

148. Airbiotics has, in bad faith, unfairly and deceptively targeted BAI Affiliates with bogus demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets made against BAI and the BAI Affiliates in relation to the Accused Device.

149. Airbiotics has refused to retract and correct its false statements, which have caused Plaintiff's distributors and customers, including Better Air North America, LLC, to require judicial resolution of Airbiotics' wrongful interference and intermeddling with the BAI Affiliates and other customers, distributors and licensees.

150. Airbiotics has interfered with BAI's potential investors while obtaining investment into its competing enterprise based upon false premises.

151. Airbiotics has harmed BAI's marketing and distribution of the Accused Device and related products.

152. Airbiotics also falsely advertised its own products as patented when it knew that its products do not practice the '610 Patent and that the '610 Patent is unenforceable. This creates the false commercial impression that any non-licensed device that is identical to Airbiotics' device is infringing.

153. However, Airbiotics has actually copied BAI's design.

154. Airbiotics is aware of BAI's business relationships with its customers, distributors, representatives, suppliers and customers.

155. BAI Affiliates have demanded resolution of Airbiotics' claims and threats made against the BAI Affiliates based upon Airbiotics' false representations of BAI and its products including the Accused Device.

156. Airbiotics' used its false and deceptive actions to target BAI's suppliers and unlawfully interfere with BAI's exclusive supply contracts.

157. Airbiotics' intentional, and unjustified, interference with all of these relationships has caused BAI damage.

158. Airbiotics' actions constitute tortious interference under Florida law.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Airbiotics from further tortious interference; ii) awarding BAI actual and punitive damages; and iii) grant such relief as is just, fair, and equitable.



**COUNT X**  
**TORTIOUS INTERFERENCE WITH ACTUAL**  
**AND PROSPECTIVE BUSINESS RELATIONSHIPS**  
(as to Roei Ben Haim only)

159. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

160. RBH has, in bad faith, unfairly and deceptively targeted BAI Affiliates with bogus demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets made against BAI and the BAI Affiliates in relation to the Accused Device.

161. BAI entered into an agreement with Better Air North America, LLC, a Florida entity, to market and sell the BA-008 and other BAI products in the U.S. market. See Exhibit B.

162. RBH has refused to retract and correct his false statements to BAI's customers and distributors. This has caused BAI distributors and customers, including Better Air North America, LLC, to require judicial resolution of RBH's wrongful interference and intermeddling with the BAI Affiliates and other customers, distributors and licensees.

163. RBH intended to and has interfered with BAI's potential investors while obtaining investment into his competing enterprise based upon false premises.

164. RBH also harmed BAI's marketing and distribution of the Accused Device and related products.

165. RBH also falsely advertised Airtbiotics products as patented when he knows that its products do not practice the '610 Patent and that the '610 Patent is unenforceable. This creates the false commercial impression that the BA-008 is infringing because Airtbiotics products were copied from the BA-008.

166. RBH with TBH actually misappropriated BAI's design and provided it to Airtbiotics and RM.

167. RBH is aware of BAI's business relationships with its customers, distributors, representatives, suppliers and customers.

168. BAI Affiliates have demanded resolution of RBH' claims and threats made against the BAI Affiliates based upon RBH' false representations of BAI and its products including the Accused Device.

169. RBH's intentional, and unjustified, interference with these relationships have caused BAI damage.

170. RBH's actions constitute tortious interference under Florida law.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Roei Ben Haim from further tortious interference; ii) awarding BAI actual and punitive damages; and iii) grant such relief as is just, fair, and equitable.

**COUNT XI**  
**TORTIOUS INTERFERENCE WITH ACTUAL**  
**AND PROSPECTIVE BUSINESS RELATIONSHIPS**  
(as to Tal Ben Haim only)

171. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

172. BAI entered into an agreement with Better Air North America, LLC, a Florida entity, to market and sell the BA-008 and other BAI products in the U.S. market. See Exhibit B.

173. TBH has, in bad faith, unfairly and deceptively used AIRBITOICS to target BAI Affiliates with bogus demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets made against BAI and the BAI Affiliates in relation to the Accused Device.

174. TBH financed the false statements and authorized Defendants' actions knowing they would cause Plaintiff's distributors and customers, including Better Air North America,

LLC, to require judicial resolution of TBH's wrongful interference and intermeddling with the BAI Affiliates and other customers, distributors and licensees.

175. TBH intended to interfere with BAI's potential investors while obtaining investment into their competing enterprise based upon false premises.

176. TBH also intended to harm BAI's marketing and distribution of the Accused Device and related products.

177. TBH also falsely advertised its own products as patented when he knew that his products, through Airbiotics, do not practice the '610 Patent and that the '610 Patent is unenforceable. This creates the false commercial impression that any non-licensed device that is identical to TBH's device is infringing.

178. However, TBH has actually copied BAI's design.

179. RBH with TBH actually misappropriated BAI's design and provided it to Airbiotics and RM.

180. TBH is aware of BAI's business relationships with its customers, distributors, representatives and customers.

181. BAI Affiliates have demanded resolution of TBH's claims and threats made against the BAI Affiliates based upon TBH's false representations of BAI and its products including the Accused Device.

182. TBH's intentional, and unjustified, interference with these relationships have caused BAI damage.

183. TBH's actions constitute tortious interference under Florida law.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Tal Ben Haim from further tortious interference; ii) awarding BAI actual and punitive damages; and iii) grant such relief as is just, fair, and equitable.

**COUNT XII**  
**TORTIOUS INTERFERENCE WITH ACTUAL**  
**AND PROSPECTIVE BUSINESS RELATIONSHIPS**  
(as to Robert Meirovich only)

184. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

185. BAI entered into an agreement with Better Air North America, LLC, a Florida entity, to market and sell the BA-008 and other BAI products in the U.S. market. See Exhibit B.

186. RM has, in bad faith, unfairly and deceptively used AIRBIOTICS to target BAI Affiliates with bogus demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets made against BAI and the BAI Affiliates in relation to the Accused Device.

187. RM has refused to retract and correct the false statements he authorized and directed AIRBIOTICS to make against BAI, which have caused Plaintiff's distributors and customers, including Better Air North America, LLC, to require judicial resolution of RM's wrongful interference and intermeddling with the BAI Affiliates and other customers, distributors and licensees.

188. RM intended to interfere with BAI's potential investors while obtaining investment into their competing enterprise based upon false premises.

189. RM also intended to harm BAI's marketing and distribution of the Accused Device and related products.

190. RM also authorized and directed AIRBIOTICS to falsely advertised its own products as patented when they know that their products do not practice the '610 Patent and that the '610 Patent is unenforceable. This creates the false commercial impression that any non-licensed device that is identical to AIRBIOTICS' device is infringing.

191. However, RM has actually copied BAI's design.

192. RM is aware of BAI's business relationships with its customers, distributors, representatives and customers.

193. BAI Affiliates have demanded resolution of RM's claims and threats made against the BAI Affiliates based upon RM's false representations of BAI and its products including the Accused Device.

194. RM's intentional, and unjustified, interference with these relationships have caused BAI damage.

195. RM's actions constitute tortious interference under Florida law.

196. RM ratified AIRBIOTICS' actions against BAI's business relationships.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining RM from further tortious interference; ii) awarding BAI actual and punitive damages; and iii) grant such relief as is just, fair, and equitable.

### **COUNT XIII**

#### **LIBEL**

(as to Airbiotics and Roei Ben Haim only)

197. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

198. AIRBIOTICS and RBH wrote to BAI Affiliates making demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets.

199. AIRBIOTICS and RBH's letters include false statements of fact regarding BAI, the Accused Device, and BAI's actions directed at BAI Affiliates.

200. AIRBIOTICS and RBH's Bad Faith Demands to BAI Affiliates falsely claim the Accused Device infringes the '610 Patent and falsely claims BAI is engaging in unfair competition and theft of trade secrets. The Bad Faith Demands accused the BAI Affiliates of crimes and threaten to sue BAI Affiliates and their spouses for punitive damages and injunctive relief if they sell or offer to sell BAI's Accused Device.

201. The Bad Faith Demands are libelous per se given AIRBIOTICS and RBH's false claims of infringement of the '610 Patent and resulting damage to BAI's business.

202. A comparison of the Accused Device to the '610 Patent contradicts AIRBIOTICS and RBH's baseless claim of patent infringement. AIRBIOTICS and RBH's knew, or recklessly disregarded, that the statements regarding patent infringement, unfair competition and theft of trade secrets in the Bad Faith Demands were false.

203. AIRBIOTICS and RBH's letters were maliciously directed at BAI and BAI Affiliates, resulting in damage to BAI's business in the United States and internationally.

204. BAI Affiliates have demanded that BAI remove the patent and AIRBIOTICS and RBH's threats as a barrier to their ability to sell the BA-008, clear the title to the intellectual property in the BA-008, and obtain definitive legal resolution AIRBIOTICS and RBH's claims of infringement and misappropriation against them as users, sellers and distributors of the Accused Device.

WHEREFORE, BAI respectfully requests this Court: i) enter permanent injunction enjoining AIRBIOTICS and RBH from further damaging communications; ii) awarding BAI damages, including but not limited to loss sales and all legal fees and costs incurred in

investigating and obtaining resolution and retraction of AIRBIOTICS and RBH's Bad Faith Demands; and iii) grant such relief as is just, fair, and equitable.

**COUNT XIV**  
**LIBEL**  
(as to Tal Ben Haim only)

205. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

206. TBH financed the letters RBH and AIRBIOTICS wrote to BAI Affiliates making demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets.

207. AIRBIOTICS was an alter ego of TBH and the other Defendants used in furtherance of the Defendants' scheme to harm BAI and defraud consumers with sham accusations.

208. The letters TBH financed resulted in false statements of fact regarding BAI, the Accused Device, and BAI's actions directed at BAI Affiliates.

209. TBH knew the statements made by RBH and AIRBIOTICS were false.

210. AIRBIOTICS and RBH's Bad Faith Demands to BAI Affiliates falsely claim the Accused Device infringes the '610 Patent and falsely claims BAI is engaging in unfair competition and theft of trade secrets. The Bad Faith Demands accused the BAI Affiliates of crimes and threaten to sue BAI Affiliates and their spouses for punitive damages and injunctive relief if they sell or offer to sell BAI's Accused Device.

211. The Bad Faith Demands are libelous per se given AIRBIOTICS and RBH's false claims of infringement of the '610 Patent and resulting damage to BAI's business.

212. A comparison of the Accused Device to the '610 Patent contradicts AIRBIOTICS and RBH's baseless claim of patent infringement. AIRBIOTICS and RBH's knew, or recklessly disregarded, that the statements regarding patent infringement, unfair competition and theft of trade secrets in the Bad Faith Demands were false.

213. The letters TBH financed were maliciously directed at BAI and BAI Affiliates, resulting in damage to BAI's business in the United States and internationally.

214. BAI Affiliates have demanded that BAI remove the patent and AIRBIOTICS and RBH's threats as a barrier to their ability to sell the BA-008, clear the title to the intellectual property in the BA-008, and obtain definitive legal resolution of AIRBIOTICS and RBH's claims, sponsored by TBH, of infringement and misappropriation against them as users, sellers and distributors of the Accused Device.

WHEREFORE, BAI respectfully requests this Court: i) enter permanent injunction enjoining TBH from further damaging communications; ii) awarding BAI damages, including but not limited to loss sales and all legal fees and costs incurred in investigating and obtaining resolution and retraction of TBH's Bad Faith Demands; and iii) grant such relief as is just, fair, and equitable.

**COUNT XV**

**LIBEL**

(as to Robert Meirovich only)

215. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

216. RM, as CEO of AIRBIOTICS, approved and ratified AIRBIOTICS writing threatening letters to BAI Affiliates making demands, claims, and published statements of patent infringement, unfair competition and theft of trade secrets.



217. AIRBIOTICS was an alter ego of RM and the other Defendants used in furtherance of the Defendants' scheme to harm BAI and defraud consumers with sham accusations.

218. RM authorized and directed AIRBIOTICS' letters that included false statements of fact regarding BAI, the Accused Device, and BAI's actions directed at BAI Affiliates.

219. RM authorized and directed AIRBIOTICS' Bad Faith Demands to BAI Affiliates falsely claim the Accused Device infringes the '610 Patent and falsely claims BAI is engaging in unfair competition and theft of trade secrets. The Bad Faith Demands accused the BAI Affiliates of crimes and threaten to sue BAI Affiliates and their spouses for punitive damages and injunctive relief if they sell or offer to sell BAI's Accused Device.

220. The Bad Faith Demands are libelous per se given AIRBIOTICS and RBH's false claims of infringement of the '610 Patent and resulting damage to BAI's business.

221. A comparison of the Accused Device to the '610 Patent contradicts AIRBIOTICS baseless claim of patent infringement. RM knew, or recklessly disregarded, that AIRBIOTICS' statements regarding patent infringement, unfair competition and theft of trade secrets in the Bad Faith Demands were false.

222. AIRBIOTICS' letters, approved and ratified by RM, were maliciously directed at BAI and BAI Affiliates, resulting in damage to BAI's business in the United States and internationally.

223. BAI Affiliates have demanded that BAI remove the patent and AIRBIOTICS' threats as a barrier to their ability to sell the BA-008, clear the title to the intellectual property in the BA-008, and obtain definitive legal resolution AIRBIOTICS claims of infringement and misappropriation against them as users, sellers and distributors of the Accused Device.

WHEREFORE, BAI respectfully requests this Court: i) enter permanent injunction enjoining RM from further damaging communications; ii) awarding BAI damages, including but not limited to loss sales and all legal fees and costs incurred in investigating and obtaining resolution and retraction of AIRBIOTICS and RBH's Bad Faith Demands; and iii) grant such relief as is just, fair, and equitable.

**COUNT XVI**  
**CONVERSION OF PROTOTYPES, CONFIDENTIAL DOCUMENTS, AND**  
**CONFIDENTIAL INFORMATION**  
(as to Roei Ben Haim only)

224. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

225. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took highly confidential documents and other materials belonging to Better Air.

226. The Better Air documents and materials included: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business.

227. A frame from one of the surveillance recordings from that night appears below showing the Ben Haims working in concert to steal confidential and documents and information from BAI.



228. TBH appears on the left of the frame in a black t-shirt, and RBH appears on the right of the frame in a blue soccer t-shirt.

229. Then, the Ben Haims absconded from Israel to Florida with the confidential documents and materials in furtherance of their plan to unlawfully compete and tortuously interfere with BAI.

230. The Better Air Property was kept in a locked office and monitored by a security system.

231. The Ben Haims were not authorized to access the Better Air Property or remove it from Better Air's offices.

232. The Ben Haims reverse engineered the stolen BA-008 prototype, which was not publically available, using the confidential documents and materials stolen from BAI.

233. The Ben Haims have knowingly used the stolen information in Florida to unlawfully interfere and compete with BAI in United States and abroad.

234. The Ben Haims taking of the confidential documents and materials from BAI is inconsistent with BAI's ownership of such materials.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Roei Ben Haim from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT XVII**  
**CONVERSION OF PROTOTYPES, CONFIDENTIAL DOCUMENTS, AND**  
**CONFIDENTIAL INFORMATION**  
(as to Tal Ben Haim only)

235. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

236. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took highly confidential documents and other materials belonging to Better Air.

237. The Better Air documents and materials included: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business.

238. A frame from one of the surveillance recordings from that night appears below showing the Ben Haims working in concert to steal confidential and documents and information from BAI.



239. TBH appears on the left of the frame in a black t-shirt, and RBH appears on the right of the frame in a blue soccer t-shirt.

240. The Better Air Property was kept in a locked office and monitored by a security system.

241. The Ben Haims were not authorized to access the Better Air Property or remove it from Better Air's offices.

242. Then, the Ben Haims absconded from Israel to Florida with the confidential documents and materials in furtherance of their plan to unlawfully compete and tortuously interfere with BAI.

243. The Ben Haims reverse engineered the stolen BA-008 prototype, which was not publically available, using the confidential documents and materials stolen from BAI.

244. The Ben Haims have knowingly used the stolen information in Florida to unlawfully interfere and compete with BAI in United States and abroad.

245. The Ben Haims taking of the confidential documents and materials from BAI is inconsistent with BAI's ownership of such materials.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Tal Ben Haim from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT XVIII**  
**CONVERSION OF PROTOTYPES, CONFIDENTIAL DOCUMENTS, AND**  
**CONFIDENTIAL INFORMATION**  
(as to Robert Meirovich only)

246. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

247. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took highly confidential documents and other materials belonging to Better Air.

248. The Better Air documents and materials included: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business.

249. A frame from one of the surveillance recordings from that night appears below showing the Ben Haims working in concert to steal confidential and documents and information from BAI.



250. TBH appears on the left of the frame in a black t-shirt, and RBH appears on the right of the frame in a blue soccer t-shirt.

251. The Better Air Property was kept in a locked office and monitored by a security system.

252. The Ben Haims were not authorized to access the Better Air Property or remove it from Better Air's offices.

253. Then, the Ben Haims absconded from Israel to Florida with the confidential documents and materials in furtherance of their plan to unlawfully compete and tortuously interfere with BAI.

254. The Ben Haims provided Better Air's documents and materials to RM and Airbitotics to unlawfully interfere and compete with BAI in United States and abroad.

255. The Ben Haims worked with RM to reverse engineer the stolen BA-008 prototype, which was not publically available, using the confidential documents and materials stolen from BAI.

256. RM accepted and used the documents and materials stolen from Better Air in furtherance of his own financial benefit.

257. RM's acceptance and use of BAI's confidential documents and materials is inconsistent with BAI's ownership of such materials.

258. RM uses the technology gleaned from the documents and materials stolen from BAI's office on his personal website and has a direct financial interest in such stolen materials.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Robert Meirovich from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT XIX**  
**CONVERSION of the '610 Patent**  
(as to Roei Ben Haim only)

259. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

260. Through trick and deceit, RBH embezzled the '610 Patent in his own name when in fact he was directed to acquire it for BAI.

261. In fact, RBH requested and was reimbursed from BAI for the application costs and attorneys' fees for the '610 Patent and a related PCT application.

262. RBH had a fiduciary duty to BAI due to his interest in BAIL.

263. RBH spoke with BAI's attorney, on behalf of BAI, while misappropriating the information needed to procure the '610 Patent.

264. After the '610 Patent issued from the USPTO, RBH reaped the benefits of the monopoly rights granted under the '610 Patent that belong to BAI.

265. RBH has knowingly used the fraudulently obtained '610 Patent, directly and through his direction of AIRBITOICS, in Florida to unlawfully interfere and compete with BAI in United States and abroad.

266. Such action by RBH is inconsistent with BAI's true ownership of the '610 Patent and underlying technology.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Roei Ben Haim from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT XX**  
**CONVERSION of the '610 Patent**  
(as to Tal Ben Haim only)

267. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

268. Through trick and deceit, RBH embezzled the '610 Patent in his own name when in fact he was directed to acquire it for BAI.

269. In fact, RBH requested and was reimbursed from BAI for the application costs and attorneys' fees for the '610 Patent and a related PCT application.

270. After the '610 Patent issued from the USPTO, RBH permitted TBH to reap the benefits of the monopoly rights granted under the '610 Patent.

271. TBH uses BAI's patented technology and claims rights to the '610 Patent as part of the AIRBIOTICS business, in which TBH finances.

272. TBH has knowingly used the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI in United States and abroad.

273. TBH has ratified AIRBIOTICS' actions relating to BAI's patented technology.

274. Such action by TBH is inconsistent with BAI's ownership in the '610 Patent and underlying technology.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Tal Ben Haim from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.



**COUNT XXI**  
**CONVERSION of the '610 Patent**  
(as to Robert Meirovich only)

275. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

276. Through trick and deceit, RBH embezzled the '610 Patent in his own name when in fact he was directed to acquire it for BAI.

277. In fact, RBH requested and was reimbursed from BAI for the application costs and attorneys' fees for the '610 Patent and a related PCT application.

278. After the '610 Patent issued from the USPTO, RBH permitted RM, through his direction of AIRBIOTICS, to reap the benefits of the monopoly rights granted under the '610 Patent.

279. RM directs AIRBITOICS' use BAI's patented technology and claims rights to the '610 Patent as part of the AIRBIOTICS business.

280. RM makes specific references to the '610 Patent on his personal website and has a direct financial interest in using the underlying technology covered in the '610 Patent.

281. RM has knowingly used the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI in United States and abroad.

282. Such action by RM is inconsistent with BAI's ownership in the '610 Patent and underlying technology.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Robert Meirovich from further conversion; ii) return of the stolen property; iii) award BAI damages, and costs; and iv) grant such relief as is just, fair, and equitable.

**COUNT XXII**  
**MISAPPROPRIATION OF TRADE SECRETS**  
(as to Roei Ben Haim only)

283. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, 225-234, and 260-266, above.

284. RBH has knowingly used the stolen information and the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI.

285. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took the highly confidential documents and materials owned by Better Air.

286. RBH stole highly confidential documents and other materials belonging to Better Air, including: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business (collectively the "Trade Secret Materials").

287. RBH stole the Trade Secret Materials for his personal gain and for the benefit of AIRBIOTICS, an entity he directed.

288. BAI stored these documents and materials in a locked facility in Israel with surveillance cameras in which authorized access was required to gain entry.

289. BAI required persons that had access or were allowed to possess the Trade Secret Materials to sign confidentiality and non-disclosure agreements.

290. RBH was not authorized to access the Trade Secret Materials.

291. By being secret, the Trade Secret Materials conferred a competitive advantage to BAI.

292. Not only did RBH misappropriate information regarding Plaintiff's inventions which it intended to patent, RBH also misappropriated Plaintiff's prototype design documents,

sourcing information, pricing information and marketing plans.

293. The information misappropriated by RBH possesses independent economic value derived from not being generally known to others who can obtain economic value from its disclosure is not be readily ascertainable by proper means by those who can obtain value from it, and was subject of efforts that are reasonable under the circumstances to maintain its secrecy.

294. BAI's damages include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

295. Alternatively, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

296. RBH's misappropriation was "willful and malicious" and the court should enter treble damages.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Roei Ben Haim from further use of the misappropriated trade secrets; ii) award BAI treble damages, costs and attorneys' fees pursuant to Fla. Stat. § 688.004(1)-(2); and iii) grant such relief as is just, fair, and equitable.

**COUNT XXIII**  
**MISAPPROPRIATION OF TRADE SECRETS**  
(as to Tal Ben Haim only)

297. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, 236-245, and 268-274, above.

298. TBH has knowingly used the stolen information and the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI.

299. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took the highly confidential documents and materials owned by Better Air.

300. TBH stole highly confidential documents and other materials belonging to Better Air, including: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating to the BA-008 and Better Air's business.

301. BAI stored these documents and materials in a locked facility in Israel with surveillance cameras in which authorized access was required to gain entry.

302. BAI required persons that had access or were allowed to possess the Trade Secret Materials to sign confidentiality and non-disclosure agreements.

303. TBH was not authorized to access the Trade Secret Materials.

304. By being secret, the Trade Secret Materials conferred a competitive advantage to BAI.

305. Not only did TBH misappropriate information regarding Plaintiff's inventions which it intended to patent, TBH also misappropriated Plaintiff's prototype design documents, sourcing information, pricing information and marketing plans.

306. The information misappropriated by TBH possesses independent economic value derived from not being generally known to others who can obtain economic value from its disclosure is not readily ascertainable by proper means by those who can obtain value from it, and was subject of efforts that are reasonable under the circumstances to maintain its secrecy.

307. BAI's damages include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

308. Alternatively, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

309. TBH's misappropriation was "willful and malicious" and the court should enter treble damages.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining Defendant Tal Ben Haim from further use of the misappropriated trade secrets; ii) award BAI treble damages, costs and attorneys' fees pursuant to Fla. Stat. § 688.004(1)-(2); and iii) grant such relief as is just, fair, and equitable.

**COUNT XXIV**  
**MISAPPROPRIATION OF TRADE SECRETS**

(as to Robert Meirovich only)

310. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, 247-258, and 276-282, above.

311. RM has knowingly used the stolen information and the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI.

312. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took the highly confidential documents and materials owned by Better Air.

313. The Ben Haims stole highly confidential documents and other materials belonging to Better Air, including: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business.

314. BAI stored these documents and materials in a locked facility in Israel with surveillance cameras in which authorized access was required to gain entry.

315. BAI required persons that had access or were allowed to possess the Trade Secret Materials to sign confidentiality and non-disclosure agreements.

316. The Ben Haims were not authorized to access the Trade Secret Materials.

317. By being secret, the Trade Secret Materials conferred a competitive advantage to BAI.

318. RM received the Trade Secret Materials from the Ben Haims and used them for his personal benefit and for the benefit of AIRBIOTICS.

319. Not only did RM misappropriate information regarding Plaintiff's inventions which it intended to patent, RM also misappropriated Plaintiff's prototype design documents, sourcing information, pricing information and marketing plans.

320. The information misappropriated by RM possesses independent economic value derived from not being generally known to others who can obtain economic value from its disclosure is not be readily ascertainable by proper means by those who can obtain value from it, and was subject of efforts that are reasonable under the circumstances to maintain its secrecy.

321. BAI's damages include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

322. Alternatively, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

323. RM's misappropriation was "willful and malicious" and the court should enter treble damages.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining RM from further use of the misappropriated trade secrets; ii) award BAI treble damages, costs and attorneys' fees pursuant to Fla. Stat. § 688.004(1)-(2); and iii) grant such relief as is just, fair, and equitable.

**COUNT XXV**  
**MISAPPROPRIATION OF TRADE SECRETS**  
(as to Airbiotics only)

324. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, 127-132, and 134-139, above.

325. AIRBIOTICS has knowingly used the stolen information by the Ben Haims and the fraudulently obtained '610 Patent in Florida to unlawfully interfere and compete with BAI.

326. The Ben Haims, on or about May 22-23, 2014, in the middle of the night, unlawfully and surreptitiously broke into and entered Better Air's offices and took the highly confidential documents and materials owned by Better Air.

327. AIRBIOTICS, through its principals the Ben Haims, stole highly confidential documents and other materials belonging to Better Air, including: BA-008 equipment, files, data, customer lists, parts lists, and supply lists relating the BA-008 and Better Air's business.

328. BAI stored these documents and materials in a locked facility in Israel with surveillance cameras in which authorized access was required to gain entry.

329. BAI required persons that had access or were allowed to possess the Trade Secret Materials to sign confidentiality and non-disclosure agreements.

330. The Ben Haims were not authorized to access the Trade Secret Materials.

331. By being secret, the Trade Secret Materials conferred a competitive advantage to BAI.

332. AIRBIOTICS received the Trade Secret Materials from the Ben Haims and used them for its own benefit.

333. Not only did AIRBIOTICS misappropriate information regarding Plaintiff's inventions which it intended to patent, AIRBIOTICS also misappropriated Plaintiff's prototype design documents, sourcing information, pricing information and marketing plans.

334. The information misappropriated by AIRBIOTICS possesses independent economic value derived from not being generally known to others who can obtain economic value from its disclosure is not be readily ascertainable by proper means by those who can obtain value from it, and was subject of efforts that are reasonable under the circumstances to maintain its secrecy.

335. BAI's damages include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

336. Alternatively, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

337. AIRBIOTICS' misappropriation was "willful and malicious" and the court should enter treble damages.

WHEREFORE, BAI respectfully requests this Court: i) enter a permanent injunction enjoining AIRBIOTICS from further use of the misappropriated trade secrets; ii) award BAI treble damages, costs and attorneys' fees pursuant to Fla. Stat. § 688.004(1)-(2); and iii) grant such relief as is just, fair, and equitable.



**COUNT XXVI**  
**VIOLATION OF FLORIDA'S ANTI-PATENT TROLL PREVENTION ACT**  
(as to Roei Ben Haim only)

338. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

339. "Demand letter" means a letter, e-mail, or other written communication asserting or claiming that a person has engaged in patent infringement.

340. BAI has been aggrieved by RBH's repeated bad faith assertions of patent infringement against BAI and the BAI Affiliates, including the Bad Faith Demands.

341. RBH and Airbiotics have made the Bad Faith Demands against BAI and its Affiliates.

342. RBH's Demand letters have threatened and caused concerns and interference with BAI customers and distributors.

343. BAI has been contacted by its customers and distributors and informed that if the Bad Faith Demands were true its customers and distributors would consider BAI in breach of its contracts with them.

344. BAI's customers and distributors have demanded assurances, guarantees and judicial resolution that the Bad Faith Demands are false.

345. The Bad Faith Demands have hindered investment in and marketing of the Accused Device.

346. For example, RBH's **July 21, 2015** Demand letter accuses BAI and the Accused Device of infringement, however the July 21, 2015 Demand letter does not contain the following information:

- a) the patent number;

- b) the name and address of the patent owner and assignee, if any; and
- c) factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

347. Moreover, before sending the any of the Bad Faith Demand letters, including the July 21 Demand letter, RBH and Defendants failed to conduct a reasonable analysis comparing the claims in the '610 Patent to BAI's products, services, or technology, and if any analysis was done it did not identify specific areas in which the BAI's products, services, and technology were covered by the claims of the patent.

348. In fact RBH was aware, when the July 21 Demand letter was sent, that the BA-008 did not practice the claims of the '610 Patent, because it did not practice the sensor limitation.

349. The **July 21** Demand letter lacked the information listed under paragraph 346 and BAI specifically requested the information, and RBH failed to provide the information within a reasonable period.

350. Defendant RBH's claim and assertion of patent infringement is unenforceable, and RBH knew, or should have known, that the claim or assertion was unenforceable.

351. Defendant RBH's claim and assertion of patent infringement is deceptive.

352. In response to Plaintiff's request for an agreement from RBH and the Defendants to stop sending letters to BAI Affiliates, Defendants, on July 29, 2015, through counsel, stated:

most of the recipients of those letters are affiliated with Better Air North America, which appears to be the entity marketing and selling the *infringing device* in the United States . . . we would be willing to discuss whether there is some narrow/precise/workable solution that would prevent the need for both parties to expend resources on fighting over an injunction on who and what our clients can talk to and say about the parties business dispute, which is essentially a sideshow to the *core patent infringement* issues . . .

(emphasis added).

353. When counsel requested, over the telephone, that Defendants' counsel identify the portion of the Accused Device that they contend practice the Sensor Limitation Defendant's counsel refused to provide any information.

354. The parties scheduled a conference call to discuss this issue. Then, three minutes before the conference call Defendants' counsel unilaterally cancelled the call.

355. Plaintiff provided RBH Defendants with a proposed agreement that they refrain from sending further Bad Faith Demand letters, and again the Defendants refused.

356. Then, on August 3, 2015, reiterating their intention to seek immediate injunctive relief, and prior to filing the Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff sent Defendants requests to:

- a) specifically identify the part of the Accused Device that they contend practices the Sensor Limitation;
- b) advise of any contentions that the Weening Prior Art is not material to the '610 Patent.

357. RBH and Defendants refused to agree to any workable solution and instead advised they contended:

. . . it appears as though you are asking . . . to agree on the merits of their patent dispute, which is something that the court or a jury will need to decide.

358. Again, the Defendants counsel was unavailable to discuss, and refused to provide any evidence of any component of the Accused Device practicing the Sensor Limitation.

359. On August 8, 2015 (after Plaintiff moved for injunctive relief) Plaintiff again reiterated its requested evidence of a sensor specifically asking:

. . . pursuant to Fla. Stat. § 501.993(1)(c), we still have not received any evidence of a sensor incorporated in the Airbiotics1 or the BA-008. If you, or your clients, have any evidence of a sensor and an actuator incorporated in either device, or if there is some other patent that you contend is applicable, let us know . . .

360. Defendants responded:

. . . we will address the sensor issue, to the extent we need to, in our response to your TRO. Likewise, the facts underlying the parties' respective positions on invalidity and infringement will properly come out during written discovery, contention interrogatories, claim construction, and expert discovery . . .

361. Again, after further prodding from the Plaintiff, on August 27, 2015, through counsel Defendants responded:

. . . You have made these demands before under the guise of Fla. Stat. s. 501.991 et seq. Section 501.991 was signed into law on July 1, 2015, months after the demand letter at issue was authored and sent. Therefore, you cannot rely upon section 501.991 or any other section of the Florida Patent Troll Prevention Act. We will not be responding to these demands at this time; you may propound a proper discovery request if you wish . . .

362. On the eve of a hearing on Plaintiffs' Motion for a Preliminary Injunction the RBH consented to and the Court entered an order enjoining the Defendants from making further accusations of patent infringement against the Better Air Affiliates and the BA-008. See Exhibit C.

363. However, on or about November 17, 2015, in violation of the Preliminary Injunction, Defendant RBH, through a thinly capitalized company RBH, Inc., filed a state action in Miami-Dade County<sup>5</sup> against the Better Air Affiliates, in violation of this Courts order, solely for the purposes of accusing the Better Air Affiliates again of Patent Infringement and theft of trade secrets. See Exhibit D.

364. Then on or about January 7, 2016 Defendant RBH filed a frivolous counterclaim of patent infringement against the BAI in this action. *Brookshire Bros. Holding, Inc. v. Dayco*

*Products, Inc.*, 554 F.3d 595, 598 (5th Cir. 2009) (finding an abuse of discretion when the district court failed to take supplemental jurisdiction over a state law claim given the significant amount of resources expended by the district court and the risk of re-litigating issues at the state court).

365. To date, RBH and Defendants intentionally fail to identify any part of the Accused Device that practices the Sensor Limitation, but still contend it infringes the '610 Patent.

366. RBH and Defendants have neither withdrawn their demands nor surrendered the '610 Patent, and they continue to maintain the Accused Device infringes the '610 Patent when they know that the Accused Device does not read upon the claims of the '610 Patent; the '610 Patent is anticipated by the prior art; and, the Defendants intentionally failed to disclose that art and the true inventors during the prosecution of the '610 Patent.

367. Pursuant to Fla. Stat. § 501.995(1), BAI is entitled to equitable relief.

368. Pursuant to Fla. Stat. § 501.995(2) and (3), BAI is entitled to recover its actual and consequential damages, attorneys fees' and costs in this action.

369. As the manufacture and source of the Accused Device Plaintiff is aggrieved by Defendants' actions.

370. Each of the targets that use the device are Plaintiff's customers or customers of its distributors and Plaintiff warrants its BA-008 to be free from infringement for its distributors and customers.

371. Pursuant to Fla. Stat. § 501.995(4), BAI is entitled to punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and attorneys' fees, whichever is greater.

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<sup>5</sup> Case No.: CACE 2015-026817-CA-01

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Defendant RBH from sending further bad faith demands; ii) awarding BAI actual, consequential and punitive damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

**COUNT XXVII**  
**VIOLATION OF FLORIDA'S ANTI-PATENT TROLL PREVENTION ACT**  
(as to Airbiotics only)

372. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

373. "Demand letter" means a letter, e-mail, or other written communication asserting or claiming that a person has engaged in patent infringement.

374. BAI has been aggrieved by RBH's repeated bad faith assertions of patent infringement against BAI and the BAI Affiliates, including the Bad Faith Demands.

375. RBH and Airbiotics have made the Bad Faith Demands against BAI and its Affiliates.

376. Airbiotics' Demand letters have threatened and caused concerns and interference with BAI customers and distributors.

377. BAI has been contacted by its customers and distributors and informed that if the Bad Faith Demands were true its customers and distributors would consider BAI in breach of its contracts with them.

378. BAI's customers and distributors have demanded assurances, guarantees and judicial resolution that the Bad Faith Demands are false.

379. The Bad Faith Demands have hindered investment in and marketing of the Accused Device.

380. For example, AIRBIOTICS' **July 21, 2015** Demand letter accuses BAI and the Accused Device of infringement, however the July 21, 2015 Demand letter does not contain the following information:

- a) the patent number;
- b) the name and address of the patent owner and assignee, if any; and
- c) factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

381. Moreover, before sending the any of the Bad Faith Demand letters, including the July 21 Demand letter, the AIRBIOTICS failed to conduct a reasonable analysis comparing the claims in the '610 Patent to BAI's products, services, or technology, and if any analysis was done it did not identify specific areas in which the BAI's products, services, and technology were covered by the claims of the patent.

382. In fact AIRBIOTICS was aware, when the July 21 Demand letter was sent, that the BA-008 did not practice the claims of the '610 Patent, because it did not practice the sensor limitation.

383. The **July 21** Demand letter lacked the information listed under paragraph 346 and BAI specifically requested the information, and the AIRBIOTICS failed to provide the information within a reasonable period.

384. Airbiotics' claim and assertion of patent infringement is unenforceable, and RBH knew, or should have known, that the claim or assertion was unenforceable.

385. Defendant Airbiotics' claim and assertion of patent infringement is deceptive.

386. In response to Plaintiff's request for an agreement from Airbiotics to stop sending

letters to BAI Affiliates, AIRBIOTICS, on July 29, 2015, through counsel, stated:

most of the recipients of those letters are affiliated with Better Air North America, which appears to be the entity marketing and selling the *infringing device* in the United States . . . we would be willing to discuss whether there is some narrow/precise/workable solution that would prevent the need for both parties to expend resources on fighting over an injunction on who and what our clients can talk to and say about the parties business dispute, which is essentially a sideshow to the *core patent infringement* issues . . .

(emphasis added).

387. When counsel requested, over the telephone, that Defendants' counsel identify the portion of the Accused Device that they contend practice the Sensor Limitation Defendant's counsel refused to provide any information.

388. The parties scheduled a conference call to discuss this issue. Then, three minutes before the conference call Defendants' counsel unilaterally cancelled the call.

389. Plaintiff provided AIRBIOTICS with a proposed agreement that they refrain from sending further Bad Faith Demand letters, and again the Defendants refused.

390. Then, on August 3, 2015, reiterating their intention to seek immediate injunctive relief, and prior to filing the Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff sent AIRBIOTICS requests to:

- a) specifically identify the part of the Accused Device that they contend practices the Sensor Limitation;
- b) advise of any contentions that the Weening Prior Art is not material to the '610 Patent.

391. Defendants refused to agree to any workable solution and instead advised they contended:

. . . it appears as though you are asking . . . to agree on the merits of their patent



dispute, which is something that the court or a jury will need to decide.

392. Again, the Defendants counsel was unavailable to discuss, and refused to provide any evidence of any component of the Accused Device practicing the Sensor Limitation.

393. On August 8, 2015 (after Plaintiff moved for injunctive relief) Plaintiff again reiterated its requested evidence of a sensor specifically asking:

. . . pursuant to Fla. Stat. § 501.993(1)(c), we still have not received any evidence of a sensor incorporated in the Airbiotics1 or the BA-008. If you, or your clients, have any evidence of a sensor and an actuator incorporated in either device, or if there is some other patent that you contend is applicable, let us know . . .

394. Defendants responded:

. . . we will address the sensor issue, to the extent we need to, in our response to your TRO. Likewise, the facts underlying the parties' respective positions on invalidity and infringement will properly come out during written discovery, contention interrogatories, claim construction, and expert discovery . . .

395. Again, after further prodding from the Plaintiff, on August 27, 2015, through counsel Defendants responded:

. . . You have made these demands before under the guise of Fla. Stat. s. 501.991 et seq. Section 501.991 was signed into law on July 1, 2015, months after the demand letter at issue was authored and sent. Therefore, you cannot rely upon section 501.991 or any other section of the Florida Patent Troll Prevention Act. We will not be responding to these demands at this time; you may propound a proper discovery request if you wish . . .

396. On the eve of a hearing on Plaintiffs' Motion for a Preliminary Injunction the Defendants consented to and the Court entered an order enjoining AIRBIOTICS from making further accusations of patent infringement against the Better Air Affiliates and the BA-008. See Exhibit C.

397. However, on or about November 17, 2015, in violation of the Preliminary Injunction, one of Airbiotics' principals, Defendant RBH, through a thinly capitalized company

RBH, Inc., filed a state action in Miami-Dade County<sup>6</sup> against the Better Air Affiliates, in violation of this Courts order, solely for the purposes of accusing the Better Air Affiliates again of Patent Infringement and theft of trade secrets. See Exhibit D.

398. Then on or about January 7, 2016 Defendant AIRBIOTICS filed a frivolous counterclaim of patent infringement against the BAI in this action. *Brookshire Bros. Holding, Inc. v. Dayco Products, Inc.*, 554 F.3d 595, 598 (5th Cir. 2009) (finding an abuse of discretion when the district court failed to take supplemental jurisdiction over a state law claim given the significant amount of resources expended by the district court and the risk of re-litigating issues at the state court).

399. To date, AIRBIOTICS has intentionally failed to identify any part of the Accused Device that practices the Sensor Limitation, but still contend it infringes the ‘610 Patent.

400. AIRBIOTICS and Defendants have neither withdrawn their demands nor surrendered the ‘610 Patent, and they continue to maintain the Accused Device infringes the ‘610 Patent when they know that the Accused Device does not read upon the claims of the ‘610 Patent; the ‘610 Patent is anticipated by the prior art; and, the Defendants intentionally failed to disclose that art and the true inventors during the prosecution of the ‘610 Patent.

401. Pursuant to Fla. Stat. § 501.995(1), BAI is entitled to equitable relief.

402. Pursuant to Fla. Stat. § 501.995(2) and (3), BAI is entitled to recover its actual and consequential damages, attorneys fees’ and costs in this action.

403. As the manufacture and source of the Accused Device Plaintiff is aggrieved by AIRBIOTICS’ actions.

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<sup>6</sup> Case No.: CACE 2015-026817-CA-01

404. Each of the targets that use the device are Plaintiff's customers or customers of its distributors and Plaintiff warrants its BA-008 to be free from infringement for its distributors and customers.

405. Pursuant to Fla. Stat. § 501.995(4), BAI is entitled to punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and attorneys' fees, whichever is greater.

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Defendant AIRBIOTICS from sending further bad faith demands; ii) awarding BAI actual, consequential and punitive damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

**COUNT XXVIII**  
**VIOLATION OF FLORIDA'S ANTI-PATENT TROLL PREVENTION ACT**  
(as to Tal Ben Haim only)

406. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

407. "Demand letter" means a letter, e-mail, or other written communication asserting or claiming that a person has engaged in patent infringement.

408. BAI has been aggrieved by TBH's repeated bad faith assertions of patent infringement against BAI and the BAI Affiliates, including the Bad Faith Demands.

409. TBH and Defendants have made the Bad Faith Demands against BAI and its Affiliates.

410. TBH is the financial backbone of AIRBIOTICS and is the active, substantial force behind the Bad Faith Demands in a position to reap a direct financial benefit from AIRBITOICS' bad faith assertions.

411. TBH authorized and financed Defendants' attorneys to send the Bad Faith Demands to BA and the BAI customers and distributors.

412. TBH's sponsoring of the Demand letters have threatened and caused concerns and interference with BAI customers and distributors.

413. BAI has been contacted by its customers and distributors and informed that if the Bad Faith Demands were true its customers and distributors would consider BAI in breach of its contracts with them.

414. BAI's customers and distributors have demanded assurances, guarantees and judicial resolution that the Bad Faith Demands are false.

415. The Bad Faith Demands have hindered investment in and marketing of the Accused Device.

416. For example, the **July 21, 2015** Demand letter TBH sponsored accuses BAI and the Accused Device of infringement, however the July 21, 2015 Demand letter does not contain the following information:

- a) the patent number;
- b) the name and address of the patent owner and assignee, if any; and
- c) factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

417. Moreover, before sending the any of the Bad Faith Demand letters, including the July 21 Demand letter, TBH and Defendants failed to conduct a reasonable analysis comparing the claims in the '610 Patent to BAI's products, services, or technology, and if any analysis was done it did not identify specific areas in which the BAI's products, services, and technology were

covered by the claims of the patent.

418. In fact TBH was aware, when the July 21 Demand letter was sent, that the BA-008 did not practice the claims of the '610 Patent, because it did not practice the sensor limitation.

419. The July 21 Demand letter lacked the information listed under paragraph 346 and BAI specifically requested the information, and the Defendants failed to provide the information within a reasonable period.

420. Defendant TBH's claim and assertion of patent infringement is unenforceable, and TBH knew, or should have known, that the claim or assertion was unenforceable.

421. Defendant TBH's claim and assertion of patent infringement is deceptive.

422. In response to Plaintiff's request for an agreement from the Defendants to stop sending letters to BAI Affiliates, Defendants, on July 29, 2015, through counsel, stated:

most of the recipients of those letters are affiliated with Better Air North America, which appears to be the entity marketing and selling the *infringing device* in the United States . . . we would be willing to discuss whether there is some narrow/precise/workable solution that would prevent the need for both parties to expend resources on fighting over an injunction on who and what our clients can talk to and say about the parties business dispute, which is essentially a sideshow to the *core patent infringement* issues . . .

(emphasis added).

423. When counsel requested, over the telephone, that Defendants' counsel identify the portion of the Accused Device that they contend practice the Sensor Limitation Defendant's counsel refused to provide any information.

424. The parties scheduled a conference call to discuss this issue. Then, three minutes before the conference call Defendants' counsel unilaterally cancelled the call.

425. Plaintiff provided TBH and Defendants with a proposed agreement that they refrain from sending further Bad Faith Demand letters, and again the Defendants refused.

426. Then, on August 3, 2015, reiterating their intention to seek immediate injunctive relief, and prior to filing the Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff sent Defendants requests to:

- a) specifically identify the part of the Accused Device that they contend practices the Sensor Limitation;
- b) advise of any contentions that the Weening Prior Art is not material to the '610 Patent.

427. TBH and Defendants refused to agree to any workable solution and instead advised they contended:

. . . it appears as though you are asking . . . to agree on the merits of their patent dispute, which is something that the court or a jury will need to decide.

428. Again, the Defendants counsel was unavailable to discuss, and refused to provide any evidence of any component of the Accused Device practicing the Sensor Limitation.

429. On August 8, 2015 (after Plaintiff moved for injunctive relief) Plaintiff again reiterated its requested evidence of a sensor specifically asking:

. . . pursuant to Fla. Stat. § 501.993(1)(c), we still have not received any evidence of a sensor incorporated in the Airbiotics1 or the BA-008. If you, or your clients, have any evidence of a sensor and an actuator incorporated in either device, or if there is some other patent that you contend is applicable, let us know . . .

430. Defendants responded:

. . . we will address the sensor issue, to the extent we need to, in our response to your TRO. Likewise, the facts underlying the parties' respective positions on invalidity and infringement will properly come out during written discovery, contention interrogatories, claim construction, and expert discovery . . .

431. Again, after further prodding from the Plaintiff, on August 27, 2015, through counsel Defendants responded:

. . . You have made these demands before under the guise of Fla. Stat. s. 501.991 et seq. Section 501.991 was signed into law on July 1, 2015, months after the demand letter at issue was authored and sent. Therefore, you cannot rely upon section 501.991 or any other section of the Florida Patent Troll Prevention Act. We will not be responding to these demands at this time; you may propound a proper discovery request if you wish . . .

432. On the eve of a hearing on Plaintiffs' Motion for a Preliminary Injunction the Defendants consented to and the Court entered an order enjoining the Defendants from making further accusations of patent infringement against the Better Air Affiliates and the BA-008. See Exhibit C.

433. However, on or about November 17, 2015, in violation of the Preliminary Injunction, Defendant RBH, through a thinly capitalized company RBH, Inc., filed a state action in Miami-Dade County<sup>7</sup> against the Better Air Affiliates, in violation of this Courts order, solely for the purposes of accusing the Better Air Affiliates again of Patent Infringement and theft of trade secrets. See Exhibit D.

434. Then on or about January 7, 2016 Defendant RBH filed a frivolous counterclaim of patent infringement against the BAI in this action. *Brookshire Bros. Holding, Inc. v. Dayco Products, Inc.*, 554 F.3d 595, 598 (5th Cir. 2009) (finding an abuse of discretion when the district court failed to take supplemental jurisdiction over a state law claim given the significant amount of resources expended by the district court and the risk of re-litigating issues at the state court).

435. TBH, through AIRBIOTICS and RBH, has attempted to shield his actions against BAI, despite TBH being the real party in interest.

436. To date, TBH and Defendants intentionally fail to identify any part of the Accused

Device that practices the Sensor Limitation, but still contend it infringes the '610 Patent.

437. TBH and Defendants have neither withdrawn their demands nor surrendered the '610 Patent, and they continue to maintain the Accused Device infringes the '610 Patent when they know that the Accused Device does not read upon the claims of the '610 Patent; the '610 Patent is anticipated by the prior art; and, the Defendants intentionally failed to disclose that art and the true inventors during the prosecution of the '610 Patent.

438. Pursuant to Fla. Stat. § 501.995(1), BAI is entitled to equitable relief.

439. Pursuant to Fla. Stat. § 501.995(2) and (3), BAI is entitled to recover its actual and consequential damages, attorneys fees' and costs in this action.

440. As the manufacture and source of the Accused Device Plaintiff is aggrieved by TBH and Defendants' actions.

441. Each of the targets that use the device are Plaintiff's customers or customers of its distributors and Plaintiff warrants its BA-008 to be free from infringement for its distributors and customers.

442. Pursuant to Fla. Stat. § 501.995(4), BAI is entitled to punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and attorneys' fees, whichever is greater.

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Defendant TBH from sending further bad faith demands; ii) awarding BAI actual, consequential and punitive damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

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<sup>7</sup> Case No.: CACE 2015-026817-CA-01



**COUNT XXIX**  
**VIOLATION OF FLORIDA'S ANTI-PATENT TROLL PREVENTION ACT**  
(as to Robert Meirovich only)

443. BAI incorporates by reference and re-alleges, as if fully set forth herein, the allegations contained in Paragraphs 1-73, above.

444. "Demand letter" means a letter, e-mail, or other written communication asserting or claiming that a person has engaged in patent infringement.

445. BAI has been aggrieved by RM's repeated bad faith assertions of patent infringement against BAI and the BAI Affiliates, including the Bad Faith Demands.

446. RM and Defendants have made the Bad Faith Demands against BAI and its Affiliates.

447. RM is the financial backbone of AIRBIOTICS and is the active, substantial force behind the Bad Faith Demands in a position to reap a direct financial benefit from AIRBITOICS' bad faith assertions.

448. RM authorized and financed Defendants' attorneys to send the Bad Faith Demands to BA and the BAI customers and distributors.

449. RM's authorization of AIRBIOTICS' Demand letters has threatened and caused concerns and interference with BAI customers and distributors.

450. BAI has been contacted by its customers and distributors and informed that if the Bad Faith Demands were true its customers and distributors would consider BAI in breach of its contracts with them.

451. BAI's customers and distributors have demanded assurances, guarantees and judicial resolution that the Bad Faith Demands are false.

452. The Bad Faith Demands have hindered investment in and marketing of the

Accused Device.

453. For example, Defendants **July 21, 2015** Demand letter, authorized by RM, accuses BAI and the Accused Device of infringement, however the July 21, 2015 Demand letter does not contain the following information:

- a) the patent number;
- b) the name and address of the patent owner and assignee, if any; and
- c) factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

454. Moreover, before sending the any of the Bad Faith Demand letters, including the July 21 Demand letter, the RM and Defendants failed to conduct a reasonable analysis comparing the claims in the '610 Patent to BAI's products, services, or technology, and if any analysis was done it did not identify specific areas in which the BAI's products, services, and technology were covered by the claims of the patent.

455. In fact RM was aware, when the July 21 Demand letter was sent, that the BA-008 did not practice the claims of the '610 Patent, because it did not practice the sensor limitation.

456. The **July 21** Demand letter lacked the information listed under paragraph 346 and BAI specifically requested the information, and the Defendants failed to provide the information within a reasonable period.

457. Defendant RBH's claim and assertion of patent infringement is unenforceable, and RBH knew, or should have known, that the claim or assertion was unenforceable.

458. Defendant RBH's claim and assertion of patent infringement is deceptive.

459. In response to Plaintiff's request for an agreement from RM and Defendants to

stop sending letters to BAI Affiliates, Defendants, on July 29, 2015, through counsel, stated:

most of the recipients of those letters are affiliated with Better Air North America, which appears to be the entity marketing and selling the *infringing device* in the United States . . . we would be willing to discuss whether there is some narrow/precise/workable solution that would prevent the need for both parties to expend resources on fighting over an injunction on who and what our clients can talk to and say about the parties business dispute, which is essentially a sideshow to the *core patent infringement* issues . . .

(emphasis added).

460. When counsel requested, over the telephone, that Defendants' counsel identify the portion of the Accused Device that they contend practice the Sensor Limitation Defendants' counsel refused to provide any information.

461. The parties scheduled a conference call to discuss this issue. Then, three minutes before the conference call Defendants' counsel unilaterally cancelled the call.

462. Plaintiff provided RBH Defendants with a proposed agreement that they refrain from sending further Bad Faith Demand letters, and again the Defendants refused.

463. Then, on August 3, 2015, reiterating their intention to seek immediate injunctive relief, and prior to filing the Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff sent Defendants requests to:

- a) specifically identify the part of the Accused Device that they contend practices the Sensor Limitation;
- b) advise of any contentions that the Weening Prior Art is not material to the '610 Patent.

464. Defendants refused to agree to any workable solution and instead advised they contended:

. . . it appears as though you are asking . . . to agree on the merits of their patent

dispute, which is something that the court or a jury will need to decide.

465. Again, the Defendants counsel was unavailable to discuss, and refused to provide any evidence of any component of the Accused Device practicing the Sensor Limitation.

466. On August 8, 2015 (after Plaintiff moved for injunctive relief) Plaintiff again reiterated its requested evidence of a sensor specifically asking:

. . . pursuant to Fla. Stat. § 501.993(1)(c), we still have not received any evidence of a sensor incorporated in the Airbiotics1 or the BA-008. If you, or your clients, have any evidence of a sensor and an actuator incorporated in either device, or if there is some other patent that you contend is applicable, let us know . . .

467. Defendants responded:

. . . we will address the sensor issue, to the extent we need to, in our response to your TRO. Likewise, the facts underlying the parties' respective positions on invalidity and infringement will properly come out during written discovery, contention interrogatories, claim construction, and expert discovery . . .

468. Again, after further prodding from the Plaintiff, on August 27, 2015, through counsel Defendants responded:

. . . You have made these demands before under the guise of Fla. Stat. s. 501.991 et seq. Section 501.991 was signed into law on July 1, 2015, months after the demand letter at issue was authored and sent. Therefore, you cannot rely upon section 501.991 or any other section of the Florida Patent Troll Prevention Act. We will not be responding to these demands at this time; you may propound a proper discovery request if you wish . . .

469. On the eve of a hearing on Plaintiffs' Motion for a Preliminary Injunction the Defendants consented to and the Court entered an order enjoining the Defendants from making further accusations of patent infringement against the Better Air Affiliates and the BA-008. See Exhibit C.

470. However, on or about November 17, 2015, in violation of the Preliminary Injunction, Defendant RBH, through a thinly capitalized company RBH, Inc., filed a state action

in Miami-Dade County<sup>8</sup> against the Better Air Affiliates, in violation of this Courts order, solely for the purposes of accusing the Better Air Affiliates again of Patent Infringement and theft of trade secrets. See Exhibit D.

471. Then on or about January 7, 2016 Defendant RBH filed a frivolous counterclaim of patent infringement against the BAI in this action. *Brookshire Bros. Holding, Inc. v. Dayco Products, Inc.*, 554 F.3d 595, 598 (5th Cir. 2009) (finding an abuse of discretion when the district court failed to take supplemental jurisdiction over a state law claim given the significant amount of resources expended by the district court and the risk of re-litigating issues at the state court).

472. RM, through AIRBIOTICS and RBH, has attempted to shield his actions against BAI, despite RM being the real party in interest.

473. To date, RM and Defendants intentionally fail to identify any part of the Accused Device that practices the Sensor Limitation, but still contend it infringes the '610 Patent.

474. RM and Defendants have neither withdrawn their demands nor surrendered the '610 Patent, and they continue to maintain the Accused Device infringes the '610 Patent when they know that the Accused Device does not read upon the claims of the '610 Patent; the '610 Patent is anticipated by the prior art; and, the Defendants intentionally failed to disclose that art and the true inventors during the prosecution of the '610 Patent.

475. Pursuant to Fla. Stat. § 501.995(1), BAI is entitled to equitable relief.

476. Pursuant to Fla. Stat. § 501.995(2) and (3), BAI is entitled to recover its actual and consequential damages, attorneys fees' and costs in this action.

477. As the manufacture and source of the Accused Device Plaintiff is aggrieved by RM and Defendants' actions.

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<sup>8</sup> Case No.: CACE 2015-026817-CA-01

478. Each of the targets that use the device are Plaintiff's customers or customers of its distributors and Plaintiff warrants its BA-008 to be free from infringement for its distributors and customers.

479. Pursuant to Fla. Stat. § 501.995(4), BAI is entitled to punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and attorneys' fees, whichever is greater.

WHEREFORE, BAI respectfully requests this Court: i) enter a preliminary and permanent injunction enjoining Defendant RM from sending further bad faith demands; ii) awarding BAI actual, consequential and punitive damages, costs and attorneys' fees; and iii) grant such relief as is just, fair, and equitable.

Dated: March 1, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the methods referenced below this day March 1, 2016 on all counsel or parties of record on the service list indicated below:

By: s/ Greg M. Popowitz  
Greg M. Popowitz

**SERVICE LIST**

***Better Air International Ltd. v. Roei Ben Haim, et. al.***  
**CASE NO: 0:15cv61511-MGC**  
**United States District Court, Southern District of Florida**

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