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13 Attorneys for Plaintiff
14 AirHawk International, LLC

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 AIRHAWK INTERNATIONAL,
19 LLC, a California limited liability
20 company,

21 Plaintiff,

22 v.

23 THEREALCRAIGJ, LLC, a
24 Minnesota limited liability company,
25 dba Wild Ass, SCOTT PARMAN, an
26 individual, CRAIG JOHNSON, an
27 individual, and DOES 1-10,

28 Defendants.

Case No. 16-cv-00624

**COMPLAINT FOR PATENT
INFRINGEMENT, FALSE
ADVERTISING, TORTIOUS
INTERFERENCE, AND
UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiff AirHawk International, LLC, a California limited liability company,
2 alleges for its Complaint against Defendants TheRealCraigJ, LLC, a Minnesota
3 limited liability company, Craig Parman, an individual, Scott Johnson, an
4 individual, and Does 1-10 on personal information as to AirHawk's own activities,
5 and upon information and belief as to the activities of others, as follows:

6
7 **I. Jurisdiction and Venue**

8 1. This Court has original subject-matter jurisdiction over AirHawk's
9 patent-infringement claims under 28 U.S.C. §§ 1331 and 1338(a) because they arise
10 under federal patent law, 35 U.S.C. § 271, and over AirHawk's federal false-
11 advertising claim under 28 U.S.C. § 1331 because it arises under Section 43(a) of
12 the Lanham Act, 15 U.S.C. 1125(a).

13 2. This Court has supplemental jurisdiction over AirHawk's state-law
14 claims under 28 U.S.C. § 1367(a) because they are so related to the federal claims
15 that they form part of the same case or controversy.

16 3. This Court has personal jurisdiction over defendants Wild Ass, Johnson,
17 and Parman because they regularly conduct business in this judicial district and
18 have committed multiple acts of patent infringement in this judicial district
19 including importing, selling, and/or offering to sell infringing products in this
20 judicial district.

21 4. This Court has personal jurisdiction over defendants because their false
22 advertising, as alleged herein, has resulted in harm to AirHawk's commercial
23 relationship with one of the largest motorcycle-accessory distributors which is
24 located in Irvine, California.

25 5. Venue is proper in the United States District Court for the Central
26 District of California under 28 U.S.C. §§ 1391(b),(c) and 1400(b) because this is a
27 judicial district in which a substantial part of the infringing activities giving rise to
28 AirHawk's claims occurred.

II. Parties

1
2 6. Plaintiff AirHawk International, LLC is a California limited-liability
3 company with its principal place of business in Santa Ana, California.

4 7. Defendant TheRealCraigJ, LLC is a Minnesota limited-liability company
5 doing business as “Wild Ass” with its headquarters and principal business address
6 at 11965 Bass Lake Road, East Gull Lake, MN 56401.

7 8. Defendant Scott Parman is an American citizen residing in Italy. Parman
8 is an officer of Wild Ass, and refers to his position as “Chief Wild Ass.”

9 9. Defendant Craig Johnson is a Minnesota resident. Johnson is an officer
10 of Wild Ass.

11 10. Defendants transact business and have provided to customers in this
12 judicial district and throughout the State of California products and/or services
13 that infringe and/or induce infringement of AirHawk’s design patents as alleged
14 herein.

15 11. As described further below, Defendants conduct business and market
16 and distribute products throughout California, and throughout the United States.

17 12. AirHawk is ignorant of the true names of Doe defendants 1 through 10
18 and therefore sues those defendants by such fictitious names. AirHawk is informed
19 and believes, and on that basis alleges, that Wild Ass, Parman, Johnson, and Doe
20 Defendants 1 through 10 are responsible for the acts alleged in this Complaint.
21 When the true names of such fictitious defendants are ascertained, AirHawk will
22 seek leave of this Court to amend this Complaint to name those individuals or
23 entities. These fictitiously named defendants, along with Wild Ass, Parman, and
24 Johnson, are referred to collectively as “Defendants.”

25 13. AirHawk is informed and believe and thereupon alleges that at all times
26 relevant hereto each of the Defendants acted in concert with each other, was the
27 agent, affiliate, officer, director, manager, principal, alter-ego, co-conspirator, aider
28 and abettor, or employee of the other defendants and was at all times acting within

1 the scope of such agency, affiliation, alter-ego relationship or employment; and
2 actively participated in, subsequently ratified and adopted, or both, each and all of
3 the acts or conducts alleged, with full knowledge of all the facts and circumstances,
4 including without limitation to full knowledge of each and every wrongful act and
5 conduct and AirHawk's damages caused therefrom.

6 7 **III. Factual Background**

8 **A. AirHawk's premium motorcycle-seat cushions use an innovative** 9 **air-cell system to provide a longer, more comfortable ride.**

10 14. AirHawk is a Santa Ana, California business that designs, manufactures,
11 and sells motorcycle-seat cushions.

12 15. AirHawk cushions feature air-cushion technology that provides a more
13 comfortable ride than conventional seat materials like gel or foam, particularly over
14 long distances.

15 16. AirHawk's system uses small, interconnected air cells to evenly
16 distribute the rider's weight over the entire motorcycle seat, thus increasing rider
17 comfort in several ways:

- 18 a) AirHawk seat cushions adjust to the rider's body shape and contour,
19 thus relieving sensitive pressure points and reducing numbness.
- 20 b) The air cells act as shock absorbers, thus reducing rider fatigue caused
21 by vibration and bumps.
- 22 c) The use of small, interconnected air cells allows fresh air to circulate
23 through the seat, reducing uncomfortable body heat build-up and
24 sweat and keeping the rider cool and dry.

25 17. The AirHawk product line and air-cell technology was originally
26 developed by The ROHO Group, a U.S.-based manufacturer of cushioning and
27 mattress products for medical applications.

28 18. Since 1973, Roho has been a worldwide leader of seating solutions

1 designed to prevent and treat pressure ulcers. Among other innovative products
2 and advances, Roho pioneered the air-cell technology later used in AirHawk
3 motorcycle-seat cushions.

4 19. In 1989 Roho founded the Roho Institute for Education. The Roho
5 Institute offers accredited continuing education seminars for clinicians seeking
6 exposure to the most recent advances in seating and mobility-related medical
7 issues. Roho's courses, which are offered worldwide, address various topics
8 ranging from wheelchair seating and positioning to pressure-ulcer prevention and
9 treatment. The ROHO Institute also has an online library of continuing education
10 courses available free of charge.

11 20. The benefits of Roho's mattress and cushion innovations have
12 repeatedly been confirmed by scientific and clinical studies.

13 21. In 1997 Roho entered the consumer market, offering products for
14 consumer applications that benefit from Roho's experience with medical-seating
15 products. Roho's consumer products included motorcycle cushions, truck
16 cushions, agriculture, construction, and aviation seating products.

17 22. Over 1 million Roho products are in use, in over 80 countries.

18 23. Roho recently began shifting its focus to the medical industry and away
19 from consumer-oriented products.

20 24. In early 2015, Roho announced the acquisition of Roho's AirHawk
21 business by the owners of High End Seating Solutions (HESS), a high-end
22 motorcycle seat-design and manufacturing company based in Santa Ana,
23 California.

24 25. HESS has manufactured custom seats with Roho's AirHawk air-cushion
25 technology since 2011.

26 26. Following the acquisition of the AirHawk brand, product line, and
27 manufacturing equipment, AirHawk manufacturing was relocated to HESS's
28 facilities in Santa Ana, California.

1 **B. AirHawk’s motorcycle cushions feature patented distinctive**
2 **ornamental design.**

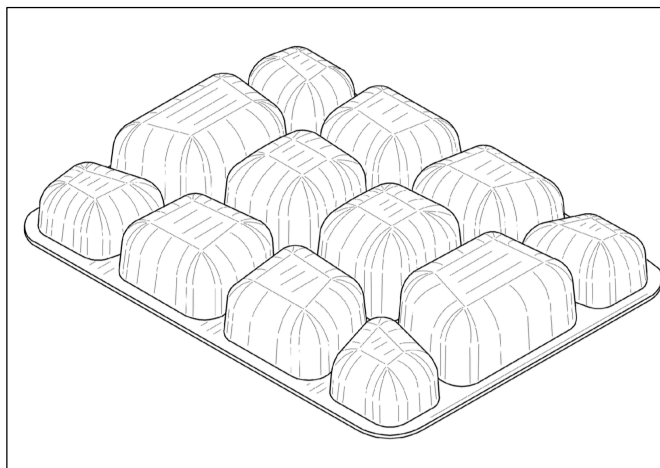
3 27. AirHawk’s innovative motorcycle-seat-cushion designs are protected by
4 design patents issued by the United States Patent & Trademark Office which cover
5 the ornamental features of AirHawk’s motorcycle cushions.

6
7 **1. U.S. Design Patent No. D673,785**

8 28. AirHawk is the owner of U.S. Design Patent No. D673,785 (the “D’785
9 Patent”), entitled “Motorcycle Pillion Cushion,” issued on January 8, 2013. A
10 copy of the D’785 Patent is attached as Exhibit A.

11 29. AirHawk is the owner by assignment of the entire right, title, and interest
12 in the D’785 Patent and has standing to sue for all past, present, and future
13 infringement of the D’785 Patent.

14 30. The D’785 Patent claims an ornamental design for a motorcycle pillion¹
15 cushion. A drawing from the D’785 Patent showing a perspective view of the
16 claimed motorcycle-pillion-cushion design appears below:



25 (D’785 Patent, Fig. 1 (rotated for presentation).)

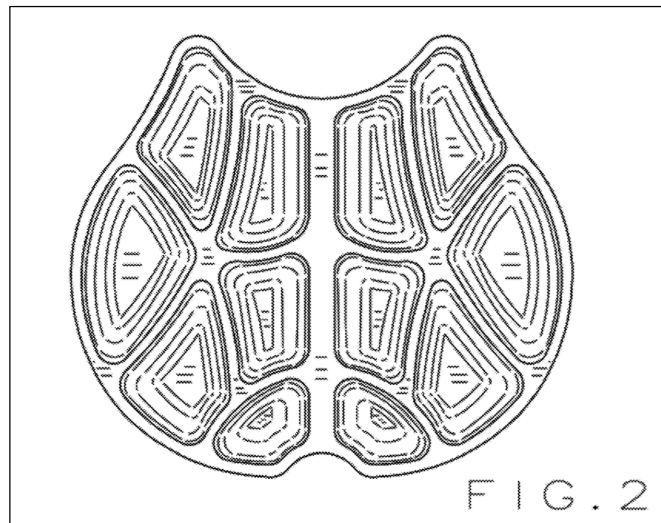
26
27
28 ¹ Pillion refers to a motorcycle passenger seat behind the motorcyclist.

1 **2. U.S. Design Patent No. D672,569**

2 31. AirHawk is the owner of U.S. Design Patent No. D672,569 (the “D’569
3 Patent”), entitled “Motorcycle Operator’s Seat Cushion,” issued on December
4 18, 2012. A copy of the D’569 Patent is attached as Exhibit B.

5 32. AirHawk is the owner by assignment of the entire right, title, and interest
6 in the D’569 Patent and has standing to sue for all past, present, and future
7 infringement of the D’569 Patent.

8 33. The D’569 Patent claims an ornamental design for a motorcycle
9 operator’s seat cushion. A drawing from the D’569 Patent showing a top-plan view
10 of the claimed motorcycle-operator’s-seat-cushion design appears below:



20 (D’569 Patent, Fig. 2.)

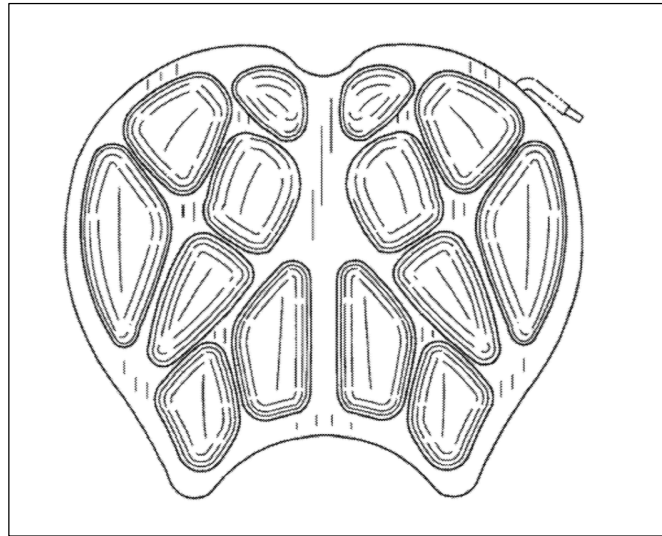
21

22 **3. U.S. Design Patent No. D658,396**

23 34. AirHawk is the owner of U.S. Design Patent No. D658,396 (the “D’396
24 Patent”), entitled “Motorcycle Seat Cushion,” issued on May 1, 2012. A copy of
25 the D’396 Patent is attached as Exhibit B.

26 35. AirHawk is the owner by assignment of the entire right, title, and interest
27 in the D’396 Patent and has standing to sue for all past, present, and future
28 infringement of the D’396 Patent.

1 36. The D'396 Patent claims an ornamental design for a motorcycle seat
2 cushion. A drawing from the D'396 Patent showing a top-plan view of the claimed
3 motorcycle-seat-cushion design appears below:



13 (D'369 Patent, Fig. 1.)
14

15 **C. Former Roho employees Parman and Johnson launched Wild Ass**
16 **to compete with AirHawk.**

17 37. Wild Ass was founded by Craig Johnson and Scott Parman, former key
18 members of Roho's team for sales and distribution of the AirHawk products.

19 38. From March 2011 through April 2015, Johnson was Roho's North
20 American Sales Manager for AirHawk. His responsibilities included developing
21 and managing AirHawk sales programs through distributors and retailers
22 throughout the U.S. and Canada.

23 39. From July 2012 through early 2015, Scott Parman was Roho's
24 International Marketing & Global Distributor Management Consultant. Parman's
25 responsibilities included developing and managing Roho's relationships with
26 AirHawk distributors and retailers and product marketing.

27 40. In January 2016, Wild Ass announced three lines of motorcycle seat
28 cushions, distinguished by materials, intended use cases, and price.

1 **1. Wild Ass Classic motorcycle-seat cushions**

2 41. Wild Ass markets its Classic line as “the premium line and designed for
3 frequent long-distance riders who want only the best level of comfort money can
4 buy.” The cushions are made with medical-grade neoprene rubber.

5 42. Classic is available in three shapes—Pillion, Smart/Cruiser, and Sport:

6
7
8
9
10 **Pillion**



11
12
13
14
15 **Smart/Cruiser**



16
17
18
19
20
21 **Sport**



1 **2. Wild Ass Air Gel motorcycle-seat cushions**

2 43. Wild Ass positions its Air Gel cushions as “a great mid-priced cushion
3 for riders with multiple cushion needs.” The cushions have three layers of
4 polyurethane, gel pads inside each individual air cell, and can be optionally used
5 without air to feel “closer to the bike.”

6 44. Wild Ass Air Gel cushions are available in the same three seat shapes as
7 the Classic line, but with a different material styling as exemplified below with the
8 Wild Ass Air Gel Pillion seat cushion:



16 **3. Wild Ass Lite motorcycle seat cushions**

17 45. Wild Ass markets its Lite cushions to “the budget conscious occasional
18 rider.” The cushions are made of economical lightweight polyurethane.

19 46. Wild Ass Lite cushions are available in the same three seat shapes as the
20 Classic line, but with a different material styling as exemplified below with the Wild
21 Ass Lite Pillion seat cushion:



1 47. All together, Wild Ass's inaugural product line offers nine cushions:
2

3 Wild Ass Product	Cushion Shape	Dealer Price	Retail Price
4 Classic	Pillion	\$156.00	\$224.99
5 Classic	Cruiser	\$156.00	\$224.99
6 Classic	Sport	\$156.00	\$224.99
7 Air Gel	Pillion	\$122.00	\$174.99
8 Air Gel	Cruiser	\$122.00	\$174.99
9 Air Gel	Sport	\$122.00	\$174.99
10 Lite	Pillion	\$69.00	\$99.99
11 Lite	Cruiser	\$69.00	\$99.99
12 Lite	Sport	\$69.00	\$99.99

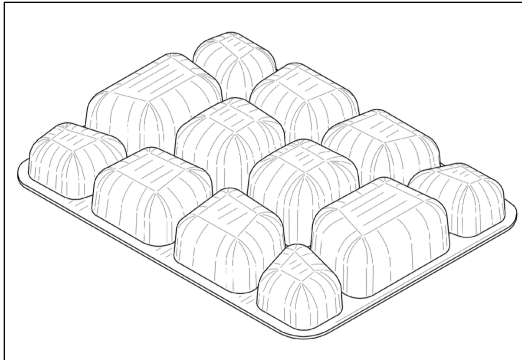

13
14
15
16 **D. Wild Ass's motorcycle-seat cushions infringe AirHawk's design patents.**

17
18 48. Rather than innovate and develop its own technology and own unique
19 style, Wild Ass chose to copy AirHawk's product line, product design, and
20 innovative style.

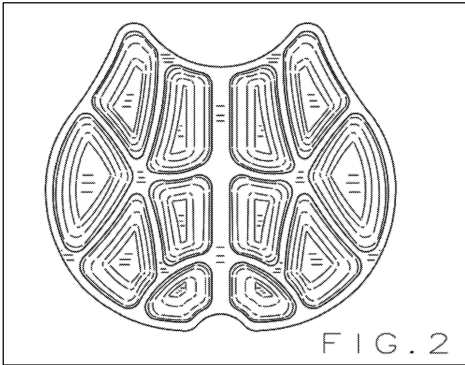



21 49. Unlike AirHawk's motorcycle seat cushions, which are manufactured in
22 Santa Ana, California, Wild Ass imports its products.

23 50. As the following side-by-side comparisons reveal, Wild Ass
24 misappropriated AirHawk's patented designs for all three of its product lines.
25
26
27
28

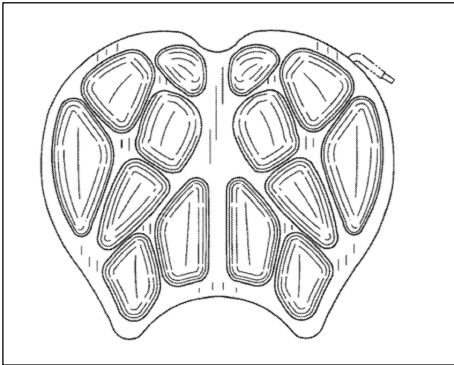



1 51. Wild Ass motorcycle-seat cushions incorporate the design claimed in
 2 AirHawk's D'785 Patent, or a colorable imitation thereof.

3 AirHawk Patent	3 Wild Ass Product
<p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 D'785 Patent, Fig. 1</p> <p>14</p>  <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>4 Classic Air Pillion Seat Pad</p>  <p>5 Classic Air Pillion Seat Pad</p>  <p>6 Classic Air Pillion Seat Pad</p> 

1 52. Wild Ass motorcycle-seat cushions incorporate the design claimed in
 2 AirHawk's D'569 Patent, or a colorable imitation thereof.

AirHawk Patent	Wild Ass Product
<p data-bbox="331 884 646 919">D'569 Patent, Fig. 2</p> 	<p data-bbox="883 449 1338 485">Classic Air Cruiser Seat Pad</p>  <p data-bbox="911 873 1308 909">Air Gel Cruiser Seat Pad</p>  <p data-bbox="906 1331 1313 1367">Lite Air Cruiser Seat Pad</p> 

1 53. Wild Ass motorcycle-seat cushions incorporate the design claimed in
 2 AirHawk's D'396 Patent, or a colorable imitation thereof.

AirHawk Patent	Wild Ass Product
<p data-bbox="331 884 646 919">D'396 Patent, Fig. 1</p> 	<p data-bbox="883 449 1338 485">Classic Air Cruiser Seat Pad</p>  <p data-bbox="911 873 1308 909">Air Gel Cruiser Seat Pad</p>  <p data-bbox="906 1335 1313 1371">Lite Air Cruiser Seat Pad</p> 

1 **E. Defendants had actual knowledge of AirHawk's design patents**
2 **but proceeded to launch a competing business based on infringing**
3 **designs and targeting AirHawk customers.**

4 54. As long-time managers of Roho's AirHawk sales and marketing efforts,
5 Johnson and Parman were intimately familiar with every aspect of Roho's AirHawk
6 motorcycle-seat-cushion business. They have extensive knowledge of Roho's
7 AirHawk distributors and retailers, marketing strategies, and patent protection.

8 55. As Wild Ass' officers and founders, Parman and Johnson are the moving,
9 active, conscious force behind its infringing activity as alleged herein.

10 56. Just months after their departure from Roho, Parman and Johnson
11 launched Wild Ass and began aggressively targeting key AirHawk distributors,
12 including Tucker Rocky Distributing, a subsidiary of Motorsport Aftermarket
13 Group (MAG).

14 57. MAG, which is based in Irvine, California, owns many leading brands in
15 the motorsport parts and accessories aftermarket. MAG controls its subsidiaries
16 from Irvine.

17 58. Tucker Rocky Distributing was a key AirHawk customer.

18 59. But following the January 2016 launch of Wild Ass, MAG announced
19 that Tucker Rocky would carry the Wild Ass product line. The MAG group of
20 companies became the exclusive distributor for Wild Ass.

21 60. In the motorcycle-accessory industry, in September manufacturers
22 provide distributors with part numbers, prices, and pictures so the distributors and
23 resellers can include the manufacturers' product in the following year's catalog.

24 61. Then in October or early November, manufacturers generally receive
25 purchase-order projections from distributors and resellers. Volume pricing is based
26 on those projections.

27 62. Following Johnson and Parman's introduction of Wild Ass's competing
28 product line, AirHawk's new purchase orders decreased substantially from the
anticipated level.

1 63. Defendants deliberately disregarded AirHawk's property rights and have
2 imported, sold, offered to sell, and used infringing Wild Ass seat cushions.

3 64. They did so with no reasonable belief for thinking they had a legal right
4 to engage in such conduct. In fact, Johnson and Parman contacted another former
5 Roho employee to request advice about how to circumvent AirHawk's patents.

6 65. Defendants acted despite an objectively high likelihood that their actions
7 constituted infringement of AirHawk's design patents.

8 66. Defendants intentional infringement has already caused substantial harm
9 to AirHawk's motorcycle-seat-cushion business. Wild Ass's infringing cushions are
10 knock offs of AirHawk's patented product and Wild Ass's sale of its competing
11 infringing products at causes commercial injury to AirHawk.

12
13 **F. Defendants falsely advertise their Wild Ass motorcycle-seat**
14 **products as being "clinically tested" and providing a range of**
15 **medical and therapeutic benefits.**

16 67. Wild Ass's marketing focuses on a claim that Wild Ass products were
17 "designed using clinically proven medical technology."

18 68. In fact, Wild Ass's marketing materials primarily focus on purported
19 medical and therapeutic benefits, as shown on a marketing brochure Wild Ass has
20 widely disseminated to motorcycle-industry distributors, retailers, and consumers:



28 (See Exhibit D.)

1 69. Wild Ass’s marketing and promotional materials are replete with claimed
2 medical and therapeutic benefits. For example, Wild Ass claims that:

- 3 • “The WILD ASS motorcycle air cushion was designed using
4 **clinically proven medical seating technology.**”
- 5 • “The cushion **eliminates painful pressure points and**
6 **promotes proper circulation** utilizing adjustable interconnected
7 air cells which conform to the rider’s shape regardless of weight
8 or seating position.”
- 9 • “Additional benefits are reduction of shock and vibration to
10 **reduce lower back pain** and air circulation under the rider to
11 disperse heat and perspiration.”
- 12 • “Recommended for riders who would like **reduction of painful**
13 **pressure points, increased blood circulation,** reduced
14 vibration, shock absorption, heat and moisture reduction in the
15 seating area.”

16 (*See* Exhibit D (emphases added).)

17 70. But Wild Ass has never had any of its products clinically tested. Its
18 representations about the medical benefits of its products are false.

19 71. Johnson and Parman are directly responsible for creating Wild Ass’s
20 marketing and are responsible for the intentional false and misleading statements
21 described herein.

22 72. Defendants make these false representations in an effort to increase the
23 perceived value of their products so that they can demand a premium price and
24 position themselves as a legitimate alternative to AirHawk’s products.

25 73. AirHawk is informed and believes that Wild Ass has engaged in other
26 forms of marketing and advertising of its motorcycle-seat cushions targeting
27 distributors, resellers, retailers, and consumers throughout the United States,
28 including in California.

1 74. Purchasers of Wild Ass products are likely to be misled and deceived by
2 its marketing and advertising. By the use of marketing and promotional materials
3 that prominently claim the products have been “clinically proven” and feature
4 claims of medical and therapeutic benefits, one would expect that the products
5 have been clinically proven and do provide the claimed benefits. Neither is true.

6 75. Defendants’ false and misleading advertising is damaging to the
7 reputation and goodwill of AirHawk and is damaging to the consuming public.
8 These false and misleading representations are designed to entice distributors,
9 resellers, and consumers to purchase Wild Ass’s products over AirHawk’s
10 products.

11 76. Because Wild Ass never had to incur the substantial effort and expense
12 of clinical testing, its cost to produce its products is far less than the costly and
13 uncertain multi-year investment for AirHawk’ products.

14 77. The natural, probable, and foreseeable result of Defendants’ wrongful
15 conduct has been to cause confusion, deception, and mistake in the motorcycle-
16 accessory market as a whole, to deprive AirHawk of business and goodwill, and to
17 injure AirHawk’s relationships with existing and prospective customers.

18 78. Wild Ass’s wrongful conduct has resulted in increased sales of Wild
19 Ass’s own product while hindering the sales of AirHawk’s products and damaging
20 its goodwill. AirHawk has sustained and will continue to sustain damages as a result
21 of Defendants’ wrongful conduct.

22
23 **IV. First Cause of Action**
24 **Patent Infringement — 35 U.S.C. § 271**
25 **U.S. Patent No. D673,785**

26 79. AirHawk incorporates Paragraphs 1–78 of its Complaint by reference.

27 80. Defendants have been and are directly infringing the D’785 Patent under
28 35 U.S.C. § 271(a) by importing into the United States and selling, offering to sell,
and using in the United States, Wild Ass Pillion motorcycle-seat cushions, which

1 embody the design covered by the D'785 Patent.

2 81. Defendants' resellers, customers, and other users of Defendants' Wild
3 Ass Pillion motorcycle-seat cushions, have been and are directly infringing the
4 D'785 Patent under 35 U.S.C. § 271(a).

5 82. Defendants have been and are actively inducing infringement of the
6 D'785 Patent under 35 U.S.C. § 271(b) by marketing, offering to sell, and selling
7 Wild Ass Pillion motorcycle-seat cushions to resellers, customers, and users.

8 83. Defendants induced infringement by resellers, customers, and users after
9 Defendants had actual knowledge of the D'785 Patent and knew that Wild Ass's
10 resellers', customers', and users' sale, offers to sell, and/or use of Wild Ass Pillion
11 motorcycle-seat cushions constituted patent infringement.

12 84. Defendants' infringement and inducement to infringe the D'785 Patent
13 have been willful and have deliberately injured and will continue to injure AirHawk
14 unless and until the Court enters a preliminary or permanent injunction prohibiting
15 further infringement and, specifically, enjoining further importation, use, sale,
16 and/or offer for sale of products that fall within the scope of the D'785 Patent.

17
18 **V. Second Cause of Action**
19 **Patent Infringement — 35 U.S.C. § 271**
20 **U.S. Patent No. D672,569**

21 85. AirHawk incorporates Paragraphs 1–84 of its Complaint by reference.

22 86. Defendants have been and are directly infringing the D'569 Patent under
23 35 U.S.C. § 271(a) by importing into the United States and selling, offering to sell,
24 and using in the United States, Wild Ass Cruiser motorcycle-seat cushions, which
25 embody the design covered by the D'569 Patent.

26 87. Defendants' resellers, customers, and other users of Defendants' Wild
27 Ass Cruiser motorcycle-seat cushions, have been and are directly infringing the
28 D'569 Patent under 35 U.S.C. § 271(a).

88. Defendants have been and are actively inducing infringement of the

1 D'785 Patent under 35 U.S.C. § 271(b) by providing and selling Wild Ass Cruiser
2 motorcycle-seat cushions to resellers, customers, and users.

3 89. Defendants induced infringement by resellers, vendors, and users after
4 Defendants had actual knowledge of the D'569 Patent and knew that Wild Ass's
5 resellers', customers', and users' sale, offers to sell, and/or use of Wild Ass
6 Cruiser motorcycle-seat cushions constituted patent infringement.

7 90. Defendants' infringement and inducement to infringe the D'569 Patent
8 have been willful and have deliberately injured and will continue to injure AirHawk
9 unless and until the Court enters a preliminary or permanent injunction prohibiting
10 further infringement and, specifically, enjoining further importation, use, sale,
11 and/or offer for sale of products that fall within the scope of the D'569 Patent.

12
13 **VI. Third Cause of Action**
14 **Patent Infringement — 35 U.S.C. § 271**
15 **U.S. Patent No. D658,396**

16 91. AirHawk incorporates Paragraphs 1–90 of its Complaint by reference.

17 92. Defendants have been and are directly infringing the D'396 Patent under
18 35 U.S.C. § 271(a) by importing into the United States and selling, offering to sell,
19 and using in the United States, Wild Ass Cruiser motorcycle-seat cushions, which
20 embody the design covered by the D'396 Patent.

21 93. Defendants' resellers, customers, and other users of Defendants' Wild
22 Ass Cruiser motorcycle-seat cushions, have been and are directly infringing the
23 D'396 Patent under 35 U.S.C. § 271(a).

24 94. Defendants have been and are actively inducing infringement of the
25 D'396 Patent under 35 U.S.C. § 271(b) by providing and selling Wild Ass Cruiser
26 motorcycle-seat cushions to resellers, customers, and users.

27 95. Defendants induced infringement by resellers, customers, and users after
28 Defendants had actual knowledge of the D'396 Patent and knew that Wild Ass's
resellers', customers', and users' sale, offers to sell, and/or use of Wild Ass

1 Cruiser motorcycle-seat cushions constituted patent infringement.

2 96. Defendants' infringement and inducement to infringe the D'396 Patent
3 have been willful and have deliberately injured and will continue to injure AirHawk
4 unless and until the Court enters a preliminary or permanent injunction prohibiting
5 further infringement and, specifically, enjoining further importation, use, sale,
6 and/or offer for sale of products that fall within the scope of the D'396 Patent.

7
8 **VII. Fourth Cause of Action**
9 **False Advertising — Lanham Act § 43(a), 15 U.S.C. § 1125(a)**

9 97. AirHawk incorporates Paragraphs 1-96 of its Complaint by reference.

10 98. Defendants have made and distributed, in interstate commerce and in
11 this District, marketing materials that contain false and misleading statements or
12 descriptions of fact about Wild Ass motorcycle-cushion products.

13 99. These advertisements contain actual misstatements and/or misleading
14 and failures to disclose, including among others, the statement that their products
15 are clinically proven and claims about medical and therapeutic benefits.

16 100. These false statements actually deceive or have a tendency to deceive, a
17 substantial segment of their intended audience— AirHawk's distributor customers
18 and consumers.

19 101. The deception is material in that it is likely to influence the purchasing
20 decisions of AirHawk's distributor customers and consumers.

21 102. AirHawk has been or is likely to be injured as a result of the false
22 statement, both by direct diversion of sales from AirHawk to Defendants and by a
23 lessening of the goodwill associated with AirHawk's products.

24 103. Defendants' false and misleading advertising statements and omissions
25 violate the Lanham Act § 43(a), 15 U.S.C. § 1125(a).

26 104. Defendants have caused, and will continue to cause, immediate and
27 irreparable injury to AirHawk, including injury to its business, reputation, and
28 goodwill, for which there is no adequate remedy at law. As such, AirHawk is

1 entitled to an injunction under 15 U.S.C. §1116 restraining Defendants, their
2 agents, employees, representatives and all persons acting in concert with them
3 from engaging in further acts of false advertising, and ordering removal of all
4 Defendants' false advertisements.

5 105. Under 15 U.S.C. § 1117, AirHawk is entitled to recover from Defendants
6 the damages AirHawk sustained as a result of Defendants' false advertising.
7 AirHawk is at present unable to ascertain the full extent of the monetary damages it
8 has suffered by reason of Defendants' acts.

9 106. Under 15 U.S.C. § 1117, AirHawk is also entitled to recover from
10 Defendants the gains, profits, and advantages that they have obtained as a result of
11 their acts. AirHawk is at present unable to ascertain the full amount of the gains,
12 profits, and advantages Defendants have obtained by reason of their acts.

13 107. Under 15 U.S.C. § 1117, AirHawk is further entitled to recover the costs
14 of this action. Moreover, AirHawk is informed and believes, and on that basis
15 alleges, that Defendants' conduct was undertaken willfully and with the intention
16 of causing confusion, mistake or deception, making this an exceptional case
17 entitling AirHawk to recover additional damages and reasonable attorneys' fees.

18
19 **VIII. Fifth Cause of Action**
20 **False Advertising — Cal. Bus. & Prof. Code § 17500**

21 108. AirHawk incorporates Paragraphs 1–107 of its Complaint by reference.

22 109. Defendants knew or in the exercise of reasonable care should have
23 known that their publicly disseminated statements and omissions relating to their
24 Wild Ass Motorcycle Cushions were false or misleading.

25 110. Defendants' false advertising statements and omissions injure
26 consumers and AirHawk.

27 111. Defendants' false and misleading statements include, among others, that
28 Defendants' products are clinically proven and claims about medical and
therapeutic benefits.

1 112. By making such untrue or misleading statements, Defendants have
2 engaged in false advertising in violation of California Business & Professions Code
3 § 17500.

4 113. By reason of Defendants' conduct, AirHawk has suffered injury in fact
5 and has lost money or property.

6 114. Defendants have caused, and will continue to cause, immediate and
7 irreparable injury to AirHawk, including injury to its business, reputation, and
8 goodwill, for which there is no adequate remedy at law. AirHawk is entitled to an
9 injunction restraining Defendants, their agents, employees, representatives and all
10 persons acting in concert with them from engaging in further such acts, and
11 forbidding Defendants from advertising their products as clinically proven, making
12 claims about medical and therapeutic benefits, and from making other false
13 statements in connection with the product.

14
15 **IX. Sixth Cause of Action**
Tortious Interference — 15 U.S.C. § 1125(d)

16 115. AirHawk incorporates Paragraphs 1–114 of its Complaint by reference.

17 116. AirHawk had economic relationships with its distributors and reseller
18 customers that probably would have resulted in economic benefit to AirHawk.

19 117. Defendants knew of those relationships.

20 118. Defendants engaged in intentional acts designed to disrupt those
21 relationships for Defendants' own benefit.

22 119. Defendants' intentional acts were wrongful because Defendants falsely
23 advertise the medical benefits of their products and are willfully infringing
24 AirHawk's design patents.

25 120. As a result, AirHawk's relationships with its distributors and reseller
26 customers have been disrupted, resulting in economic harm to AirHawk in the
27 form of decreased revenue from those customers.

28 121. Defendants' conduct was a substantial factor in causing AirHawk's

1 economic harm.

2 122. As a direct, proximate, and foreseeable result of Defendants'
3 interference with AirHawk's economic relationships, AirHawk has been damaged
4 in an amount to be determined at trial.

5 123. AirHawk is entitled to and requests an award of punitive and exemplary
6 damages under California Civil Code § 3294(a) against Defendants because
7 Defendants acted with, and were guilty of, oppression, fraud, and malice.

8 124. As a direct and proximate result of Defendants' intentional interference
9 with its economic relationships, AirHawk is suffering immediate and irreparable
10 harm.

11 **X. Seventh Cause of Action**
12 **Unfair Competition — Cal. Bus. & Prof. Code §§ 17200 et seq.**

13 125. AirHawk incorporates Paragraphs 1–124 of its Complaint by reference.

14 126. Defendants have made, published, disseminated, and circulated false,
15 deceptive, and misleading statements, representations, and advertisements,
16 including in California, misrepresenting the nature, quality, and characteristics of
17 their Wild Ass Motorcycle Cushions with the intent of selling, distributing, and
18 increasing the consumption of, and interest in, their Wild Ass Motorcycle
19 Cushions.

20 127. Defendants' conduct is likely to mislead or deceive the general public
21 and therefore constitutes fraudulent business acts or practices in violation of
22 California Business & Professions Code §§ 17200 et seq.

23 128. Defendants' conduct also constitutes false advertising under both
24 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and California Business &
25 Professions Code § 17500, and is therefore unlawful in violation of California
26 Business & Professions Code §§ 17200, et seq.

27 129. Defendants' conduct constitutes unlawful, unfair, or fraudulent business
28 acts or practices and is therefore unfair competition in violation of California

1 Business and Professions Code § 17200.

2 130. As a direct and proximate result of Defendants' unfair competition,
3 AirHawk has suffered injury in fact, including lost money or property in the form of
4 harm to its good will, reputation, lost sales, and other actual damages.

5 131. Defendants' wrongful conduct has also caused damage to consumers.

6 132. As a direct and proximate result of Defendants' wrongful conduct, the
7 Defendants obtained unlawful profits to the detriment of AirHawk.

8 133. These wrongful acts have proximately caused and will continue to cause
9 Plaintiff substantial injury, including loss of customers, dilution of goodwill,
10 confusion of existing and potential customers, and diminution of the value of
11 Plaintiff's products. The harm these wrongful acts will cause to Plaintiff is both
12 imminent and irreparable, and the amount of damage sustained by Plaintiff will be
13 difficult to ascertain if these acts continue. Plaintiff has no adequate remedy at law.

14 134. The harm to AirHawk and to members of the general public outweighs
15 the utility of Defendants' business practices.

16 135. Unless enjoined, Defendants will continue the acts and conduct
17 described above to AirHawk's great and irreparable injury, for which damages will
18 not afford adequate relief.

19 136. AirHawk is entitled to an injunction restraining Defendants, their
20 officers, agents, employees, and all persons acting in concert with them from
21 engaging in further such unlawful conduct.

22 137. Defendants committed the wrongful acts willfully, intending to gain
23 business and market share at the expense of AirHawk's profits and market share.
24 Defendants' conduct justifies an award of exemplary damages.

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XI. Relief Requested

1
2 Plaintiff AirHawk International, LLC requests that the Court enter judgment
3 in its favor and against Defendants TheRealCraigJ, LLC, Scott Parman, Craig
4 Johnson, and Does 1–10, jointly and severally, on all of AirHawk’s causes of action
5 as follows:

- 6 1. A judgment that Defendants have infringed and/or induced others to
7 infringe the D’785 Patent;
- 8 2. A judgment that Defendants have infringed and/or induced others to
9 infringe the D’569 Patent;
- 10 3. A judgment that Defendants have infringed and/or induced others to
11 infringe the D’396 Patent;
- 12 4. Preliminary and permanent injunctive relief restraining and enjoining
13 Defendants and their respective officers, directors, agents, servants,
14 representatives, employees, affiliates, attorneys, and all persons acting in
15 privity or in concert with them, and their parents, subsidiaries, divisions,
16 successors and assigns, from directly or indirectly infringing AirHawk’s
17 patents;
- 18 5. A judgment, order, or award of damages adequate to compensate
19 AirHawk for Defendants’ infringement, but in no event less than a
20 reasonable royalty, including all pre-judgment and post-judgment
21 interest at the maximum rate permitted by law;
- 22 6. A judgment awarding AirHawk all damages, including treble damages
23 under 35 U.S.C. § 284, based on any infringement found to be willful,
24 together with all pre-judgment and post-judgment interest at the
25 maximum rate permitted by law;
- 26 7. A finding that this case is exceptional and an award to AirHawk of its
27 reasonable attorney fees under 35 U.S.C. § 285;
- 28 8. A judgment that Defendants engaged in false advertising in violation of

1 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by using false or
2 misleading statements of fact that misrepresent the nature, quality, or
3 characteristics of their Wild Ass Motorcycle Cushion products;

- 4 9. Preliminary and permanent injunctive relief restraining and enjoining
5 Defendants and their respective officers, directors, agents, servants,
6 representatives, employees, affiliates, attorneys, and all persons acting in
7 privity or in concert with them, and their parents, subsidiaries, divisions,
8 successors, and assigns, from engaging in false or misleading advertising
9 with respect to their Wild Ass Motorcycle Cushion products;
- 10 10. A judgment, order, or injunction directing Defendants to deliver up for
11 destruction all labels, signs, prints, packages, wrappers, receptacles, and
12 advertisements bearing the false or misleading representations or
13 descriptions described herein;
- 14 11. A judgment, order, or injunction requiring Defendants to engage in
15 corrective advertising in a form approved by the Court to dispel the
16 serious competitive impact and effect of the false and misleading
17 representations described herein;
- 18 12. An accounting of Defendants' profits under 15 U.S.C. § 1117;
- 19 13. A finding that this case is exceptional and an award to AirHawk of its
20 reasonable attorney fees under 15 U.S.C. § 1117(a);
- 21 14. A judgment trebling any damages award under 15 U.S.C. § 1117 as a
22 result of Defendants' willful, intentional, and deliberate acts in violation
23 of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
- 24 15. A judgment that Defendants unfairly competed against AirHawk by
25 engaging in false or misleading advertising in violation of California
26 Business & Professions Code § 17500;
- 27 16. A judgment that Defendants unlawfully and unfairly competed against
28 AirHawk in violation of California Business & Professions Code

1 §§ 17200, *et seq.*;

- 2 17. An order under California Business & Professions Code § 17203
3 preventing Defendants from engaging in unfair competition;
- 4 18. A judgment awarding AirHawk actual damages suffered as a result of
5 Defendants' unlawful conduct, in an amount to be proven at trial,
6 including pre-judgment interest as authorized by law;
- 7 19. Restitution and disgorgement of Defendants' profits from false
8 advertising or obtained by Defendants as the result of unjust enrichment;
- 9 20. An award of attorneys fees and costs, as allowed by law;
- 10 21. Punitive damages under California Civil Code § 3294;
- 11 22. An order directing Defendants to file with the Court and serve on
12 AirHawk a written report under oath setting forth in detail the manner
13 and form in which Defendants have complied with the injunction and
14 judgment within 30 days after the service of the injunction and judgment
15 on Defendants; and
- 16 23. Such other and further relief as this Court or a jury may deem proper and
17 just.

18
19 Dated: April 4, 2016.

Respectfully Submitted,

NEWMAN DU WORS LLP

21 By: s/ Derek Linke
22 Derek A. Newman, State Bar No. 190467
23 Derek Linke, State Bar No. 302724

24 Attorneys for Plaintiff
25 AirHawk International, LLC
26
27
28

XII. Jury Demand

Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff AirHawk International, LLC demands a trial by jury of all issues presented in this Complaint which are so triable.

Dated: April 4, 2016.

Respectfully Submitted,

NEWMAN DU WORS LLP

By: s/ Derek Linke
Derek Linke, State Bar No. 302724

Attorneys for Plaintiff
AirHawk International, LLC