

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BOBCAR MEDIA, LLC.

Plaintiff,

v.

AARDVARK EVENT LOGISTICS, INC.

Defendant.

Civil Action No. 1:16-cv-00885

(JURY TRIAL DEMANDED)

**AMENDED COMPLAINT**

Plaintiff Bobcar Media, LLC (“Bobcar” or “Plaintiff”) by its attorneys, hereby complains of Defendant Aardvark Event Logistics, Inc. (“Aardvark” or “Defendant”) as follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §101 *et seq.*; trademark infringement and unfair competition under Section 43 of the Lanham Act, 15 U.S.C. §1125; and for unfair competition under the law of the State of New York. This Court has jurisdiction over the federal claims of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1332, 28 U.S.C. §1338, and 15 U.S.C. § 1121, and has jurisdiction over the state claims under 28 U.S.C. §1338(b) and further pursuant to its supplemental jurisdiction under 28 U.S.C. §1367. The state claims asserted herein are so related to the federal claims as to form part of the same case or controversy.

2. This action arises from Defendant's use, making, sale, offer for sale, and/or importing of promotional vehicles, and conduct of activities, that infringe Plaintiff's patents and trade dress.

3. This Court has personal jurisdiction over Defendant in that Defendant has engaged in acts constituting doing business in the State of New York, including in this judicial district and have intentionally directed its tortious activities toward the State of New York, including this judicial district. Defendant has committed acts of intellectual property infringement in New York, including this judicial district, and has delivered the accused promotional vehicles into the stream of commerce with the expectation that they will be used and/or purchased by consumers in the State of New York, including this judicial district. Upon information and belief, Defendant has used the accused vehicles in this State, including this judicial district, and/or offered for sale and/or sold promotional vehicles, including promotional vehicles that are the subject of this Complaint, to consumers in the State of New York.

4. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1391, and 28 U.S.C. §1400.

#### **THE PARTIES**

5. Plaintiff Bobcar Media, LLC is a limited liability company organized and existing under the laws of the State of New York having a principal place of business at 110 Wall Street, 4th Floor, New York, New York 10005. Bobcar is the owner of the patents and trademarks that are the subject of this Complaint.

6. Defendant Aardvark Event Logistics, Inc. (“Defendant” or “Aardvark”), is a corporation organized and existing under the laws of the State of Pennsylvania having a principal place of business at 1979 Pioneer Road, Huntingdon Valley, PA 19006. Aardvark makes, uses, offers for sale, sells and/or imports the accused promotional vehicles in the United States.

**FACTS**

**PLAINTIFF’S PATENTS  
AND TRADE DRESS**

7. Bobcar Media LLC is the owner of new technology and designs, including new inventions relating to promotional vehicles.

8. Plaintiff’s unique and innovative designs for promotional vehicles are well known throughout the United States as a result of the popular promotional vehicles that Plaintiff has designed, introduced, and commercialized in interstate commerce.

9. On May 17, 2011 United States Patent No. 7,942,461 B2 entitled “Method and Apparatus for Selling Consumer Products” was duly and lawfully issued to Bobcar by the United States Patent and Trademark Office (hereafter “the ‘461 patent”). A copy of the ‘461 patent is attached as Exhibit 1 hereto.

10. On July 17, 2012 United States Patent No. 8,220,854 B2 entitled “Method and Apparatus for Selling Consumer Products” was duly and lawfully issued to Bobcar by the United States Patent and Trademark Office (hereafter “the ‘854 patent”). A copy of the ‘854 patent is attached as Exhibit 2 hereto.

11. On April 8, 2014 United States Patent No. 8,690,215 B2 entitled “Method and Apparatus for Selling Consumer Products” was duly and lawfully issued to Bobcar

by the United States Patent and Trademark Office (hereafter “the ‘215 patent”). A copy of the ‘215 patent is attached as Exhibit 3 hereto.

12. On January 17, 2012 United States Design Patent No. D 652,353 entitled “Promotional Vehicle” was duly and lawfully issued to Bobcar by the United States Patent and Trademark Office (hereafter “the ‘353 patent”). A copy of the ‘353 patent is attached as Exhibit 4 hereto.

13. On March 26, 2013 United States Design Patent No. D 678,823 entitled “Promotional Vehicle” was duly and lawfully issued to Bobcar by the United States Patent and Trademark Office (hereafter “the ‘823 patent”). A copy of the ‘823 patent is attached as Exhibit 5 hereto.

14. On August 18, 2015, United States Design Patent No. D 736,675 entitled “Promotional Vehicle” was duly and lawfully issued to Bobcar by the United States Patent and Trademark Office (hereafter “the ‘675 patent”). A copy of the ‘675 patent is attached as Exhibit 6 hereto.

15. Plaintiff Bobcar also has rights to the trade dress of its promotional vehicle designs. That trade dress includes the combination and arrangement of the following features:

a promotional vehicle having a compact cab in the front, and a compact showroom in back, the showroom having substantially rectangular or square panels on the left and right sides and rear in the closed position, the vehicle having a configuration in which those panels are raised above the showroom and above the height of the front cab in an open position, the showroom being open to the public on three sides when the panels are in the open position, providing an open air showroom which is used to promote goods or services displayed in the showroom, wherein the promotional vehicle includes a colorful front cab and colorful back, including a colorful coordinated theme extending the entire length of the vehicle from front to back and

corresponding to the brand or type of goods or services in the showroom, and with the vehicle having advertising or promotional materials on the panels visible in the open and closed positions and corresponding to the brand or type of goods or services in the showroom.

Examples of Bobcar's promotional vehicles and their trade dress are attached as Exhibit 7 hereto.

16. Bobcar was the first to introduce the combination and arrangement of features above for a promotional vehicle into interstate commerce.

17. The combination and arrangement of features above constitutes the distinctive trade dress of Plaintiff Bobcar.

18. Bobcar's trade dress is inherently distinctive.

19. Bobcar's trade dress also has acquired distinctiveness, also known as secondary meaning.

20. Bobcar's trade dress has acquired distinctiveness as demonstrated by, *inter alia*: Bobcar's expenditures of over a million dollars promoting and popularizing its trade dress; industry recognition, including: the 2015 EX Silver Award for Best Mobile Marketing Program, which was awarded to Bobcar's innovative mobile showroom in a competitive selection from over a thousand entries from agencies throughout the country; media coverage of Bobcar's product and programs; Bobcar's sales success, having generated millions of dollars of revenue from its trade dress, and having repeatedly been chosen for marketing programs by major companies and industry leaders such as Samsung, T-Mobile, Verizon, Clear, Pentax, and Olympus, among others; Bobcar's approximately eight years of exclusive use of the trade dress; the recognition of Bobcar's trade dress and the good will associated therewith in the industry, including, recognition

and good will with numerous major consumers; and, Aardvark's plagiarism, which trades off of Bobcar's trade dress and the good will and success associated therewith.

21. Bobcar's trade dress is also non-functional.

22. The Bobcar trade dress is a combination and arrangement of features providing a unique ornamental and aesthetic appearance that was designed by Bobcar.

23. Bobcar's trade dress is not essential to the use or purpose of a promotional vehicle.

24. There are numerous alternative means to perform the function of promoting goods and services without using Bobcar's trade dress.

25. Plaintiff has used its inventions and designs on promotional vehicles used in interstate commerce, and has generated extensive revenue from its promotional vehicles using its trade dress.

26. Plaintiff invested significant time, funds, and effort into the development, marketing, and commercialization of its inventions, trade dress, and designs, with respect to promotional vehicles.

27. As a result of Plaintiff's efforts and promotional, advertising, and marketing activities, Plaintiff's promotional vehicles, designs therefor, and trade dress have become widely known throughout the United States.

28. Plaintiff's intellectual property including its patents, its trade dress, and the associated goodwill directed to its promotional vehicles, are all valuable assets of Plaintiff.

**DEFENDANT'S INFRINGEMENT OF  
PLAINTIFF'S PATENTS AND TRADE DRESS**

29. During the term of the Bobcar's patents, Defendant has manufactured or had manufactured for it, and has offered for sale, sold, used, and/or imported articles embodying the patented inventions and designs of Bobcar's patents, and engaged in activities infringing Bobcar's patents, namely, the '461, '854, '215, '353, '823 and '675 patents.

30. Defendant's articles that infringe Bobcar's patents include Defendant's "Aardy" promotional vehicles. Examples of Defendant's infringing promotional vehicles are attached as Exhibit 8 hereto.

31. Defendant's accused promotional vehicles infringe at least claim 1 of each of the utility patents, namely, the '461, '854, and '215 patents, among other claims of the utility patents.

32. Claim 1 of the '461 patent recites an article of manufacture, comprising:

(a) a self-propelled moving vehicle, said self-propelled moving vehicle comprising a cab and a showroom, said showroom being provided behind said cab;

(b) said showroom comprising a frame and a display platform, said frame and display platform defining an internal display area;

(c) said self-propelled moving vehicle comprising a series of panels affixed to said frame, said series of panels comprising a panel on the left side of said showroom, a panel on the right side of said showroom, and a panel at the rear of said showroom;

(d) said panels having a front side and a back side, wherein advertising is provided on at least one of said sides of at least one of said panels to promote a product or service to consumers;

(e) wherein each of said panels is movable, such that said panels have a lowered position and a raised position;

(f) wherein said series of panels surround said showroom on three sides when said panels are in said lowered position;

(g) wherein said display platform is open to the air on at least three sides when said series of panels are all in said raised position, such that a consumer can reach in from the left side, right side, and rear of said showroom to touch any products positioned on said display platform; and,

(h) wherein advertising is provided on said front of at least one of said panels when said panels are in said raised position, such that said panel serves as a vertical billboard above said display platform and above said roof of said showroom.

33. Claim 1 of the '854 patent recites an article of manufacture, comprising:

(a) a self-propelled moving vehicle, said self-propelled moving vehicle comprising a cab and a showroom, said showroom being provided behind said cab;

(b) said showroom comprising a display area;

(c) said showroom further comprising a series of panels, said series of panels comprising a panel on the left side of said showroom, a panel on the right side of said showroom, and a panel at the rear of said showroom;



(d) wherein each of said panels is movable, such that each of said panels has a closed position and an open position; and

(e) wherein said display area is open to the air when one or more of said panels is in said open position, such that a consumer can reach in to touch products positioned in said display area.

34. Claim 1 of the '215 patent recites an article of manufacture, comprising:

(a) a self-propelled moving vehicle, said self-propelled moving vehicle comprising a cab and a showroom, said showroom being provided behind said cab;

(b) said showroom comprising a display area;

(c) said showroom further comprising a series of panels, said series of panels comprising a panel on the left side of said showroom, a panel on the right side of said showroom, and a panel at the rear side of said showroom; and,

(d) wherein each of said panels is movable, such that each of said panels has a closed position and an open position.

35. As shown by the images of the accused product in Exhibit 8, and further images on Defendant's website, the accused product includes all of the limitations of the claims set forth above, infringing those claims.

36. Specifically, as shown in Exhibit 8, the accused product is a self-propelled moving vehicle, the self-propelled moving vehicle having a cab (at the front of the vehicle), and having a showroom provided behind the cab.

37. As shown in Exhibit 8, the back of the accused product includes a frame and a display platform, with the frame and display platform defining an internal display area.

38. As also shown in Exhibit 8, the accused product has a series of panels affixed to that frame. In particular, the accused product includes a panel on the left side of the showroom, a panel on the right side of the showroom, and a panel at the rear of the showroom. The panels have a front side and a back side, wherein advertising is provided on at least one of the sides of at least one of the panels to promote a product or service to consumers. Each of the panels is movable, such that they have a lowered or closed position and a raised or open position. The series of panels surround the showroom on three sides when the panels are in the lowered position.

39. As shown in Exhibit 8, the display platform of the accused product is open to the air on at least three sides when the series of panels are all in the raised position, such that a consumer can reach in from the left side, right side, and rear of the showroom to touch any products positioned on the display platform.

40. As also shown in Exhibit 8, advertising is provided on the front of at least one of the panels when the panels are in the raised position, such that the panel serves as a vertical billboard above the display platform and above the roof of the showroom.

41. Although for any particular patent claim all of the above-cited features of the accused product are not necessarily needed to infringe, the presence of all of these features in the accused product confirms that the accused product literally infringes at least claim 1 of each and every utility patent-in-suit.

42. Alternatively or additionally, the accused product infringes at least claim 1 of each and every utility patent-in-suit under the doctrine of equivalents.

43. Defendant's accused promotional vehicles also infringe the single claim of each of the design patents, namely, the '353, '823 and '675 patents.

44. An image of one of Defendants' accused products is attached as Exhibit 8 hereto. Further images are located on Defendant's website, [www.theardy.com](http://www.theardy.com).

45. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, Defendants' accused design and Plaintiff's patented designs are substantially the same.

46. An ordinary observer would see the design of Defendants' accused product as making the same design impression, or as being the same design, as the patented design of the '353 patent.

47. An ordinary observer would likewise see the design of Defendants' accused product as making the same design impression, or as being the same design, as the patented design of the '823 patent.

48. An ordinary observer would likewise see the design of Defendants' accused product as making the same design impression, or as being the same design, as the patented design of the '675 patent.

49. An ordinary observer would likewise consider the accused design, in the context of any prior art, and giving such attention as a purchaser usually gives, to be the same as the patented designs of the '353, '823, and '675 patents.

50. In the eye of the ordinary observer, giving such attention as a purchaser usually gives, the accused design and patented designs are substantially the same, with the resemblance being such as to deceive such an observer, inducing him to purchase one supposing it to be the other.

51. In fact, Defendants' accused design is virtually identical, if not identical, to Plaintiff's patented designs.

52. Defendants' accused design infringes Plaintiff's design patent rights.

53. In addition to its acts of patent infringement, Defendant also infringes Bobcar's trade dress.

54. Defendant's accused product includes all of the features of Bobcar's trade dress described above. An example of Defendant's accused product, including the features of Plaintiff's trade dress, is set forth in Exhibit 8. Likewise, numerous images of further infringements of Bobcar's trade dress are shown on Defendant's website, <http://www.theardy.com>.

55. Defendant's trade dress poses a likelihood of confusing and misleading consumers into believing that Defendant's goods originate from, are sponsored by, or are affiliated with Bobcar.

56. Defendant's bad faith activities have caused and will continue to cause a likelihood of deception and confusion in the marketplace among consumers, and extensive damage to Bobcar and its business, goodwill and reputation.

57. In addition, there has been actual confusion.

58. Defendant has illegally profited from its infringement of Bobcar's patented inventions, designs, and trade dress.

59. Defendant's acts have been without license or authority of Bobcar.

#### **WILLFUL INFRINGEMENT**

60. Defendant's activities have been deliberate and willful.

61. Defendant is aware of Bobcar's patented inventions and designs, and has deliberately chosen to use, sell, and offer for sale, promotional vehicles intended to copy or imitate those inventions and designs.

62. Defendant is also aware of Bobcar's trade dress, and has deliberately chosen to make, use, sell and/or offer for sale promotional vehicles which incorporate highly similar dress, and which are intended to cause confusion with Bobcar's trade dress.

63. On December 21, 2015 counsel for Plaintiff Bobcar wrote to Defendant Aardvark. A copy of that letter is attached as Exhibit 9.

64. In the December 21st letter, counsel for Plaintiff notified Defendant of Bobcar's intellectual property, including, but not limited to, the patents-in-suit.

65. Counsel for Plaintiff also notified Defendant that it was infringing Bobcar's intellectual property.

66. Counsel for Defendant responded in a letter dated January 5, 2016. A copy of that letter is attached as Exhibit 10.

67. In the January 5th letter, counsel for Defendant provided no explanation of why Defendant Aardvark's accused product does not infringe.

68. Counsel for Plaintiff Bobcar responded in a letter dated January 12, 2016. A copy of that letter is attached as Exhibit 11.

69. In the January 12th letter, counsel for Plaintiff pointed out to counsel for Defendant that, with respect to the January 5th letter, “there is not a single detail in your letter supporting your alleged non-infringement position.”

70. Counsel for Defendant Aardvark responded in a letter dated January 19, 2016. A copy of that letter is attached as Exhibit 12.

71. Counsel for Defendant again did not provide any details of any non-infringement position.

72. Counsel for Plaintiff responded in a letter dated January 26, 2016. A copy of that letter is attached as Exhibit 13.

73. In the January 26th letter, counsel for Plaintiff stated to counsel for Defendant Aardvark as follows: “Upon reviewing your letters, it is likewise apparent that Aardvark’s product infringes Bobcar’s patents. We pointed out in our January 12, 2016 letter that your January 5th letter did not include even a single detail supporting your alleged non-infringement position. In your latest letter, that remains the case.”

74. In the January 26th letter, counsel for Plaintiff requested a response by February 3rd.

75. Despite the numerous requests listed above, Defendant’s counsel was still unable by that date to provide any justification for its allegations of non-infringement.

76. In fact, counsel for Defendant did not provide a response of any form.

77. Nonetheless, Defendant has deliberately continued to engage in its infringing activities using its infringing product.

78. Even though Defendant's own counsel was unable after numerous requests to provide even a single detail of an alleged non-infringement position, Defendant has continued its accused activities.

79. Defendant has knowledge of Bobcar's patents, and knowledge of an objectively high risk that its accused vehicle and activities infringe those patents.

80. From December 21, 2015 onward, Defendant has acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, and this objectively-defined risk was either known or so obvious that it should have been known to the Defendant.

81. Prior to December 21, 2015 Defendant was on constructive notice of Bobcar's patent rights.

82. Upon information and belief, prior to December 21, 2015 Defendant was likewise aware of Bobcar's products and intellectual property.

83. Upon information and belief, Defendant nonetheless chose to infringe prior to December 21, 2015 despite an objectively high likelihood that its actions constituted infringement of a valid patent, with this objectively-defined risk being either known or so obvious that it should have been known to the accused infringer.

84. Defendant's actions constitute willful infringement under the current legal standard, and any future standards of law applicable thereto.

85. Defendant's activities are, and have been, in bad faith.

86. Defendant has used its infringing promotional vehicles to advertise, market, and promote third party products to Bobcar's detriment, offering itself as a cheaper alternative to Bobcar.

87. Defendant has used its infringing promotional vehicles to advertise, market, and promote Defendant's infringing product to Bobcar's customers and potential customers.

88. Defendant is and has been knowingly harming Bobcar's business, using Bobcar's own intellectual property.

89. Defendant's actions have caused and are causing irreparable damage to Bobcar.

90. Bobcar has been damaged by Defendant's bad faith activities and will continue to be damaged unless Defendant is restrained and enjoined by this Court.

91. Bobcar has no adequate remedy at law.

92. Bobcar has been damaged by Defendant's illegal actions in an amount to be determined by a jury and this Court, including recovery and relief for Bobcar's lost sales, lost profits, price erosion, and damage to its reputation and good will, and/or a disgorgement of Defendant's revenues and profits, and recovery of Bobcar's attorneys' fees and costs.

**COUNT I**  
**PATENT INFRINGEMENT:**  
**(35 U.S.C. §101 *et seq.*)**

93. Bobcar repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.



94. This claim arises under 35 U.S.C. §101 et seq.

95. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331.

96. Defendant's acts constitute infringement of the '461, '854, '215, '353, '823, and '675 patents, under 35 U.S.C. §271.

97. Defendant's acts constitute direct literal infringement, and/or infringement under the doctrine of equivalents, of each of Bobcar's design patents, and at least claim 1 of each of Bobcar's utility patents.

98. Defendant's acts likewise constitute inducement of infringement.

99. Upon information and belief, Defendant is inducing third parties to engage in infringement of Bobcar's patents.

100. Upon information and belief, Defendant has engaged or is engaging in an affirmative act to encourage the manufacturer of the accused product to manufacture the accused product and thereby infringe Bobcar's patents-in-suit.

101. Upon information and belief, Defendant has and has had specific intent to induce infringement of Plaintiff's patents.

102. Upon information and belief, Defendant has and has had actual knowledge that the induced acts constitute patent infringement, or, has and has had willful blindness thereto.

103. Defendant's acts of infringement were and are willful and deliberate.

104. Defendant has profited from its infringing activities.

105. As a result of Defendant's conduct, Bobcar has been substantially harmed. Bobcar has suffered, and continues to suffer, substantial damages as a result of

Defendant's bad faith activities. Bobcar has also suffered actual damages, including lost profits, and price erosion, and has been forced to retain legal counsel and pay costs of court to bring this action.

**COUNT II**  
**LANHAM ACT TRADEMARK INFRINGEMENT**  
**AND UNFAIR COMPETITION:**  
**(15 U.S.C. §1125(a))**

106. Bobcar repeats and re-alleges each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

107. This claim arises under the Lanham Act, 15 U.S.C. § 1051 et seq.

108. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331.

109. Defendant's infringing trade dress is designed and intended to mislead consumers.

110. Defendant is intentionally using trade dress which is confusingly similar to Bobcar's trade dress in a manner that has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Bobcar, or as to the origin, sponsorship, or approval of Defendant's goods by Bobcar.

111. Defendant's activities, in selling and offering for sale promotional vehicles with trade dress which is confusingly similar to Bobcar's trade dress, constitute unfair competition, false designation of origin, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

112. Defendant's acts of infringement were and are willful and deliberate.

113. Defendant has profited from its illegal and bad faith activities.

114. As a result of Defendant's conduct, Bobcar has been substantially harmed. Bobcar has suffered, and continues to suffer, substantial damages as a result of Defendant's bad faith activities. Bobcar has also suffered actual damages, including lost profits, and price erosion, and has been forced to retain legal counsel and pay costs of court to bring this action.

**COUNT III**  
**UNFAIR COMPETITION UNDER NEW YORK LAW**

115. Bobcar repeats and re-alleges each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

116. This claim arises under the common law of the State of New York.

117. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1367.

118. Bobcar has created its designs, promoted its promotional vehicles, and created its marketing programs, through years of extensive time, labor, skill and money.

119. Defendant has misappropriated the results of that labor and skill and those expenditures of Bobcar.

120. Defendant has used trade dress that is confusingly similar to Bobcar, for identical or highly similar goods, in competition with Bobcar, gaining an unfair advantage, because Defendant bore little or no burden of expense of development and promotion of those goods.

121. Defendant has also used the commercial and advertising programs of Bobcar.

122. An example of one such program is an advertising and marketing program designed and developed by Bobcar, in which Bobcar's promotional vehicle trade dress

described above would be used in conjunction with a vehicle that jointly promotes the products and services of two separate companies, Samsung and T-Mobile.

123. Such program was conceived of, designed, and developed by Bobcar.

124. Defendant has misappropriated Bobcar's trade dress and advertising and marketing ideas and program, by use of Bobcar's promotional vehicle trade dress described above in conjunction with an infringing vehicle that jointly promotes the products and services of both Samsung and T-Mobile.

125. By knowingly using confusingly similar product trade dress for identical or highly similar goods, to compete against Bobcar's goods, Defendant has misappropriated a commercial advantage belonging to Bobcar.

126. By knowingly using Bobcar's trade dress for identical or highly similar goods, with the advertising and marketing program that Bobcar developed, to compete against Bobcar's goods, Defendant has misappropriated a commercial advantage belonging to Bobcar.

127. Defendant has deliberately used Bobcar's intellectual property and ideas in bad faith, to undercut Bobcar and injure Bobcar and its business.

128. Defendant's activities constitute bad faith misappropriation of the labors of Bobcar which is likely to cause confusion, and to deceive purchasers as to the origin of the goods.

129. Defendant's actions have caused significant commercial damage to Bobcar.

130. Defendant's conduct is illegal and actionable under the common law of unfair competition of the State of New York.

131. Bobcar has been injured by Defendant's illegal actions and is entitled to the remedies provided under New York law.

**DAMAGES**

132. Bobcar is being irreparably harmed by Defendant's infringing activities, and has no adequate remedy at law.

133. Bobcar has been extensively damaged by Defendant's intellectual property infringement in an amount to be determined by a jury and this Court.

134. Bobcar seeks damages as a result of Defendant's infringement which include, but are not limited to: Bobcar's lost sales, lost profits, price erosion and damage to its reputation and good will; and/or disgorgement of Defendant's revenues and profits; from Defendant's sales of infringing promotional vehicles, associated parts thereof, and from convoyed sales.

135. Bobcar requests that this honorable Court assess enhanced damages against Defendant in the fullest amount permissible by law, including, but not limited to, treble damages under federal law and punitive damages under New York law, and award Bobcar its attorneys' fees, in view of the willful, egregious, malicious, and extensive nature of Defendant's bad faith activities complained of herein, and in view of the numerous violations, the willful nature of the violations, and the significant damage to Bobcar, as set forth above.

**JURY TRIAL DEMAND**

136. Pursuant to Rule 38, Fed. R. Civ. P. Bobcar hereby demands a trial by jury on all issues set forth herein that are properly triable to a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Bobcar respectfully requests that the Court, upon final hearing of this matter, grant the following relief against Defendant:

- A. That Defendant be adjudged to have engaged in patent infringement of Bobcar's rights under United States Patent No. 7,942,461 B2 ("the '461 patent), under 35 U.S.C. §101 *et seq.*;
- B. That Defendant be adjudged to have engaged in patent infringement of Bobcar's rights under United States Patent No. 8,220,854 B2 ("the '854 patent), under 35 U.S.C. §101 *et seq.*;
- C. That Defendant be adjudged to have engaged in patent infringement of Bobcar's rights under United States Patent No. 8,690,215 B2 ("the '215 patent), under 35 U.S.C. §101 *et seq.*;
- D. That Defendant be adjudged to have engaged in patent infringement of Bobcar's rights under United States Design Patent No. D652,353 ("the '353 patent), under 35 U.S.C. §101 *et seq.*;
- E. That Defendant be adjudged to have engaged in patent infringement of Bobcar's rights under United States Design Patent No. D678,823 ("the '823 patent), under 35 U.S.C. §101 *et seq.*;
- F. That Defendant be adjudged to have engaged in patent infringement of

Bobcar's rights under United States Design Patent No. D 736,675 ("the '675 patent), under 35 U.S.C. §101 *et seq.*;

- G. That Defendant be adjudged to have engaged in federal unfair competition and trademark infringement under Section 43 of the Lanham Act, 15 U.S.C. §1125 and unfair competition and trademark infringement under the common law and statutory law of the State of New York.
- H. That the '461, '854, '215, '353, '823 and '675 patents were duly and legally issued by the U.S. Patent Office, and are valid and enforceable;
- I. That Defendant, its officers, agents, servants, employees, representatives, distributors and all persons in concert or participation with Defendant be enjoined pursuant to 35 U.S.C. §283 from engaging in any activities which infringe Bobcar's rights in the patents under 35 U.S.C. §271;
- J. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be enjoined pursuant to 35 U.S.C. §283 from making, using, importing, exporting, offering for sale and selling any vehicles and engaging in any activities which directly infringe the patents under 35 U.S.C. §271;
- K. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be preliminarily and permanently enjoined from offering for sale, selling or marketing merchandise that tends in any way to deceive, mislead or confuse the public into believing that Defendant's merchandise in any way

originates with, is sanctioned by, or is affiliated with Bobcar;

- L. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be preliminarily and permanently enjoined from otherwise competing unfairly with Bobcar;
- M. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be preliminarily and permanently enjoined from engaging in further acts of misrepresentation regarding Bobcar and Bobcar's promotional vehicles;
- N. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be preliminarily and permanently enjoined from engaging in further deceptive and unfair business practices with respect to Bobcar;
- O. That Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be preliminarily and permanently enjoined from engaging in further acts infringing Bobcar's rights under New York law;
- P. That the Defendant be directed to file with this Court and serve on Bobcar within thirty (30) days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendant has complied with the injunction;
- Q. That Defendant be required to account for and pay over to Bobcar any and



all revenues and profits derived by it and all damages sustained by Bobcar by reason of the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled pursuant Section 35 of the Lanham Act, 15 U.S.C. §1117, as well as 35 U.S.C. §§284 and 289, and all further applicable law;

- R. That Defendant be required to account for and pay over to Bobcar such actual damages as Bobcar has sustained as a consequence of Defendant's infringement, and that the damages relating to patent infringement be trebled pursuant to 35 U.S.C. §284, and to account for and pay to Bobcar all of Defendant's gains, revenues, profits and advantages attributable to or derived by Defendant's infringement.
- S. That each such award of damages be enhanced to the maximum available for each infringement in view of each of Defendant's willful infringement of Bobcar's rights;
- T. That the Defendant be required to deliver up for impoundment during the pendency of this action, and for destruction thereafter, all copies of the infringing materials in its possession or under its control and all materials, including all molds, master models and other materials used for making same;
- U. That Bobcar be awarded punitive or exemplary damages under New York law because of the egregious, malicious, and tortious conduct of Defendant complained of herein;

- V. That Bobcar recover the costs of this action including its expenses and reasonable attorneys' fees pursuant to 15 U.S.C. §1117, 35 U.S.C. §285 and all further applicable law, because of the deliberate and willful nature of the infringing activities of Defendant sought to be enjoined hereby, which make this an exceptional case warranting such award;
- W. That Bobcar be awarded pre-judgment and post-judgment interest;
- X. That Bobcar obtain all further relief permitted under the laws of the United States and the State of New York; and,
- Y. That Bobcar obtain all such other and further relief as the Court may deem just and equitable.

Dated: April 20, 2016

*/s/Morris E. Cohen*

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Morris E. Cohen (MC-4620)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2016, a true and correct copy of the foregoing was served on counsel of record via the Court's ECF system.

Dated: April 20, 2016

*/s/ Morris E. Cohen*

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Morris E. Cohen