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10 Attorneys for Plaintiff  
11 CABEAU, INC.

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 CABEAU, INC., a California corporation,

15 Plaintiff,

16 vs.

17 JEFFREY PAVACIC, an individual;  
18 J&A MARKETING, LLC, a Utah Limited  
19 Liability Company;  
20 and DOES 1-10 inclusive,

21 Defendants.

**CASE NO. 2:16-cv-4584-SJO-GJS**

**FIRST AMENDED COMPLAINT  
FOR DAMAGES AND INJUNCTIVE  
RELIEF FOR:**

**PATENT INFRINGEMENT  
[35 U.S.C. § 271]**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Cabeau, Inc., for its complaint against defendants Jeffrey Pavacic, J&A  
2 Marketing, LLC, and Does 1-10, inclusive, alleges as follows:

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4 **NATURE OF ACTION**

5 This is a civil action for patent infringement under 35 U.S.C. § 271.  
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7 **PARTIES**

8 1. Plaintiff Cabeau, Inc. (“Cabeau” or “Plaintiff”) is a corporation duly  
9 organized and existing under the laws of the State of California, with a principal place of  
10 business located at 5850 Canoga Avenue, Suite 100, Woodland Hills, California 91367.

11 2. On information and belief, Jeffrey Pavacic (“Pavacic”) is an individual  
12 located at 817 Santmyer Drive SE, Leesburg, VA 20175. On information and belief,  
13 Pavacic does business on the online marketplace Amazon under the names “Skies the  
14 Limit” and “TryMe.”

15 3. On information and belief, J&A Marketing, LLC (“J&A”) is a Utah LLC with  
16 a registered address for service of process at 299 S. Main Street, Suite 1300, Salt Lake City,  
17 UT 84111. On information and belief, J&A does business on the online marketplace  
18 Amazon under the names “Skies The Limit” and “TryMe.”

19 4. Defendants Does 1-10, inclusive (collectively, with Pavacic and J&A,  
20 “Defendants”), are sued herein under fictitious names. Their true names and capacities are  
21 unknown to Cabeau. When their true names and capacities are ascertained, Cabeau will  
22 amend this complaint by inserting their true names and capacities. Cabeau is informed and  
23 believes and thereon alleges that each of Does 1-10 is responsible in some manner for the  
24 occurrences alleged herein and that Cabeau’s damages have been and are being  
25 proximately caused by such defendants.

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1 **JURISDICTION AND VENUE**

2 5. Jurisdiction in this Court arises under the patent laws of the United States, and  
3 this Court has subject matter jurisdiction under at least 28 U.S.C. §§ 1331, 1338, and 1367.

4 6. This Court has personal jurisdiction over Defendants because they have  
5 committed one or more of the infringing acts complained of herein in California and in this  
6 district, and on information and belief, they have done regular business in this district. This  
7 Court has personal jurisdiction over Defendants because, among other things, Defendants  
8 conduct business in the State of California and in this judicial district and thus enjoy the  
9 privileges and protections of California law.

10 7. Venue in this Court is proper at least under the provisions of 28 U.S.C.  
11 §§ 1391(b) and 1391(c) because a substantial part of the claims arose in this district.

12 **BACKGROUND**

13 8. This is an action for design patent infringement.

14 9. Cabeau is a multi-million dollar leader in the travel product industry. As a  
15 result of its significant investment in innovation and careful attention to detail, Cabeau has  
16 developed distinctive designs and a unique level of craftsmanship that have revolutionized  
17 the market for comfort products and on-the-go gear. In particular, Cabeau’s flagship  
18 product, the EVOLUTION® PILLOW, is one of the best-selling travel pillows worldwide,  
19 and is an innovative design recognized by consumers throughout the world.

20 10. As a direct result of its advanced design, the EVOLUTION® PILLOW was  
21 an instant success. Analysts and consumers alike praised the product as a game-changer.  
22 For instance, People Magazine listed the EVOLUTION® PILLOW as one of its top  
23 “Travel Picks.”

24 11. Cabeau has invested significant time, effort and capital in presenting the  
25 EVOLUTION® PILLOW at trade shows across the United States. Cabeau’s  
26 EVOLUTION® PILLOW has been extensively advertised throughout the United States in  
27 a variety of media channels, including the Internet, magazines, newsletters, catalogs and  
28

1 newspapers—with the vast majority of the advertisements featuring photographs of the  
2 product’s distinctive design. Cabeau has invested millions of dollars in advertising  
3 expenditures for this single product since its launch. As such, those in the travel industry  
4 are well aware of the innovative design of Cabeau’s EVOLUTION® PILLOW.

5 12. Cabeau has offered the EVOLUTION® PILLOW for sale in SkyMall  
6 magazine, which at one time could be found on almost all domestic flights in the United  
7 States and reached hundreds of millions of air travelers annually. Cabeau likewise sells the  
8 EVOLUTION® PILLOW via its own website at <http://www.cabeau.com> and through  
9 major online distributors such as Amazon. Additionally, the EVOLUTION® PILLOW is  
10 sold in retail stores in over 100 countries throughout the world.

11 13. Cabeau’s EVOLUTION® PILLOW has received unsolicited comment and  
12 attention in print and broadcast media throughout the United States, including mainstream  
13 media outlets such as ABC News, The New York Times, the Los Angeles Times, USA  
14 Today, MSNBC, Gizmodo, and The Washington Post. The EVOLUTION® PILLOW is  
15 routinely the subject of positive commentary and receives unsolicited praise from  
16 independent commentators.

17 14. Accordingly, the Cabeau EVOLUTION® PILLOW product design has come  
18 to represent and symbolize the superb quality of Cabeau’s products and enjoys substantial  
19 goodwill among consumers. That quality and goodwill has made the EVOLUTION®  
20 PILLOW a number one best-seller in stores across the United States. Consumers have  
21 consistently demonstrated they are willing to pay more for the premium quality and  
22 superior design of the EVOLUTION® PILLOW; its success speaks for itself.

23 15. Cabeau has protected its innovative designs through intellectual property  
24 rights. Among those is United States Design Patent No. D619,402 (“the ‘402 Patent”) titled  
25 “Travel Pillow.” The design patent covers distinctive, ornamental features of the  
26 EVOLUTION® PILLOW product.

27 16. The ‘402 Patent was duly and legally issued by the United States Patent and  
28 Trademark Office on July 13, 2010. A true and correct copy of the ‘402 Patent is attached

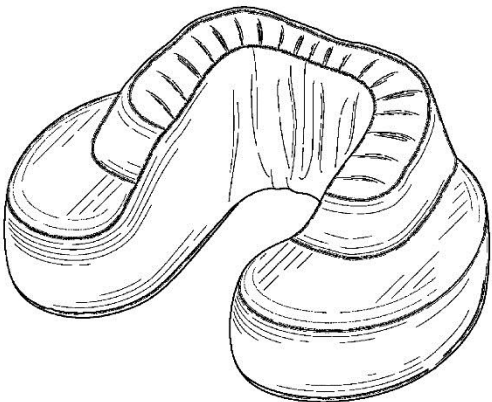

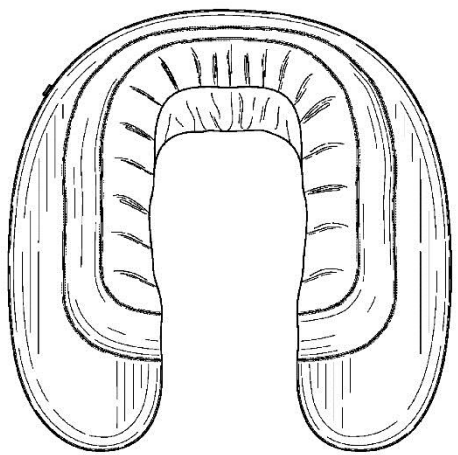

1 as Exhibit 1 hereto. Cabeau owns all right, title, and interest in the ‘402 Patent, as shown  
2 by the USPTO Assignment Database printout shown in Exhibit 2. As the owner of the ‘402  
3 Patent, Cabeau is authorized and has standing to bring legal action to enforce all rights  
4 arising under the ‘402 Patent. Cabeau has never assigned, licensed, or otherwise granted or  
5 transferred any rights under the ‘402 Patent.

6 17. Defendants have willfully infringed the ‘402 Patent by making, using, selling,  
7 offering to sell and/or importing pillows that embody the invention claimed by the ‘402  
8 Patent. Rather than develop their own unique style for his travel pillow products,  
9 Defendants blatantly and willfully copied Cabeau’s innovative design.

10 18. For example, Defendants have sold a travel pillow (the “TRYME PILLOW”)  
11 through channels of commerce also utilized by Cabeau, such as Amazon, which allows  
12 purchasers from regions across the United States and the world to buy Defendants’  
13 products. A screenshot of the Amazon.com listing for the TRYME PILLOW is attached  
14 hereto as Exhibit 3. Defendants’ copying is so pervasive that the TRYME PILLOW  
15 appears to be an actual Cabeau product – for example, it copies the ‘402 Patent’s distinctive  
16 raised side cushions, as shown by the below side-by-side comparison with the design  
17 claimed by the ‘402 Patent. The shape and design of the TRYME PILLOW are  
18 substantially similar to the patented design as set forth in the ‘402 Patent, such that an  
19 ordinary observer, taking into account the prior art, would believe the TRYME PILLOW  
20 to be the same as the patented design.

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THE '402 PATENT	TRYME PILLOW
	
	

19. Defendants conduct or have conducted business over the internet, and sell or have sold the TRYME PILLOW over the internet.

20. Defendants have sold the TRYME PILLOW over the internet to one or more purchasers in California, and the TRYME PILLOW has been shipped to one or more purchasers in California.



1           21. On information and belief, Pavacic is a member of J&A, and controls J&A's  
2 commercial activities. On information and belief, Pavacic acts on behalf of J&A and can  
3 legally bind J&A.

4           22. On information and belief, Pavacic personally conducts business on the online  
5 marketplace Amazon under the names "Skies The Limit" and "TryMe." In response to an  
6 intellectual property infringement complaint filed on Amazon.com by Cabeau for the  
7 TRYME PILLOW, Amazon on February 2016, specifically named "Jeffrey Pavacic/Skies  
8 The Limit" as the third-party seller of the TRYME PILLOW and provided Mr. Pavacic's  
9 yahoo email account as the contact information.

10           23. On information and belief, there is no real separation between Pavacic and  
11 J&A, and J&A is a sham LLC. At no point prior to the filing of the Complaint in this action  
12 (doc. 1) on June 23, 2016, was Cabeau aware of J&A's existence. J&A was not identified  
13 in any communication to Cabeau from Pavacic or otherwise as the entity conducting  
14 business on the online marketplace under the names "Skies The Limit" and "TryMe."  
15 Pavacic identified only himself individually as being related to the infringing online sales  
16 alleged herein, and represented that he was the person that Cabeau should be dealing with  
17 respect to the infringing subject matter. At no time did Mr. Pavacic even mention J&A.

18           24. On information and belief, neither "Skies the Limit" nor "TryMe" is a  
19 registered business entity. On information and belief, neither "Skies the Limit" nor  
20 "TryMe" has followed any corporate or business entity formalities. Cabeau has conducted  
21 searches for both a "Skies the Limit" entity and a "TryMe" entity, and has found no  
22 evidence of either.

23           25. On information and belief, J&A has failed to follow the formalities required  
24 of an LLC. On information and belief, J&A is inadequately capitalized. Despite inquiries  
25 from Cabeau requesting information to show that J&A has followed the formalities  
26 required of an LLC, and requesting information to show that J&A is adequately capitalized,  
27 J&A has provided no such information.

28           26. On March 7, 2016, as shown by the email thread attached hereto as Exhibit

1 4, Cabeau both emailed and mailed a cease and desist letter to Pavacic demanding that he  
2 immediately cease sales of the infringing TRYME PILLOW. A copy of this letter, which  
3 includes various images of the TRYME PILLOW, is attached hereto as Exhibit 5.

4 27. Pavacic responded less than forty minutes later, stating that the listing for the  
5 TRYME PILLOW was “no longer active or for sale on Amazon or any other sales  
6 channel.” A copy of this email is shown in Exhibit 4, attached hereto.

7 28. In April of 2016, Cabeau discovered an Amazon listing by Defendants for a  
8 travel pillow with a shape nearly identical to the TRYME PILLOW (the “TRYME LOW  
9 PROFILE PILLOW”; collectively, with the TRYME LOW PROFILE PILLOW, the  
10 “TRYME PILLOWS”). A screenshot of the Amazon.com listing for the TRYME LOW  
11 PROFILE PILLOW is attached hereto as Exhibit 6. The shape of the TRYME LOW  
12 PROFILE PILLOW is essentially identical to the shape of the TRYME PILLOW but for  
13 overall height, and the TRYME LOW PROFILE PILLOW also appears to be an actual  
14 Cabeau product, as shown by the below side-by-side comparison with the design claimed  
15 by the ‘402 Patent. The shape and design of the TRYME LOW PROFILE PILLOW are  
16 substantially similar to the patented design as set forth in the ‘402 Patent, such that an  
17 ordinary observer, taking into account the prior art, would believe the TRYME LOW  
18 PROFILE PILLOW to be the same as the patented design.

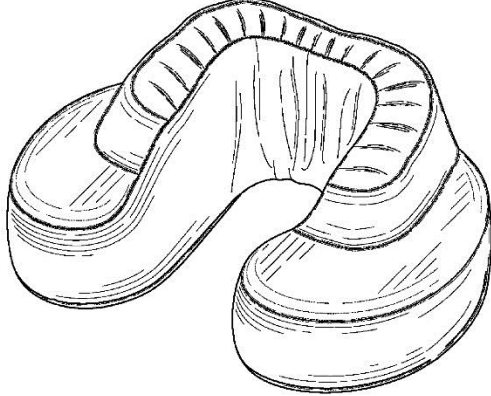

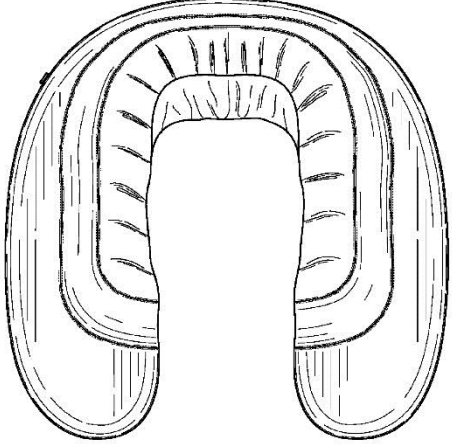

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<b>THE '402 PATENT</b>	<b>TRYME LOW PROFILE PILLOW</b>
	
	

29. Defendants have sold the TRYME LOW PROFILE PILLOW over the internet to one or more purchasers in California, and the TRYME LOW PROFILE PILLOW has been shipped to one or more purchasers in California.

30. On May 16, 2016, as shown by Exhibit 4, Cabeau both emailed and mailed a cease and desist letter to Pavacic demanding that he immediately cease sales of the infringing TRYME LOW PROFILE PILLOW. A copy of this letter, which includes

1 various images of the TRYME LOW PROFILE PILLOW, is attached hereto as Exhibit 7.

2 31. Pavacic responded less than ten minutes later, stating that Defendants  
3 “categorically admit to nothing in terms of infringement. The low profile pillow is  
4 significantly different design [*sic*]”. A copy of this email is shown in Exhibit 4.

5 32. Through its sales of the TRYME PILLOW and the TRYME LOW  
6 PROFILE PILLOW, Defendants have reached out beyond their home states to avail itself  
7 of the benefits of the California forum; J&A has reached out beyond its home state of  
8 Utah to avail itself of the benefits of the California forum; and Pavacic has reached out  
9 beyond his home state to avail himself of the benefits of the California forum.

10 33. California, the home of Silicon Valley and high-tech research institutes such  
11 as the California Institute of Technology and the University of California, holds such a  
12 substantial portion of the nations’ internet users that J&A, which engages in electronic  
13 commerce over the internet, expected or should reasonably have expected its activities to  
14 reach a large number of California residents.

15 34. On information and belief, J&A is organized in Utah and its principals reside  
16 in Virginia, and as such J&A has also purposefully availed itself of jurisdictions over  
17 1,500 miles apart.

18  
19 **FIRST CAUSE OF ACTION**

20 **(Design Patent Infringement, U.S. Des. Pat. No. D619,402)**

21 35. Cabeau realleges and incorporates by reference the full text of all of the  
22 foregoing numbered paragraphs, photographs, figures, and tables as though each such  
23 paragraph, photograph, figure, and table has been fully set forth herein.

24 36. On July 13, 2010, the United States Patent and Trademark Office issued  
25 U.S. Des. Pat. No. D619,402 (hereinafter “the ‘402 Patent”). Effective as of the date of  
26 application, January 15, 2010, Cabeau is the owner of the entire right, title, and interest in  
27 and to the patent application and the ‘402 Patent issuing therefrom, as shown by the  
28 USPTO Assignment Database. *See* Exhibit 2. The ‘402 Patent was duly and legally

1 issued by the United States Patent and Trademark Office on July 13, 2010.

2 37. Cabeau's ownership of the '402 Patent includes without limitation the  
3 exclusive right to enforce the '402 Patent, the exclusive right to file actions based on  
4 infringement of the '402 Patent, and the exclusive right to recover damages or other  
5 monetary amounts for infringement of the '402 Patent and to be awarded injunctive relief  
6 pertaining to the '402 Patent, and as such Cabeau has standing to bring legal action to  
7 enforce all rights arising under the '402 Patent.

8 38. Defendants have been, and presently are, infringing the '402 Patent within  
9 this judicial district and elsewhere by making, using, selling, offering to sell in, and/or  
10 importing into the United States travel pillows that embody the patented invention  
11 claimed by the '402 Patent. Such products include, by way of example and without  
12 limitation, Defendants' TRYME PILLOW and TRYME LOW PROFILE PILLOW  
13 products. Defendants will continue to manufacture and sell its infringing products unless  
14 enjoined by this Court.

15 39. Defendants have had actual knowledge of the '402 Patent since at least as  
16 early as March 7, 2016. Defendants continue to, *inter alia*, make, sell, offer for sale in,  
17 and/or import into the United States infringing travel pillows, thus intending for its  
18 actions to result in infringement. Defendants' infringement has been and is egregious and  
19 willful, warranting an award of enhanced damages under 35 U.S.C. § 284.

20 40. On information and belief, Defendants have knowingly induced  
21 infringement, and has had specific intent to induce infringement of the '402 Patent by,  
22 *inter alia*, marketing, selling, supporting sales, and/or distributing infringing travel  
23 pillows. Defendants' customers, including without limitation manufacturers and retailers,  
24 directly infringe the '402 Patent by, *inter alia*, making, using, selling, offering to sell in,  
25 and/or importing into the United States infringing travel pillows.

26 41. The TRYME PILLOWS so closely resemble the invention claimed by the  
27 '402 Patent that an ordinary observer, taking into account the prior art, would be deceived  
28 into purchasing the TRYME PILLOWS in the mistaken belief that they include the

1 invention claimed by the ‘402 Patent. Defendants’ TRYME PILLOWS infringe the ‘402  
2 Patent in violation of 35 U.S.C. §§ 271 and 289.

3 42. Due to Defendants’ infringement of the ‘402 Patent, Cabeau has suffered, is  
4 suffering, and will continue to suffer irreparable injury for which Cabeau has no adequate  
5 remedy at law. Cabeau is therefore entitled to a permanent injunction against Defendants’  
6 further infringing conduct.

7 43. Defendants have profited and are profiting from its infringement of the ‘402  
8 Patent and Cabeau has been and is being damaged and losing profit by such infringement.  
9 Cabeau is therefore entitled to recover damages from Defendants and the total profit  
10 derived from such infringement, all in amount to be proven at trial, together with interest  
11 and costs as fixed by the Court.

12 44. Cabeau has complied with the statutory requirement of placing a notice of the  
13 ‘402 Patent on all EVOLUTION® PILLOW products it manufactures and sells in  
14 accordance with 35 U.S.C. § 287, and has given Defendants written notice of their  
15 infringement.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Cabeau, Inc. prays for relief as follows:

- 18 1. A judgment declaring that Defendants have:  
19 a. infringed Cabeau’s ‘402 Patent; and  
20 b. willfully violated applicable laws of the United States and of the states  
21 where Defendants’ goods have been sold, all to the detriment of  
22 Cabeau.
- 23 2. That the Defendant, its agents, servants, employees, attorneys, assigns, and  
24 all persons in active concert with or participation with them be forthwith  
25 permanently enjoined and restrained from infringing or inducing  
26 infringement of Cabeau’s ‘402 Patent.
- 27 3. For a judgment directing that any pillows and goods in the possession or  
28 under the control of Defendants which infringe the ‘402 Patent, or any

1 colorable imitation thereof, but not emanating from Cabeau, be delivered up  
2 and destroyed within 10 days of entry of judgment, and that all  
3 instrumentalities used in the production of such pillows and goods, including  
4 any and all items, objects, tools, machines, molds, and equipment used in  
5 such production, be delivered up and destroyed within 10 days of entry of  
6 judgment;

7 4. For a judgment directing Defendants to recall all infringing goods and any  
8 other materials sold, distributed, advertised, or marketed which infringe any  
9 and all of the '402 Patent, or any colorable imitation or facsimile thereof, but  
10 not emanating from Cabeau;

11 5. For a judgment against Defendants awarding Cabeau damages, lost profits,  
12 reasonable royalties, and other monetary amounts including without  
13 limitation:

14 a. all damages sustained by Cabeau as a result of Defendants' unlawful  
15 infringement of the '402 Patent, together with appropriate interest on  
16 such damages and that such damages be trebled, pursuant to 35 U.S.C.  
17 § 284;

18 b. Defendants' total profit from Defendants' sales of pillows that  
19 infringe the '402 Patent, and all other remedies provided by 35 U.S.C.  
20 § 289;

21 c. all damages sustained by Cabeau on account of unfair competition,  
22 lost business opportunities, and any other damage suffered by Cabeau  
23 as a result of Defendants' acts described in this complaint, and that  
24 such damages be trebled;

25 6. For an order directing Defendants to pay punitive damages to Cabeau;

26 7. For an order directing Defendants to pay restitution to Cabeau;

27 8. For an award of attorneys' fees pursuant to 35 U.S.C. § 285;

28 9. For an award of pre-judgment interest at the maximum rate allowed by law;





**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1, Plaintiff Cabeau, Inc. hereby demands a trial by jury of any and all issues triable of right by a jury pursuant to the Seventh Amendment to the United States Constitution or as given by a statute of the United States.

DATED: 22 August 2016

By: /s/ Corey A. Donaldson  
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Attorneys for Plaintiff  
CABEAU, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of August, 2016, a true and correct copy of the foregoing FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND DEMAND FOR JURY TRIAL was filed via ECF and served on all counsel of record for Defendant Jeffrey Pavacic via that system.

By: /s/ Corey A. Donaldson  
Corey A. Donaldson

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