

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**CHEROKEE GRAY EAGLE IP, LLC and  
REBOUNDERZ FRANCHISE AND  
DEVELOPMENT, INC.,**

**Plaintiffs,**

**vs.**

**AIRHEADS TRAMPOLINE ARENA, LLC,**

**Defendant.**

**Case No. 6:16-cv-2054-Orl-40GJK**

**INJUNCTIVE RELIEF REQUESTED  
JURY TRIAL REQUESTED**

**AMENDED COMPLAINT**

Plaintiffs Cherokee Gray Eagle IP, LLC and Rebounderz Franchise and Development, Inc., (collectively, “Plaintiffs”), through their undersigned counsel, for their complaint against Defendant Airheads Trampoline Arena, LLC, state:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Cherokee Gray Eagle IP, LLC (“Cherokee Gray Eagle”) is a Florida limited liability company having a place of business at 605 Hickman Circle, Sanford, Florida 32771.

2. Plaintiff Rebounderz Franchise and Development, Inc. (“Rebounderz”) is a Florida corporation having a place of business at 605 Hickman Circle, Sanford, Florida 32771.

3. Upon information and belief, Defendant Airheads Trampoline Arena, LLC (“Airheads”) is a Minnesota limited liability company, having a registered office address at 5635 Northeast River Road, Sauk Rapids, Minnesota 56379.

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. This Court has *in personam* jurisdiction as to Airheads because, upon information and belief, Airheads is subject to both general and specific jurisdiction in this State. More particularly, upon information and belief, Airheads regularly conducts business activity in the State of Florida, and sells, offers to sell, and uses products that infringe one or more claims of Rebounderz's patents in the State of Florida.

6. Venue properly lies within this judicial district and division pursuant to 28 U.S.C. §§1391(c) and 1400(b).

### **STATEMENT OF FACTS**

7. Rebounderz is a leading developer and franchisor in the indoor trampoline arena industry.

8. Cherokee Gray Eagle is the sole and exclusive owner of the following valid and enforceable United States Patents (collectively, the "Patents-in-Suit"):

<b>PATENT NO.</b>	<b>TITLE</b>
8,764,575 ("the '575 Patent")	Trampoline Arena
8,657,696 ("the '696 Patent")	Trampoline Arena

True and correct copies of the Patents-in-Suit are attached hereto as Exhibit A and B, respectively.

9. Cherokee Gray Eagle has licensed the Patents-in-suit to Rebounderz.

10. Mark Gurley, the inventor of the Patents-in-Suit, is recognized as an innovator in the trampoline arena industry. Mr. Gurley has invented many improvements for the trampoline arena industry, including innovations covering the structure of trampoline arenas and for improving the safety of trampoline arenas.

11. The Patents-in-Suit claim some of Mr. Gurley's inventions in the field. Mr. Gurley has assigned all of his rights to the inventions claimed in the Patents-in-Suit to Cherokee Gray Eagle.

12. Rebounderz owns U.S. Trademark Registration No. 4,330,622 for the following trademark, which claims blue and green colors as features of the mark:



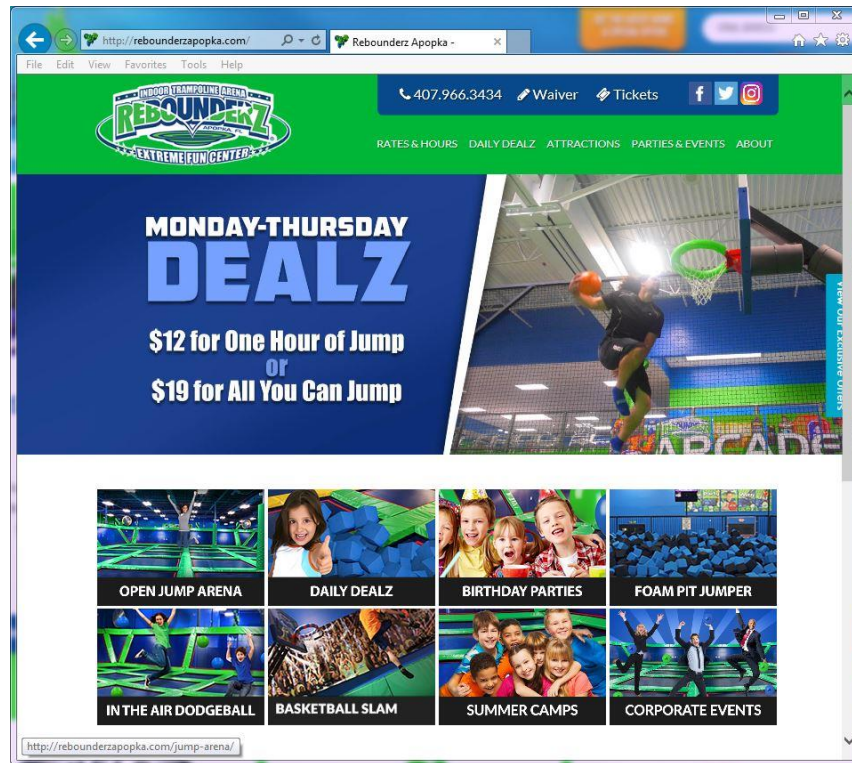
A true and correct copy of the trademark registration is attached hereto as Exhibit C.

13. Rebounderz facilities and its franchisees' facilities incorporate the green-and-blue color scheme throughout, including green foam pads overlying blue trampolines, and blue walls.

Images of Rebounderz's Apopka facility are below:



14. Rebounderz and its franchisees' websites also incorporate the green-and-blue color scheme throughout. The image below depicts a representative example of a Rebounderz franchisee's website ([www.rebounderzapopka.com](http://www.rebounderzapopka.com)):



15. Consumers have come to identify the green-and-blue color scheme comprising Rebounderz's trade dress as identifying Rebounderz as the source of Rebounderz's goods and services. The same color scheme is used in each Rebounderz-branded trampoline arena throughout the country and world.

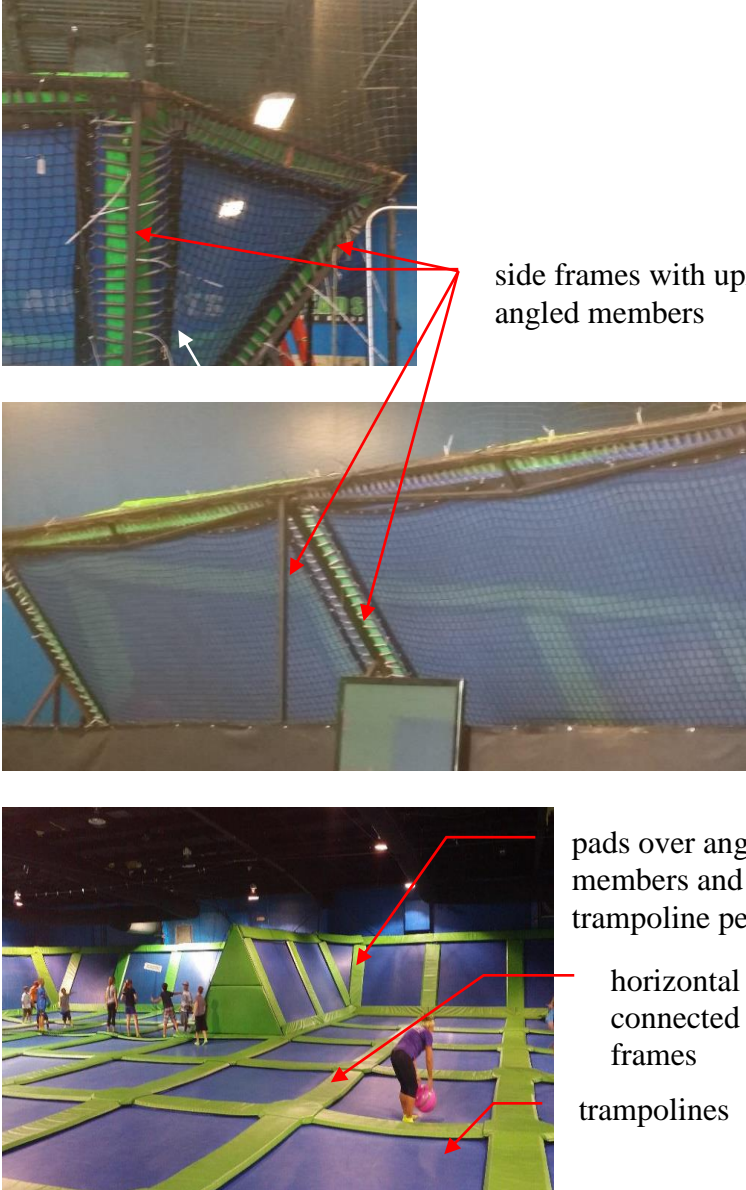
16. This color scheme, *inter alia*, is a feature of Rebounderz's protectable trade dress ("Trade Dress").

17. Rebounderz's Trade Dress has become well known to the purchasing public as a distinctive indicator of origin of Rebounderz's trampoline arenas.

18. Rebounderz has expended significant resources advertising and promoting its trampoline arenas that incorporate this distinctive Trade Dress.

19. Airheads has manufactured, offered for sale, used, offered services that use, and allowed access to trampoline arenas that directly or indirectly infringe upon one or more claims


of the '575 Patent in the United States and in this judicial district . The below images show Airheads' trampoline arenas infringing at least Claim 1 of the '575 Patent:

Claim 1 of the '575 Patent	Airheads' Infringing Trampoline Arena
<p>A trampoline arena comprising:</p> <p>a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:</p> <p>a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor; and</p> <p>a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members;</p> <p>a horizontally-extending deck connected to the second angled member portions of the plurality of side frames;</p> <p>a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids; and</p> <p>a padding assembly including a plurality of pads at least partially overlying the angled members and the peripheries of the trampolines.</p>	 <p>side frames with upright and angled members</p> <p>pads over angled members and trampoline peripheries</p> <p>horizontal deck connected to side frames</p> <p>trampolines</p>

20. Airheads has made, offered for sale, used, offered services that use, and allowed access to trampoline arenas that directly or indirectly infringe upon one or more claims of the



‘696 Patent in the United States and in this judicial district . The below images show Airheads’ trampoline arenas infringing at least Claim 1 of the ‘696 Patent:

Claim 1 of the ‘696 Patent	Airheads’ Infringing Trampoline Arena
<p>A trampoline arena comprising:</p> <p>a framework assembly including a plurality of frame elements defining an outwardly sloping outer wall, and a deck, a plurality of voids being defined between the framework elements;</p> <p>a plurality of trampolines connected to the frame elements along peripheries thereof and extending across the plurality of voids to further define the outwardly sloping outer wall and deck; and</p> <p>a padding assembly including a plurality of pads overlying the frame elements and the peripheries of the trampolines;</p> <p>wherein the plurality of frame elements further define a plurality of pyramids extending upwardly from the deck, the plurality of trampolines connecting to the frame elements along the peripheries thereof and extending across the plurality of voids to further define the plurality of pyramids.</p>	 <p>Outwardly sloping outer wall</p> <p>trampolines along peripheries</p> <p>padding overlying peripheries</p> <p>Pyramid Assembly</p> <p>Pyramid connected to frame element</p>

21. Upon information and belief, Airheads owns and operates at least three trampoline arenas in Florida, including in the Orlando, Tampa, and St. Petersburg/Clearwater areas.

22. Airheads advertises on its website for customers to “[c]ome experience the ultimate adrenaline rush for people of all ages . . . join us on our gigantic trampoline arena where you can fly and jump off of our walls!”

23. Upon information and belief, Airheads’ customers directly infringe the Patents-in-Suit by using Airheads’ infringing trampoline arenas.

24. Rebounderz has not granted Airheads a license to practice the Patents-in-Suit nor to use Rebounderz’s Trade Dress.

**COUNT I**  
**Action for Direct Infringement of the Patents-in-Suit**

25. Count I is an action by Plaintiffs against Airheads for monetary damages and injunctive relief for Airheads’ direct infringement of the Patents-in-Suit.

26. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 24.

27. Defendant has directly infringed at least claims 1-2 and 5-19 of the ‘575 Patent.

28. Defendant has directly infringed at least claims 1-5, 10-13, and 15-16 of the ‘696 Patent.

29. Airheads has made, offered for sale and sold and/or used trampoline arenas, including but not limited to trampolines at its facilities, in the Orlando, Tampa, and St. Petersburg/Clearwater areas, which directly infringe one or more claims of the Patents-in-Suit.

30. Plaintiffs are entitled to compensatory damages and injunctive relief for Airheads’ infringing activities.

31. Plaintiffs put Airheads on notice of its infringement of one or more of the claims of both the Patents-in-Suit at least as early as July 2016.

32. Airheads has continued to make, offer for sale and sell, and/or use trampoline arenas that infringe the Patents-in-Suit after being put on notice in July 2016.

33. Plaintiffs have suffered damages as a result of Airheads' infringement.

34. Upon information and belief, Airheads lacks justifiable a belief that there is no infringement, or that the infringed claims are invalid, or it has acted with objective and subjective recklessness in its infringing activity. Airheads' infringement is therefore willful, and this is an exceptional case entitling Plaintiff to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

Wherefore, Plaintiffs pray that this Court enter such preliminary and final orders and judgments as are necessary to provide Plaintiffs with the following requested relief:

A. A permanent injunction enjoining Airheads from infringing each of the Patents-in-Suit;

B. An award of damages against Airheads under 35 U.S.C. §284 in an amount adequate to compensate Plaintiffs for Airheads' infringement, but in no event less than a reasonable royalty for the use made by Airheads of the inventions set forth in the Patents-in-Suit;

C. An award against Airheads for treble damages, attorneys' fees, and costs under 35 U.S.C. § 285; and

D. Such other and further relief as this Court deems just and proper.

## **COUNT II**

### **Action for Induced Infringement of the Patents-in-Suit**

35. Count II is an action by Plaintiffs against Airheads for monetary damages and injunctive relief for Airheads' induced infringement of the Patents-in-Suit.

36. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 24.

37. Plaintiffs put Airheads on notice of its infringement of one or more of the claims of both the Patents-in-Suit at least as early as July 2016, yet Airheads continues to operate its



infringing trampoline arenas and offer its services, including use of the infringing trampoline arenas, to customers.

38. Airheads knew, or was willfully blind to, the existence of the Patents-in-Suit and that the acts it induced constitute infringement by its customers.

39. Airheads' customers have directly infringed at least claims 1-2 and 5-19 of the '575 Patent by using Airheads' infringing trampoline arenas.

40. Airheads' customers have directly infringed at least claims 1-5, 10-13, and 15-16 of the '696 Patent by using Airheads' infringing trampoline arenas.

41. With knowledge of, or a willful blindness to, the patents, Airheads encouraged its customers to infringe the Patents-in-Suit.

42. Plaintiffs are entitled to compensatory damages and injunctive relief for Airheads' infringing activities.

43. Plaintiffs have suffered damages as a result of Airheads' induced infringement.

44. Upon information and belief, Airheads lacks justifiable a belief that there is no infringement, or that the infringed claims are invalid, or it has acted with objective and subjective recklessness in its infringing activity. Airheads' infringement is therefore willful, and this is an exceptional case entitling Plaintiffs to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

Wherefore, Plaintiffs pray that this Court enter such preliminary and final orders and judgments as are necessary to provide Plaintiffs with the following requested relief:

A. A permanent injunction enjoining Airheads from inducing infringement of each of the Patents-in-Suit;

B. An award of damages against Airheads under 35 U.S.C. §284 in an amount adequate to compensate Plaintiffs for Airheads' infringement, but in no event less than a reasonable royalty for the use made by Airheads of the inventions set forth in the Patents-in-Suit;

C. An award against Airheads for treble damages, attorneys' fees, and costs under 35 U.S.C. § 285; and

D. Such other and further relief as this Court deems just and proper.

**COUNT III**  
**Action for Trade Dress Infringement**

45. Count III is an action by Plaintiffs against Airheads for monetary damages and injunctive relief for Airheads' infringement of Rebounderz's Trade Dress.

46. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 24.

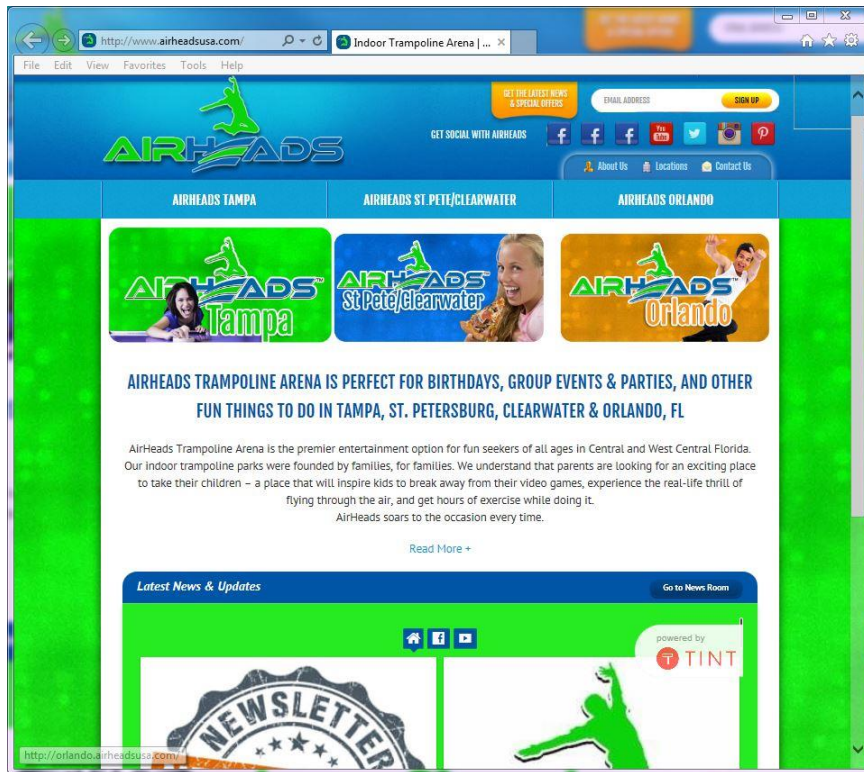
47. Airheads is engaged in acts of trade dress infringement under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. As a consequence of the origin-indicating nature of the Plaintiffs' Trade Dress, Plaintiffs have established valuable, exclusive trade dress rights in the green-and-blue color scheme.

49. Airheads' facilities incorporate the distinctive and recognizable green-and-blue color scheme throughout, including green foam pads overlying blue trampolines, and blue walls. The below image depicts one of Airheads' infringing facilities:



50. Airheads' website also incorporates Rebounderz's Trade Dress. The below image depicts Airheads' website ([www.airheadsusa.com](http://www.airheadsusa.com)):



51. Customers of Rebounderz have suffered actual confusion regarding the affiliation and relationship between Rebounderz and Airheads.

52. Airheads' conduct has caused consumer confusion, and is likely to continue to confuse, mislead and deceive customers, potential customers and members of the public as to the

origin, source, sponsorship, endorsement, license, authorization, affiliation or approval of Airheads' trampoline arenas.

53. Airheads' trampoline arenas incorporate substantially identical reproductions of Plaintiffs' Trade Dress.

54. Rebounderz's Trade Dress is distinctive and non-functional.

55. Rebounderz extensive use of the Trade Dress has resulted in the Trade Dress acquiring secondary meaning, in that the Trade Dress has come to be recognized in the minds of the public and consumers as identifying Rebounderzs as the source of its goods and services.

56. Airheads' trampoline arenas incorporating Plaintiffs' Trade Dress are likely to cause confusion, mistake, or deception as to the source, sponsorship or affiliation of the trampoline arenas, and constitute trade dress infringement.

57. By such wrongful acts, Airheads has caused and will continue to cause trade dress infringement, thereby causing serious irreparable injury and damage to Plaintiffs and to the goodwill associated with the Plaintiffs' Trade Dress, including diversion of customers from Plaintiffs, lost sales and lost profits, initial confusion and post-sale confusion, and Airheads will be unjustly enriched. Plaintiffs have no adequate remedy at law.

58. Airheads' acts are willful, intentional, and egregious, and make this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

Wherefore, Plaintiffs pray that this Court enter such preliminary and final orders and judgments as are necessary to provide Plaintiffs with the following requested relief:

A. A permanent injunction enjoining Airheads from infringing Plaintiffs' Trade Dress and ordering the destruction of the infringing trade dress;

- B. An award of damages against Airheads pursuant to §35(a) of the Lanham Act, 15 U.S.C. § 1117;
- C. An award against Airheads for attorneys' fees and costs under 15 U.S.C. §1117;
- D. Such other and further relief as this Court deems just and proper.

**JURY TRIAL REQUEST**

Plaintiffs request a trial by jury as to all matters so triable.

Respectfully submitted February 14, 2017.

/s/Brock A. Hankins

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 14, 2017, I electronically filed the foregoing using the Case Management/Electronic Case Filing ("CM/ECF") System.

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