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9 HIGHWAVE, INC.

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 HIGHWAVE, INC.,) Case No.
14 Plaintiff,)
15 vs.) **COMPLAINT FOR PATENT**
16 TELEBRANDS CORP.,) **INFRINGEMENT**
17 Defendant.) **DEMAND FOR JURY TRIAL**

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21 Plaintiff Highwave, Inc. (“Highwave”) alleges the following claims against
22 Defendant Telebrands Corp. (“Telebrands”) for patent infringement under this
23 Court’s subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a):

24 **THE PARTIES**

- 25 1. Plaintiff Highwave is a California corporation, with its principal place
26 of business at 3301 W 5th Street, Suite 130, Oxnard, CA 93030.
27 2. Upon information and belief, Defendant Telebrands is a New Jersey
28 corporation, with its principal place of business at 79 Two Bridges Road, Fairfield,
New Jersey. Upon information and belief, Telebrands owns and/or operates a

1 warehouse in or about Ontario, California.

2 3. Upon information and belief, Telebrands was registered with the
3 California Secretary of State to do business in California on January 19, 1999, its
4 agent for service of process resigned on June 17, 2013, and Telebrands' status with
5 the California Secretary of State is currently reflected as forfeited.

6 **JURISDICTION AND VENUE**

7 4. This action includes claims arising under the Patent Laws of the
8 United States, United States Code, Title 35. This Court has subject matter
9 jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

10 5. This Court has personal jurisdiction over Telebrands because
11 Telebrands engages in business within this district on a continuous and systematic
12 basis. Further, Telebrands contacted Highwave in this district to ostensibly
13 negotiate for a patent license and other rights relating to the subject matter of this
14 action. Then without Highwave's knowledge and permission, and without having
15 obtained a license, Telebrands, on information and belief, placed infringing
16 products into the stream of commerce by shipping them into this district (and/or
17 knowing that the products would be shipped into this district), and the infringing
18 products have been sold and used in this district.

19 6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b)
20 because, among other reasons, Telebrands is subject to personal jurisdiction in this
21 district and has committed acts of infringement in this district.

22 **COMMON ALLEGATIONS**

23 24 7. Plaintiff Highwave was founded in 1983. Since that time, through
25 many years of hard work, creativity, inventiveness and investment, it became a
26 leading innovator of housewares, and travel-oriented consumer products, such as
27 travel mugs for coffee, tea, wine and water, and has been recognized and honored
28 by the trade for product design excellence. Among its consumer product

1 innovations were the first travel mug with a drink-through top, the first travel mug
2 with hinged closures on a drink top, the first stainless double wall vacuum tumbler,
3 first 100% leak-tight design, first 360-degree drink top, first drink press with full
4 shut-off infusion and sediment avoidance, first vacuum bottle for wine, a design
5 for aerating and preserving wine, a collapsible wine ice bucket, and the subject of
6 this action, a novel travel mug for dogs. Its products have been carried by
7 popular retailers such as Starbucks, Peet's, Eddie Bauer, Disney, Teavana, and
8 Hammacher Schlemmer.

9
10 8. To protect its innovations and creative designs, Highwave secures
11 patent protection. To date, 40 patents have issued to it. One of the patents held by
12 Highwave is D741,025 (the 'D025 Patent'). A true and correct copy of the 'D025
13 Patent is attached to this Complaint as Exhibit 1 and incorporated by this reference.
14 The 'D025 Patent protects the ornamental design of a dog travel mug, a design
15 invented by Highwave's chief executive, Gary Ross, and assigned by him to
16 Highwave. Highwave produces and sells an AutoDogMug product, using this
17 patented design. The Auto Dog Mug has been popular among dog owners and
18 garnered honors for global innovation from the International Housewares
19 Association. Here is an image showing Highwave's patented AutoDogMug:



1 9. The AutoDogMug is assembled for Highwave by OPARC, a non-
2 profit organization dedicated to providing employment to the developmentally
3 disabled. OPARC employees assemble the AutoDogMug in the United States,
4 from parts also made domestically in the United States.

5 10. On information and belief, in or about early 2016, a Telebrands
6 executive named Manish Israni had seen Highwave's Auto Dog Mug; and he was
7 struck by its novel design and potential for exponential sales growth. Further,
8 Telebrands was aware of the patent-protected AutoDogMug because its Bulbhead
9 division had purchased from Highwave and sold at the retail level hundreds of
10 thousands of dollars' worth of AutoDogMug products. But, on information and
11 belief, Telebrands' greed took over, as it was not content with the purchase and re-
12 sale of the authentic AutoDogMug product by the Bulbhead division. Instead, on
13 information and belief, Telebrands developed a plan to usurp exclusive control
14 over the AutoDogMug, and when that didn't work, to usurp the market by selling
15 cheap knock-offs of the AutoDogMug.
16

17 11. Thus, Israni in early 2016 contacted Highwave employees at
18 Highwave's Oxnard, California headquarters, about Telebrands' desire to obtain a
19 license to sell the patented product. License negotiations occurred during the late
20 Fall of 2016 and early 2017. During this time, Telebrands obtained product
21 samples of the AutoDogMug and other product-related information, reviewed the
22 'D025 Patent, reviewed the utility patent (United States Patent No. 8,807,083),
23 which Highwave also holds for the AutoDogMug, and confirmed Telebrands'
24 desire to license both patents in order to not only sell, but also make, import and
25 distribute the AutoDogMug product. During his discussions with Israni, Gary
26 Ross of Highwave emphasized, among other subjects, the importance to Highwave
27 of continuing its existing relationships and channels of manufacture and sale,
28 including assembly operations through OPARC and sourcing through domestic

1 suppliers. These negotiations did not conclude with a license or other conveyance
2 of rights to Telebrands.

3 12. Rather, in early February 2017, Highwave discovered that Telebrands
4 had been selling cheap knock-offs of the AutoDogMug, evidently manufactured
5 overseas and imported by Telebrands into the United States, then marketed and
6 sold in the United States by Telebrands, all without knowledge or approval from
7 Highwave. On information and belief, Telebrands has called its cheap knock-off
8 an “Aqua Dog.” On or about February 10, 2017, Israni admitted that Telebrands
9 made these sales. Highwave demanded that Telebrands immediately discontinue
10 the unauthorized sales. Telebrands has refused to comply with this demand.
11

12 13. On information and belief, Telebrands’ infringing “Aqua Dog”
13 product, as a cheap imitation of the patent-protected AutoDogMug, has placed in
14 peril Highwave’s ability to continue to have made, marketed and sold in the United
15 States the AutoDogMug. On information and belief, Telebrands consciously set
16 about to destroy the market established by the AutoDogMug, by replacing it with
17 infringing product made more cheaply overseas, in callous disregard for
18 Highwave’s rights and for the detriment to domestic suppliers of the patent-
19 protected product, including the worthy cause in enlisting OPARC’s
20 developmentally disabled workforce for manufacture of the AutoDogMug.
21 Highwave therefore brings its claim for infringement of the design patent
22 protecting its AutoDogMug, as set forth below. Highwave’s rights in the
23 AutoDogMug are not limited to the ‘D025 design patent, and Highwave therefore
24 reserves its right to amend its pleading of claims as more information about
25 Telebrands’ wrongful actions and the Aqua Dog product is learned.
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FIRST CAUSE OF ACTION

**(Design Patent Infringement, U.S. Des. Pat No. D741,025, pursuant to
35 U.S.C. § 271)**

14. Highwave realleges and incorporates by reference each and every allegation of paragraphs 1 through 13 above, as if set forth in full herein.

15. On October 23, 2015, the United States Patent and Trademark Office duly and legally issued the ‘D025 Patent for “[t]he ornamental design for a portable water travel mug for dogs, as shown and described.”

16. Highwave is the owner of the entire right, title, and interest in and to the patent application and the ‘D025 Patent issuing therefrom.

17. Highwave’s ownership of the ‘D025 Patent includes without limitation the exclusive right to enforce the ‘D025 Patent, the exclusive right to file actions based on infringement of the ‘D025 Patent, and the exclusive right to recover damages or other monetary amounts for infringement of the ‘D025 Patent and/or be awarded injunctive relief enforcing the ‘D025 Patent. As the legal owner of the ‘D025 Patent, Highwave has standing to bring legal action to enforce all rights arising under the ‘D025 Patent.

18. The ‘D025 Patent is a design patent teaching an ornamental design for the AutoDogMug. Figures 1 through 9 from the attached ‘D025 Patent depict various perspective views of the AutoDogMug employing the patented design.

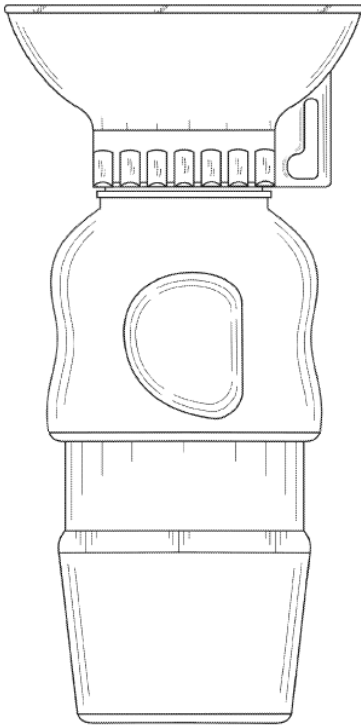
19. Below are side and top perspectives of the AutoDogMug, shown side by side with corresponding side and top views of the accused Aqua Dog product marketed by Telebrands.

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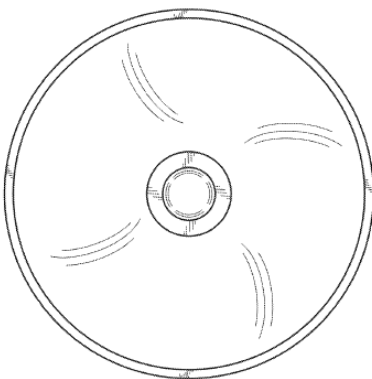
1 **Highwave Patented Design**



Accused Aqua Dog Product



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17 **Highwave Patented Design**



Accused Aqua Dog Product



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20. Telebrands' accused "Aqua Dog" product has an overall appearance that would be viewed by the ordinary observer familiar with the prior art as

1 confusingly similar to and substantially the same as the design claimed in the
2 ‘D025 Patent.

3 21. On information and belief, Telebrands has been, and presently is,
4 infringing the ‘D025 Patent within this judicial district and elsewhere by making,
5 using, selling, offering to sell in, and/or importing into the United States the
6 accused Aqua Dog product embodying the design claimed by the ‘D025 Patent.
7 On information and belief, Telebrands will continue to manufacture and sell such
8 Aqua Dog products unless enjoined by this Court.

9 22. On information and belief, Telebrands had actual knowledge of the
10 ‘D025 Patent from before it first began the infringing actions alleged in this
11 Complaint, knew the Accused Product fell within the claim of the ‘D025 Patent,
12 and knew the marketing, distribution and sale of the Accused Product was
13 unauthorized. Nevertheless, Telebrands deliberately undertook and has carried out
14 a plan to make, sell, offer for sale in, and/or import into the United States
15 infringing Aqua Dog products.

16 23. On information and belief, Telebrands has knowingly induced
17 infringement, and has specific intent to induce infringement of the ‘D025 Patent
18 by, *inter alia*, marketing, selling, supporting sales, and/or distributing infringing
19 Aqua Dog products. Telebrands’ customers, including without limitation
20 manufacturers and retailers, directly infringe the ‘D025 Patent by, *inter alia*,
21 making, using, selling, offering to sell in, and or importing into the United States
22 infringing Aqua Dog products.

23 24. Due to Telebrands’ infringement of the ‘D025 Patent, Highwave has
24 suffered, is suffering, and will continue to suffer irreparable injury for which
25 Highwave has no adequate remedy at law. Highwave is therefore entitled to a
26 permanent injunction against any further infringing conduct by Telebrands.
27

28 25. Telebrands has profited and is profiting from its infringement of the

1 ‘D025 Patent. Highwave has been and is being damaged and losing profit from
2 such infringement. Highwave is therefore entitled to recover damages from
3 Telebrands and the profit derived from Telebrands’ infringement, all in amounts to
4 be proven at trial, together with costs and interest to be fixed by the Court.

5 26. Telebrands’ infringement of the ‘D025 Patent has been intentional.
6 On information and belief, Telebrands has acted and continues to act with
7 objective recklessness by proceeding despite an objectively high likelihood that its
8 actions constitute infringement of Highwave’s patent. This is an exceptional case
9 warranting an award of treble damages to Highwave under 35 U.S.C. § 284,
10 together with an award of Highwave’s attorneys’ fees under 35 U.S.C. § 285.
11

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13 **PRAYER FOR RELIEF**

14 WHEREFORE, Highwave prays for judgment against Telebrands that:

15 1. Telebrands has infringed one or more claims of the ‘025 Patent.
16 2. Telebrands’ infringement of the ‘025 Patent was and is willful.
17 3. Telebrands, its officers, agents, servants, employees, attorneys,
18 assigns, and all persons in active concert with or participation with them be
19 forthwith and permanently enjoined from infringing or inducing infringement of
20 Highwave’s ‘025 Patent.

21 4. Telebrands be directed that that any Aqua Dog products, goods,
22 labels, emblems, and or packaging in the possession or under the control of
23 Telebrands which infringe the ‘025 Patent, or any colorable imitation thereof, but
24 not emanating from Highwave, be delivered and destroyed within 10 days of entry
25 of judgment, and that all instrumentalities used in the production of such Aqua
26 Dog products, goods, labels, emblems, or packaging, including any and all items,
27 objects, tools, machines, molds, and equipment used in such production, be
28 delivered up and destroyed within 10 days of entry of judgment.

5. Telebrands be ordered to recall any infringing goods and any other

1 materials sold, distributed, advertised, or marketed, which infringe any and all of
2 the '025 Patent, or any colorable imitation or facsimile thereof, but not emanating
3 from Highwave.

4 6. Telebrands be ordered to provide an accounting of its total profits
5 from infringement of the 'D025 Patent.

6 5. Highwave be awarded all lost profits, reasonable royalties, and other
7 monetary amounts including without limitation:

- 8 a. all damages sustained by Highwave as a result of Telebrands'
9 unlawful infringement of the '025 Patent, together with pre-
10 judgment and post-judgment interest on such damages and that
11 such damages be trebled, pursuant to 35 U.S.C. § 284;
- 12 b. Telebrands' total profit from the sale or other disposition of of
13 Aqua Dog products that infringe the '025 Patent, and all other
14 remedies provided by 35 U.S.C. § 289.

15 6. Highwave be awarded its reasonable attorneys' fees and costs as
16 provided by 35 U.S.C. § 285; and

17 7. Highwave be awarded such further relief as the Court deems just and
18 proper.

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21 Dated: February 15, 2017

Respectfully submitted,

RINCON VENTURE LAW GROUP

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24 By: /s/ K. Andrew Kent

25 K. Andrew Kent

26 Attorneys for Plaintiff Highwave, Inc.
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JURY DEMAND

Pursuant to Rule 38 of the federal Rules of Civil Procedure, Highwave demands a trial by jury on all issues triable by jury.

Dated: February 15, 2017

Respectfully submitted,
RINCON VENTURE LAW GROUP

By: /s/ K. Andrew Kent
K. Andrew Kent
Attorneys for Plaintiff Highwave, Inc.