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6	Attorneys for Plaintiff Privacy Pop, LLC	
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8		DISTRICT COURT
9	CENTRAL DISTRICT OF CALII	FORNIA – SOUTHERN DIVISION
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11	Privacy Pop, LLC, a California Limited Liability Company	Case No.: 8:17-cv-00299
12	DI : 4:66	Plaintiff's Complaint for Patent and Trademark Infringement
13	Plaintiff,	and Trademark Infringement
14	VS.	
1516	Marketfleet, Inc, a Delaware Corporation d/b/a Winterial; and Does 1- 10,	Jury Trial Demanded
17	Defendants.	
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19	Plaintiff Privacy Pop, LLC ("Plaintiff") complains and alleges as follows	
20	against Defendant Marketfleet, Inc., d/b/a Winterial.com ("Defendant").	
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THE PARTIES

- 1. Plaintiff Privacy Pop, LLC is a California limited liability company having an address at 1919 Alton Parkway, Irvine, CA 92606. Plaintiff is a manufacturer and seller of bed tents. See privacypop.com.
- 2. Upon information and belief, Defendant Marktetfleet, Inc. is a corporation organized under the laws of the State of Delaware, having an address at 411 Main Street, Suite 101, Chico CA 95928. Defendant sells outdoor products, including tents at www.winterial.com.
- 3. Plaintiff is ignorant of the true names and capacities of Doe Defendants 1-10, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when they are ascertained.

JURISDICTION AND VENUE

- 4. This action arises under the patent and trademark laws of the United States, 35 USC § 271 *et seq* and 15 USC § 1051 *et seq*.
- 5. This Court also has subject matter jurisdiction for this action under 28 USC § 1331 and 28 USC § 1338(a), in that it raises federal questions and relates to patents and trademarks.
- 6. Venue is proper in this district under 28 USC §§ 1391(b) (2) and 1400(b), because a substantial part of the events giving rise to the claim occurred here and because Defendant committed acts of infringement in this district.

7. This Court has personal jurisdiction over the Defendant because it committed and continues to commit acts of infringement in violation of the patent and trademark laws. It offers to sell infringing goods in California and in this judicial district, and such sales are occurring and ongoing. The acts by Defendant cause injury to Plaintiff within this district. Upon information and belief, Defendant derives substantial revenue from selling infringing products within this district, and expects its actions to have consequences here.

FACTUAL BACKGROUND

- 8. Plaintiff Privacy Pop, LLC sells a patented privacy bed tent for in-home use. Privacy Pop, LLC has been continuously and extensively using the trademark PRIVACY POP® since 2011 for bed tents.
- 9. On April 30, 2012 Plaintiff applied to formally register its mark with the U.S. Patent & Trademark Office, application serial no. 85/612,346. On May 7, 2012, Plaintiff filed U.S. patent application serial no. 29/420,258 for the design of its bed tent.
- 10. On December 11, 2012, U.S. Registration No. 4,257,671 issued for Plaintiff's trademark. On April 30, 2013, U.S. Design Patent No. D681,146, which covers Plaintiff's innovative bed tent design, issued to Plaintiff. See Exhibits A, B.
- 11. In late 2016, Plaintiff learned Marketfleet was selling an essentially identical bed tent, calling it a "Privacy Pop Up Tent." On December 12, 2016, Plaintiff, through counsel, sent a cease-and-desist letter to Defendant requesting written assurances that it would stop all sales of the infringing design and cease using the PRIVACY POP as a product name. See Exhibit C.

1	12. On December 28, 2016, Defendant responded through counsel indicating	
2	it voluntarily removed advertisements of the product featuring the name "Privacy	
3	Pop," but refused to stop selling its bed tent product, contending its design was unique	
4	and of its own making. See Exhibit D.	
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6	13. Plaintiff sent a follow-up email renewing its cease-and-desist demands on	
7	January 16, 2017. See Exhibit E. Defendant responded, again refusing to stop selling	
8	its bed tent product.	
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10	14. Defendant has an established pattern of 'knocking off' products that are	
11	successful in the marketplace, and is currently also being sued for patent infringement	
12	in Massachusetts (Case no. 1:16-cv-12562-FDS) and in Colorado (Case no. 1:17-cv-	
13	00163-MEH).	
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15	FIRST CAUSE OF ACTION	
16	Patent Infringement Under Patent Act 35 USC § 271	
17	15. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-14	
18	as though set forth herein.	
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20	16. Defendant has infringed and continues to infringe U.S. Design Patent	
21	D681,146 by using, selling and/or offering to sell in the United States, and/or	
22	importing into the United States the bed tent currently known as the "Winterial	
23	Privacy Bed Tent" which embodies the design covered by the patent.	
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25	17. On information and belief, Defendant willfully infringed the D681,146	

patent, selling the accused infringing product with full knowledge of Plaintiff's

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existing patent rights.

1	18. Plaintiff is being irreparably damaged by Defendant infringing the	
2	D681,146 patent, entitling Plaintiff to injunctive relief.	
3	J J	
4	19. Defendant's willful infringement of the D681,146 patent, among other	
5	factors, renders this case exceptional within the meaning of 35 U.S.C. § 285.	
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7	SECOND CAUSE OF ACTION	
8	Federal Trademark Infringement Under Lanham Act 15 USC §1114	
9	20. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-19	
10	as though set forth herein.	
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12	21. Defendant's use of the PRIVACY POP® mark constituted trademark	
13	infringement, including using the registered mark in connection with the sale, offering	
14	for sale and distribution of essentially identical goods, that is likely to cause confusion	
15	or mistake.	
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17	22. Upon information and belief, Defendant's acts were willful and in	
18	conscious disregard of Plaintiff's trademark rights in the PRIVACY POP® mark.	
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20	23. As a proximate result of Defendant's conduct, as alleged herein, Plaintiff	
21	was damaged in an amount to be proven at trial.	
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23	24. Any continued use of the PRIVACY POP® mark will cause irreparable	
24	harm to Plaintiff and its rights.	
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26	25. Defendant's willful infringement, and other facts, render this an	
28	exceptional case pursuant to 15 USC § 1117(a).	

1 PRAYER FOR RELIEF WHEREFORE, Plaintiff prays that the Court enter Judgment against Defendant 2 including: 3 4 a finding that Defendant infringed the D681,146 patent; 5 A. 6 7 B. a finding Defendants infringed the PRIVACY POP® mark; 8 C. an order permanently enjoining and prohibiting Defendant and its 9 owners, officers, directors, agents, employees, affiliates, attorneys, and all others 10 11 acting in privity or in concert with them, and their parents, subsidiaries, divisions, 12 successors and assigns, from further acts of infringement of the asserted design patent, including sales, offers to sell and/or importing of the Winterial Privacy Bed Tent or 13 colorable imitations; 14 15 D. a preliminary and permanent injunction enjoining and prohibiting 16 17 Defendant and its owners, officers, directors, agents, employees, affiliates, attorneys, 18 and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from using the PRIVACY POP® trademark, or the 19 words "privacy pop" or colorable imitations thereof in relation to bed tents, in 20 21 connection with the marketing, promotion or sale of any such products; 22 23 E. awarding Plaintiff all damages adequate to compensate for Defendant's infringement of the asserted patent, and lost profits if available; 24 25 26 F. awarding Plaintiff all damages adequate to compensate for Defendant's

infringement of the PRIVACY POP® trademark, and lost profits if available;

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2	G. awarding Plaintiff treble damages, based on any infringement found to be	
3	willful, pursuant to 35 USC § 284 and/or 15 USC § 1117(b), together with	
4	prejudgment interest;	
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6	H. declaring this case to be exceptional and awarding Plaintiff its reasonable	
7	attorneys fees pursuant to 35 USC § 285 and/or 15 USC § 1117(a); and	
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9	J. such other and further relief as this Court deems just and proper.	
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11	DATED: February 17, 2017 Respectfully Submitted,	
12	LAUSON & TARVER LLP	
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14	By: /s/ Robert J. Lauson	
15	Robert J. Lauson, Esq. Attorney for Plaintiff	
16	Privacy Pop, LLC	
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DEMAND FOR JURY TRIAL Plaintiff hereby requests a trial by jury on all claims so triable. DATED: February 17, 2017 Respectfully Submitted, LAUSON & TARVER LLP By: /s/ Robert J. Lauson Robert J. Lauson, Esq. Attorney for Plaintiff Privacy Pop, LLC