

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL PRODUCTS, INC,

Plaintiff,

v.

JOHN DOES 1-5, one doing business as
ToGames, one using tradename Cimiva,

Defendants.

Case No.:

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff National Products, Inc. (“NPI”) brings this action against JOHN DOES 1-5 (“Defendants”) for an injunction, damages, and other appropriate relief to stop Defendants from violating NPI’s patent and trademark rights. In support of its claims, NPI alleges as follows:

I. NATURE OF THE CASE

1. This case involves Defendants’ willful infringement of Plaintiff’s patents and registered trade dress and their attempt to confuse consumers and unfairly compete in the market for mounting systems.

2. NPI is a well-known and respected, Seattle-based company that designs and manufactures a variety of mounting applications.

3. One of NPI’s most successful product lines, introduced in 1992 and called RAM (standing for Round-A-Mount), is the most innovative product line of its kind.

1 4. The RAM product line is recognized for providing essential mounting
2 components for a variety of applications, including vehicle mounts for cell phones, computers,
3 tablets, and cameras.

4 5. Using its patented and patent-pending “X-Grip” and “Hourglass Shape”
5 technologies, NPI’s mounts are recognizable and reliable.

6 6. As is often the case where years of creative efforts lead to success, piracy follows.

7 7. The true identities of Defendants are not known to NPI. On information and
8 belief, Defendants also sell a variety of mounting applications. But rather than create and market
9 their own designs, Defendants sell mounting applications that parasitically copy NPI’s patent
10 protected and trademarked mounting products, as well as NPI’s trade dress designs. Defendants
11 have misused the “X-Grip” patents and trademark, and the Hourglass Shape® design, in their
12 marketing efforts, all in a wrongful attempt to exploit the hard work and creative effort of NPI,
13 and to create consumer confusion, attracting attention to Defendants’ products. Plaintiff now
14 brings this suit for infringement of NPI’s patents, trademarks, and trade dress.

15 **II. JURISDICTION AND VENUE**

16 8. In this action, NPI alleges that Defendants have: (1) infringed NPI’s trade dress under
17 15 U.S.C. § 1114 and Washington common law; (2) falsely designated mounting products under
18 15 U.S.C. § 1125(a); (3) committed one or more unfair business practices under RCW 19.86 et
19 seq.; and (4) infringed four NPI patents under 35 U.S.C. §§ 271 and 281-285.

20 9. This Court has subject matter jurisdiction over NPI’s federal claims pursuant to 28
21 U.S.C §§ 1331 and 1338(a) and (b) because this action arises under the trademark laws of the
22 United States, 15 U.S.C. §§ 1114, 1121, and 1125, and the patent laws of the United States, 35
23 U.S.C. *et seq.* This Court has supplemental subject matter jurisdiction over NPI’s state law
24 claims under 28 U.S.C. § 1367(a) because the state law claims are so related to NPI’s federal
25 question claims that they are part of the same case and controversy. The Court may also have
26 diversity jurisdiction under 28 U.S.C. § 1332.

1 10. The Court has personal jurisdiction over Defendants because they have engaged in
2 business activities in and purposefully directed to this judicial district and the State of
3 Washington, and have committed the tortious acts complained of in this judicial district and the
4 State of Washington.

5 11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

6 12. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle Division is
7 proper because the claims arose in this Division, where (a) NPI resides, (b) the injuries giving
8 rise to the suit occurred, and (c) Defendants directed their unlawful conduct.

9 III. PARTIES

10 13. NPI is a Washington corporation with its principal place of business in Seattle
11 Washington.

12 14. Upon information and belief, Defendants are a manufacturer, marketer, distributor,
13 and/or seller of mounting solutions for consumer electronic devices.

14 15. Defendants' citizenship is unknown.

15 16. Defendants market and sell mounting devices throughout the United States, including
16 within this judicial district, through online retailers such as amazon.com ("Amazon").

17 17. On information and belief, Defendants advertised, distributed, and sold the products
18 which are the subject of the allegations of this lawsuit in this district.

19 IV. FACTUAL BACKGROUND

20 NPI's Business and Intellectual Property

21 18. Founded by Jeff Carnevali twenty-five years ago, NPI is a market leader in the
22 design, manufacture, and sale of innovative mounting systems, including those that secure
23 portable electronic devices.

24 19. Utilizing the finest assembly hardware, durable composites, steel, stainless steel,
25 rubber, and aluminum, NPI mounting systems are manufactured in the United States.

26 20. One of NPI's earliest and most successful product lines is its RAM Mounting
Systems. For over two decades, RAM systems have received critical acclaim within the industry

1 and among consumers. RAM Mounting Systems have become an essential mounting component
2 for a variety of applications, including rugged vehicle, industrial, military and defense, material
3 handling, as well as any application requiring a robust mounting solution. RAM Mounting
4 Systems have even been used on the Space Shuttle.

5 21. In the over two decades that it has been sold, NPI's RAM product line has amassed
6 considerable goodwill among consumers.

7 22. NPI has used the trademark RAM MOUNT (the "RAM MOUNT Mark") on and
8 in connection with its good and related services, and through extensive promotion and media
9 exposure, has built up a considerable positive reputation and goodwill associated with such
10 trademark. The RAM MOUNT Mark is widely recognized among consumers of mounting
11 systems for consumer electronic devices, and is closely associated with NPI and its product line.

12 23. NPI is the owner of a federal registration for the RAM MOUNT Mark, U.S.
13 Trademark Registration No. 3,267,734 ("734 Registration") for its metal and non-metal
14 mounting goods and related services. The '734 Registration is valid and subsisting.

15 24. NPI has also used the trademark X-GRIP (the "X-GRIP Mark") on and in
16 connection with its good and related services, and through extensive promotion and media
17 exposure, has built up a considerable positive reputation and goodwill associated with such
18 trademark.

19 25. The X-GRIP Mark is widely recognized among consumers of mounting systems
20 for consumer electronic devices, and is closely associated with NPI and its product line.

21 26. NPI owns federal registration No. 4,418,619 ("619 Registration") for the X-
22 GRIP Mark for mounting devices for monitors and related services. The '619 Registration is
23 valid and subsisting.

24 **NPI's Patents and Covered Products**

25 27. Mr. Carnevali is the named inventor on over 125 United States patents, many of
26 which he has assigned to NPI.

1 28. On October 1, 2013, the USPTO issued United States Patent No. 8,544,161,
2 entitled “Method for Mounting a Portable Device,” (hereafter the “**’161 Patent**”) to Mr.
3 Carnevali. A copy of the ’161 Patent is attached hereto as **Exhibit 1**.

4 29. Mr. Carnevali has assigned all right, title, and interest in the “’161 Patent to NPI,
5 and NPI is the current owner of all right, title, and interest in the ’161 Patent.

6 30. The ’161 Patent is generally directed towards an opposing digits apparatus that
7 mounts and secures a normally hand-held portable electronic device.

8 31. On January 7, 2014, U.S. Patent No. 8,622,359, (hereafter the “**’359 Patent**”)
9 entitled “Mounting a Portable Device,” was issued to Mr. Carnevali. A true and correct copy of
10 the ’359 Patent is attached hereto as **Exhibit 2**.

11 32. Mr. Carnevali has assigned all right, title, and interest in the ’359 Patent to NPI,
12 and NPI is the current owner of all right, title, and interest in the ’359 Patent, which is generally
13 directed towards a mounting device that works with the X-Grip Apparatus to secure a normally
14 hand-held portable electronic device.

15 33. On April 29, 2014, U.S. Design Patent No. D703,657 S (hereafter the “**’657**
16 **Design Patent**”) entitled “Quick Mounting Device,” was issued to Mr. Carnevali. A true and
17 correct copy of the ’657 Design Patent is attached hereto as **Exhibit 3**.

18 34. Mr. Carnevali has assigned all right, title, and interest in the ’657 Design Patent to
19 NPI and NPI is the current owner of all right, title, and interest in the ’657 Design Patent.

20 35. On June 17, 2008, U.S. Design Patent No. D571,278 S1 (hereafter the “**’278**
21 **Design Patent**”) entitled “Configurable Mounting Bracket,” was issued to Mr. Carnevali. A true
22 and correct copy of the ’278 Design Patent is attached hereto as **Exhibit 4**.

23 36. Mr. Carnevali has assigned all right, title, and interest in the ’278 Design Patent to
24 NPI and NPI is the current owner of all right, title, and interest in the ’278 Design Patent.

25 37. NPI manufactures, marks, and sells numerous products that practice the ’161
26 Patent including Ram Mounts RAM-B-149Z-UN7U Handlebar Rail Mount with U-Bolt Base

1 and Universal X-Grip Cellphone Holder (the “RAM Motorcycle Mount”). Below are images of
 2 the RAM Motorcycle Mount:



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 12 38. NPI also manufactures, marks, and sells numerous products that practice the '359
 13 Patent, the '657 Design Patent, and the '278 Design patent, including the RAM Motorcycle
 14 Mount, as shown above at paragraph 35.

15 39. NPI products, including the RAM Motorcycle Mount, are marked with the patent
 16 numbers of the patents that they practice, including the '161 Patent, the '359 Patent, the '657
 17 Design Patent, and the '278 Design Patent.

18 **The Hourglass Shape Trade Dress**

19 40. Since 1992, NPI has continuously and exclusively used in commerce a double-
 20 socketed RAM Mounting Device with a distinctive hourglass-shaped profile. On December 8,
 21 1998, the United States Patent and Trademark Office (“PTO”) issued to assignee NPI U.S. Patent
 22 No. 5,845,885, which gives NPI exclusive rights to manufacture and sell in the United States
 23 double-socket mount arms for mounting devices. NPI’s RAM Mounting double-socket practices
 24 the technology claimed by this patent and NPI, in a design choice not related to the functionality
 25 of the double-socket mount arm, selected the distinctive hourglass-shaped profile.

26 41. In 2013, the term of this patent expired but NPI still retained its trade dress rights
 on the hourglass-shaped profile.

42. On May 23, 2012, prior to the expiration of the Patent No. 5,845,885, NPI filed an application with the PTO to register its hourglass shaped profile trade dress on the Principal Register.

43. The PTO granted this trade dress application on December 4, 2012. The “MARK CONSIST[ING] OF A THREE-DIMENSIONAL CONFIGURATION OF A DOUBLE-SOCKET MOUNT ARM THAT IS TAPERED IN THE MIDDLE LIKE AN HOURGLASS” is currently registered with NPI under U.S. Trademark Reg. No. 4,254,086 (“’086 Registration”). Attached hereto as **Exhibit 5** is a true and correct copy of the ’086 Registration.

44. The ’086 Registration is valid and subsisting, and NPI has been the continuous owner of the hourglass-shaped profile of the double-socket mount device trade dress from 1992 to the present.

45. NPI’s website provides notice that “[t]he Hourglass Shape® is a registered trademark of National Products, Inc.”

46. The trade dress of the Hourglass Shape mount consists of a number of design elements. The combination of these elements together gives the mount a distinct loop and commercial impression.

47. The Hourglass Shape Trade Dress is illustrated in the following pictures:



Defendant’ Infringing Activities

48. Defendants sell products through Amazon and other online retailers.

49. Defendants offers for sale and sells products that bear designs and features that copy those of NPI. For example:



Defendant's Product

50. Defendants have sold mounting applications, such as the Infringing Cellphone Holder that bear copies of the NPI's product designs, including its Hourglass Shape.

51. Defendants have sold mounting applications, such as the Infringing Cellphone Holder, that infringe on NPI's patented X-Grip design.

52. Defendants' Infringing Cellphone Holder specifically infringes one or more claims of the '161 Patent, including without limitation claim 1.

53. Defendants' Infringing Cellphone Holder specifically infringes one or more claims of the '359 Patent, including without limitation claims 1 and 8, and dependent claims thereto.

54. Defendants' Infringing Cellphone Holder specifically infringes on the '657 Design Patent, as shown at paragraph 49.

55. Defendants' Infringing Cellphone Holder specifically infringes on the '278 Design Patent, as shown at paragraph 49.

56. Defendants have used the phrase "X-Grip" in their advertising on Amazon, which is used to drive internet traffic to its products by persons seeking RAM products. Attached as

1 **Exhibit 6** is a true and correct copy of Defendants' advertising using the term "X-Grip" on
2 Amazon.

3 57. The use of the term "X-Grip" creates at least initial interest confusion, in that
4 persons searching for RAM products will initially believe that the site is associated with RAM or
5 carries RAM products, and will then be diverted to purchasing Defendant's competitive
6 mounting products.

7 58. Defendant has neither sought nor received a license from NPI for any purpose
8 whatsoever.

9 59. Defendants' products are cheaper and of inferior quality to genuine RAM
10 products.

11
12 **COUNT I**
(VIOLATION OF 15 U.S.C. § 1114)

13 60. Plaintiff realleges and incorporates by reference the allegations contained in
14 paragraphs 1 through 59 as if fully set forth herein.

15 61. Long after Plaintiff's adoption of the RAM MOUNT Trademark and the federal
16 registrations for same, Defendants have commenced the use of such mark in the manner
17 described herein, and in connection with the sale, offer for sale, and distribution of its competing
18 mounting systems products on Amazon and elsewhere, all in violation of 15 U.S.C. § 1114(1).

19 62. Similarly, after Plaintiff's adoption of the X-GRIP Trademark and the federal
20 registrations for same, Defendants have commenced the use of such mark in the manner
21 described herein, and in connection with the sale, offer for sale, and distribution of its competing
22 mounting systems products on Amazon and elsewhere, in violation of 15 U.S.C. § 1114(1).

23 63. On information and belief, the activities of Defendants complained of herein
24 constitute willful and intentional infringement of the above-identified registered trademarks, are
25 in total disregard of Plaintiff's rights, and were commenced and have continued in spite of
26 Defendant's knowledge that the use of such trademarks or a copy or a colorable imitation thereof
in the manner described here was and is in direct contravention of Plaintiff's rights.

73. Defendants have directly infringed one or more claims of the '359 Patent under 35 U.S.C. § 271 by manufacturing, using, selling, or offering for sale the Infringing Cellphone Holder within the United States and by importing the Infringing Cellphone Holder into the United States.

74. Defendants have induced by making, using, offering to sell, and selling within the United States, and/or importing into the United States, products that infringe on U.S. Patent No. 8,622,359, including without limitation the Infringing Cellphone Holder

75. The Infringing Cellphone Holder competes directly with NPI mounting products and Defendants' infringement of the '359 Patent has caused, and continues to cause, NPI irreparable harm.

76. NPI will continue to suffer irreparable harm unless Defendants are enjoined from infringing the '359 Patent.

77. Upon information and belief, Defendants' infringement of the '359 Patent has been willful.

**COUNT IV
(INFRINGEMENT OF THE '657 DESIGN PATENT)**

78. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

79. Defendants have directly infringed one or more claims of the '657 Design Patent under 35 U.S.C. § 271 by manufacturing, using, selling, or offering for sale the X-Grip RAM Motorcycle Bike Car Mount Cellphone Holder USB Charger for Phone BS (the "Infringing Cellphone Holder") within the United States and by importing the Infringing Cellphone Holder into the United States.

80. Defendants have induced by making, using, offering to sell, and selling within the United States, and/or importing into the United States, products that infringe on the '657 Design Patent including without limitation the Infringing Cellphone Holder.

81. The Infringing Cellphone Holder competes directly with NPI mounting products and Defendants' infringement of the '657 Design Patent has caused, and continues to cause, NPI irreparable harm.

82. NPI will continue to suffer irreparable harm unless Defendants are enjoined from infringing the '657 Design Patent.

83. Upon information and belief, Defendants' infringement of the '657 Design Patent has been willful.

COUNT V
(INFRINGEMENT OF THE '278 DESIGN PATENT)

84. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

85. Defendants have directly infringed one or more claims of the '278 Design Patent under 35 U.S.C. § 271 by manufacturing, using, selling, or offering for sale the X-Grip RAM Motorcycle Bike Car Mount Cellphone Holder USB Charger for Phone BS (the "Infringing Cellphone Holder") within the United States and by importing the Infringing Cellphone Holder into the United States.

86. Defendants have induced by making, using, offering to sell, and selling within the United States, and/or importing into the United States, products that infringe on the '278 Design Patent including without limitation the Infringing Cellphone Holder.

87. The Infringing Cellphone Holder competes directly with NPI mounting products and Defendants' infringement of the '278 Patent has caused, and continues to cause, NPI irreparable harm.

88. NPI will continue to suffer irreparable harm unless Defendants are enjoined from infringing the '278 Design Patent.

89. Upon information and belief, Defendants' infringement of the '278 Design Patent has been willful.

**COUNT VI
(FEDERAL TRADE DRESS INFRINGEMENT)**

90. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

91. Defendant has sold and offered for sale certain mounting applications that reproduce, copy, and imitate the Hourglass Shape design, in a manner that is confusingly similar to the distinctive trade dress of NPI, and then offering for sale and selling these products on Amazon to customers located throughout the United States.

92. Defendant's adoption and use of the Hourglass Shape design described hereinabove constitutes trade dress infringement, and deliberate and willful violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

93. The actions and conduct of Defendants complained of herein have damaged NPI and will, unless restrained, further impair the value of the Hourglass Shape Trade Dress and the goodwill associated therewith.

94. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and damage as a result of Defendant's acts in an amount to be determined at trial.

**COUNT VII
(WASHINGTON CONSUMER PROTECTION ACT — CHAPTER 19.86 RCW)**

95. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

96. Defendant's continued use of NPI's trade dress and X-GRIP Mark constitutes unfair competition with NPI by creating a likelihood of confusion as to the source or sponsorship of the products or services provided by Defendants and/or by NPI; by misappropriating NPI's reputation and goodwill represented by the X-GRIP Mark and the Hourglass Shape® trade dress, thereby injuring that reputation and goodwill; and by diverting from NPI the benefits arising therefrom.

1 NPI's RAM Mounts website prior to Defendant's adoption and use of NPI's registered trade
2 dress.

3 105. On information and belief, Defendant's acts are deliberate and intended to
4 confuse the public as to the source of the infringing mount devices, to injure NPI, and to reap the
5 benefits of NPI's goodwill associated with NPI's trade dress.

6 106. The actions and conduct of Defendant complained of herein has damaged NPI and
7 will, unless restrained, further impair the value of the Hourglass Shape Trade Dress and the
8 goodwill associated therewith.

9 107. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and
10 damage as a result of Defendant's acts in an amount to be determined at trial. Moreover, Plaintiff
11 is entitled to all gains, profits, and advantages obtained by Defendant as a result thereof in an
12 amount to be determined at trial, as well as the costs of this action pursuant to 15 U.S.C.
13 § 1117(a), and attorneys' fees and treble damages pursuant to 15 U.S.C. § 1117(b).

14 **V. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for the following relief:

16 i) That Defendant, its agents, servants, employees, attorneys, and those in active concert
17 or participation with them, be enjoined or restrained:

18 a. From imitating, copying, reproducing, or using in any manner the RAM MOUNT
19 or X-GRIP Trademark or the Hourglass Shape Trade Dress, including in the
20 manner complained of herein;

21 b. From further manufacturing, assembling, producing, selling, offering for sale,
22 advertising, and distributing goods that infringe on the '161 Patent;

23 c. From further manufacturing, assembling, producing, selling, offering for sale,
24 advertising, and distributing goods that infringe on the '359 Patent;

25 d. From further manufacturing, assembling, producing, selling, offering for sale,
26 advertising, and distributing goods that infringe on the '657 Design Patent;

- e. From further manufacturing, assembling, producing, selling, offering for sale, advertising, and distributing goods that infringe on the '278 Design Patent;
 - f. From further manufacturing, assembling, producing, selling, offering for sale, advertising, and distributing goods that bear the Hourglass Shape Trade Dress;
 - g. From representing, suggesting in any fashion to any third party, or performing any act which may give rise to the belief that Defendant, or any of its goods, are authorized or sponsored by NPI;
 - h. From further copying or distributing copies of Plaintiff's patented designs or otherwise infringing upon Plaintiff's patents identified herein;
- ii) That Defendant be required to deliver up to Plaintiff for destruction any and all goods in its possession that infringe upon NPI's patents, trademarks, or trade dress, identified herein;
- iii) That Defendant be required, pursuant to 15 U.S.C. § 1117, to account to Plaintiff for any and all profits derived by Defendant, and for all damages sustained by Plaintiff by reason of Defendant's actions complained of herein, and/or statutory damages, which Plaintiff may at a later time elect to recover, in an amount to be proven at trial;
- iv) Awarding exemplary damages under 15 U.S.C. § 1117;
- v) Awarding the damages arising out of Defendants' infringement of U.S. Patents Nos. 8,622,359 and 8,544,161, in an amount to be proven at trial;
- vi) That pursuant to 15 U.S.C. § 1117, 35 U.S.C. § 285, and RCW 19.86.090, or as otherwise permitted by law, Plaintiff recovers its reasonable attorneys' fees, costs, and disbursements from Defendant;
- vii) That Plaintiff be awarded damages and treble damages pursuant to RCW 19.86.090;
- viii) That Plaintiff be awarded both pre-judgment and post-judgment interest on each and every damage award; and

For such further relief as the Court deems just and appropriate.

VI. DEMAND FOR JURY TRIAL

NPI demands a trial by jury of all issues so triable.

DATED this 16th day of May, 2017.

STOKES LAWRENCE, P.S.

By: /s/ Shannon M. Jost

By: /s/ Lance A. Pelletier

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2017, I caused the foregoing to be:

☒ electronically filed with the Clerk of the Court using the CM/ECF system.

/s/ Shannon M. Jost

Shannon M. Jost (WSBA #32511)

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