

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

PINPOINT MARKETING GROUP, INC.
d/b/a GOLD'S GEAR
Plaintiff,

v.

SUNDESA, LLC; and
RUNWAY BLUE, LLC,
Defendants.

Civil Action No. 3:17-cv-00435

JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT AND
ANSWER TO DEFENDANTS' COUNTERCLAIMS**

Plaintiff Pinpoint Marketing Group, Inc. d/b/a Gold's Gear ("Pinpoint" or "Plaintiff"), for its Original Complaint against Defendant Sundesa, LLC and Defendant Runway Blue, LLC (collectively "Defendants"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action seeking a determination that Pinpoint's Gold's Gym bottle does not infringe any valid or enforceable claim of U.S. Patent No. D510,235 (the "Patent-in-Suit") (attached hereto as Exhibit 1), under 35 U.S.C. § 271; a determination that the Patent-in-Suit is invalid under 35 U.S.C. § 102, 103, and 112; a determination that various bottles manufactured by the Defendants have been falsely marked; a determination that Pinpoint has suffered a competitive injury as a result of Defendants' false marking and is entitled to money damages; and a determination that the Defendants have misused the Patent-in-Suit entitling Pinpoint to money damages adequate to compensate Pinpoint for the resultant harm.

2. On information and belief, Sundesa, LLC is the exclusive licensee of the Patent-in-Suit from its assignee Runway Blue, LLC. Sundesa represents that its exclusive license

includes the right to enforce the Patent-in-Suit. On information and belief, Runway Blue, LLC is the assignee of the Patent-in-Suit.

THE PARTIES

3. Plaintiff Pinpoint Marketing Group, Inc. is a corporation organized under the laws of the State of Texas with its principal place of business at 625 Deerwood Lane, Keller, Texas 76248 within this District.

4. Upon information and belief, Defendant Sundesa, LLC, is a Utah limited liability company with its principal place of business at 250 South 850 East, Lehi, Utah 84043, and can be served through its registered agent Steven M. Sorensen, 250 South 850 East, Lehi, Utah 84043.

5. On information and belief, Defendant Runway Blue, LLC is a Utah limited liability company with its principal place of business at 1953 North 690 East, Orem, Utah, 84097, and can be served through its registered agent Steven M. Sorensen, 35 S Pfeifferhorn Dr., Alpine, UT 84004.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. §§ 2201 and 2202, to obtain a declaration of non-infringement of the Patent-in-Suit.

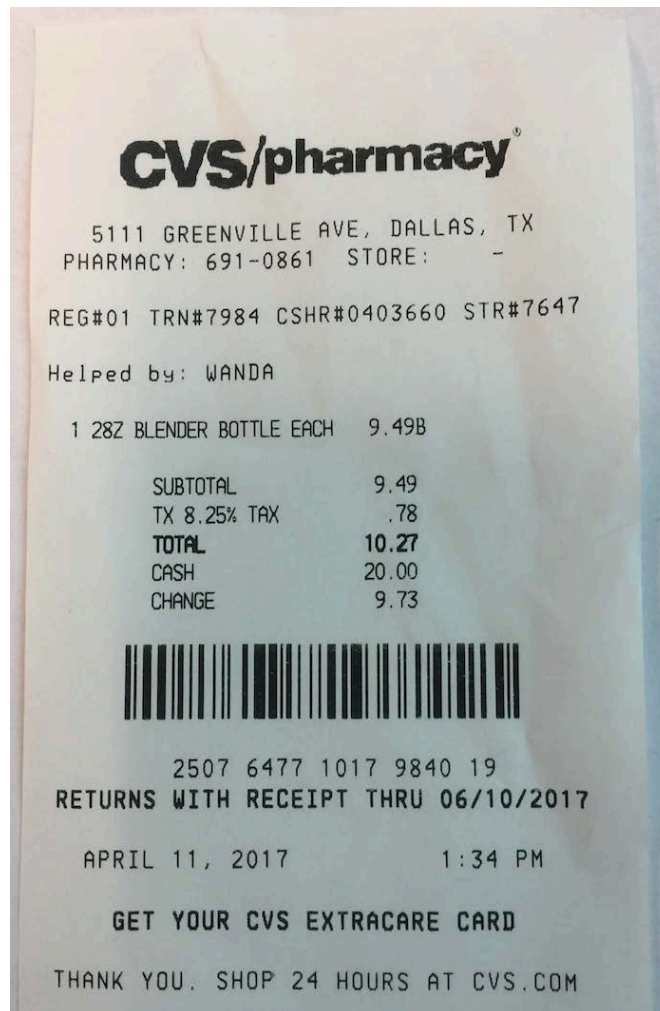
7. Because this action arises under the Patent Laws of the United States, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. Plaintiff resides within this district, and all of Plaintiff's relevant records are located within this district. Plaintiff's potentially relevant records located in this district include

design information, sales data, marketing print material, internet web marketing information, and electronic communications about Plaintiff's products.

9. Plaintiff has customers throughout the United States including in this district. Plaintiff's largest customer, Gold's Gym, is headquartered in this district at 125 E John Carpenter FWY, Suite 1300, Irving, TX 75062 and has an interest in the outcome of this litigation.

10. Defendants sell their products related to this lawsuit, their Blender Bottle, throughout the United States, including in this district. For instance, Plaintiff was able to purchase one of Defendants' Blender Bottles in this district as shown by this receipt:



11. Defendants operate an interactive website accessible worldwide including in this District at <https://www.blenderbottle.com>. On this website, customers can order products, including the BLENDERBOTTLE CLASSIC, that are similar to the invention of the Patent-in-Suit for shipment to destinations including to addresses in this district. *See* <https://www.blenderbottle.com/cart>.

12. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long-Arm Statute, due to their substantial business in this forum, including sales of BlenderBottle products and through their patent enforcement actions in this jurisdiction.

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

A SUBSTANTIAL CONTROVERSY EXISTS BETWEEN THE PARTIES

14. Pinpoint sells shaker cups under the name of Gold's Gear and other brands.

15. On or about December 5, 2016, Pinpoint, through Scott Graham by email, received a letter from Larry R. Laycock on behalf of Sundesa ("the Letter") (attached hereto as Exhibit 2).

16. The Letter alleges "[f]rom our review of the structure and operation of Your Shaker Cups, it appears that they infringe the Asserted Patent."

17. The Letter further states:

Demand is hereby made for you to immediately stop infringing the Asserted Patent and for you to provide written assurances that you have terminated all manufacture, use, sale, offers for sale, and importation of Your Shaker Cups in the United States. If you wish to resolve this matter outside of litigation, please contact us within twenty-one days from the date of this letter. Otherwise, Sundesa will assume that you intend to continue infringing the Asserted Patent and will pursue all legal remedies available.

18. Pinpoint does not infringe, either directly or indirectly, any valid, enforceable claim of the Patent-in-Suit, either literally or under the doctrine of equivalents.

19. In conversations with Pinpoint's counsel, Sundesa's representative denied the accuracy of Pinpoint's non-infringement position as explained below in paragraphs 22-28.

20. Pinpoint has been harmed by Sundesa's efforts to interfere with its business of selling Gold's Gym bottles.

21. By virtue of the foregoing, a substantial controversy exists between the parties that is of sufficient immediacy and reality to warrant declaratory relief.

**COUNT 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE
D510,235 PATENT**

22. Pinpoint realleges and incorporates paragraphs 1 through 21 as if fully set forth herein.

23. Figure 2 of the D510,235 is reproduced below:

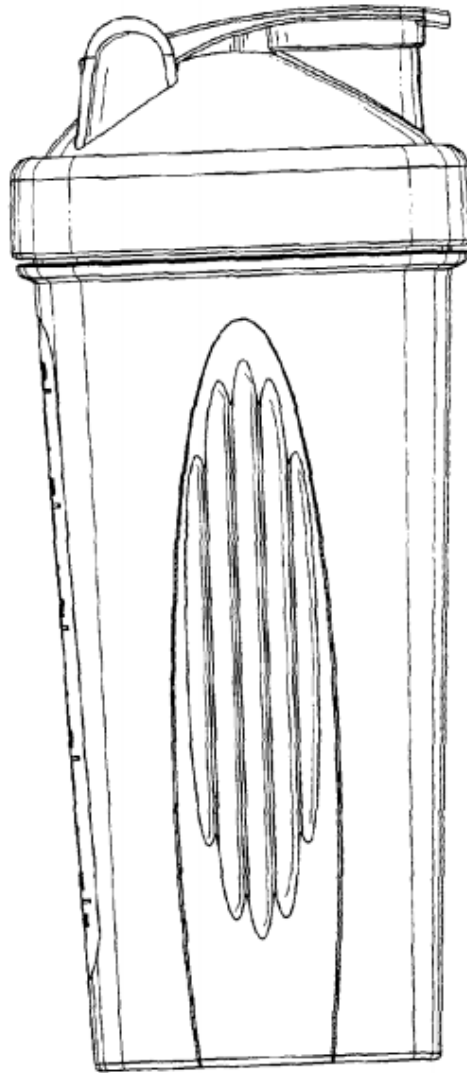


Fig. 2

24. Figure 2 of the Patent-in-Suit shows that the claimed bottle has an inset on the side of the bottle that contains five protrusions.

25. The sides of Pinpoint's Gold's Gym bottle are smooth as shown below:



26. The “Pinpoint Marketing Claim Chart” attached to the Letter contains the following comparison:



27. As this comparison shows, the smooth sides of Pinpoint's Gold's Gym bottle do not contain any of the ornamental aspects of the five protrusions within the inset of the claimed bottle.

28. Bottle designs employing something other than five protrusions could be made to accomplish the functional capability of increasing the bottle user's grip.

29. The claimed bottle has flat insets on opposite sides as shown in Figures 2 and 5. These flat regions are highlighted in the reproduced drawings below:

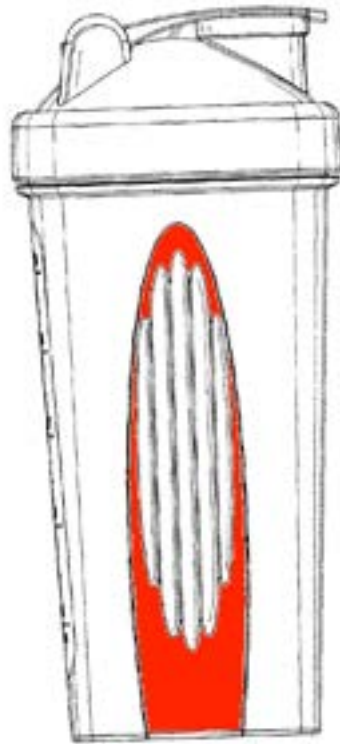


Fig. 2

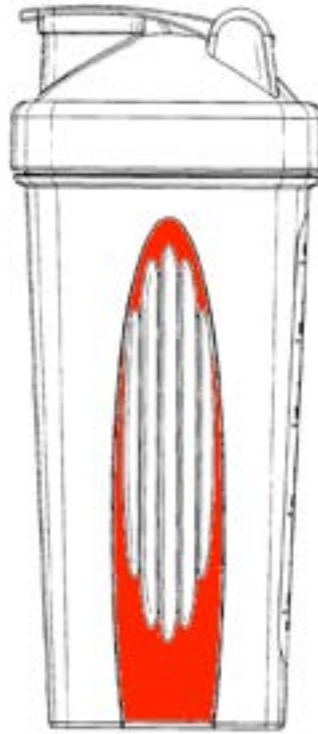


Fig. 5

30. The flat regions identified in ¶ 28 have curved sides.
31. A flat region could be inset into a bottle having straight sides.
32. As shown in ¶ 24 above, Pinpoint's Gold's Gym bottle does not have flat regions.
33. Figures 1 and 4 of the Patent-in-Suit show the measuring scale aligned below the hinge on the lid, as indicated below.

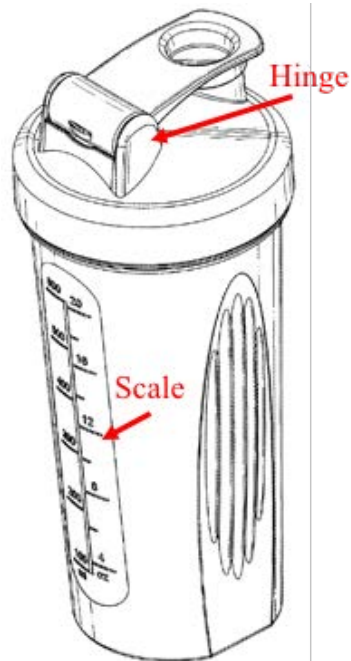


Fig. 1

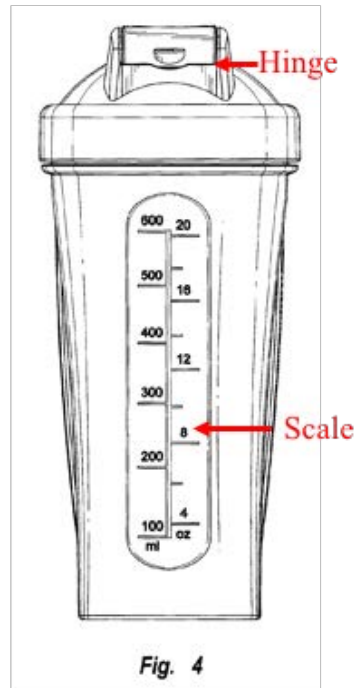


Fig. 4

34. Pinpoint's bottles have the spout aligned with the scale as shown in the figure below.



35. The orientation of the features of the lid relative to features on the bottle is a design choice determined by the threading of the lid and the bottle.

36. Figure 7 of the Patent-in-Suit shows that the bottom of the claimed bottle has two flat sides as shown by the highlights below.

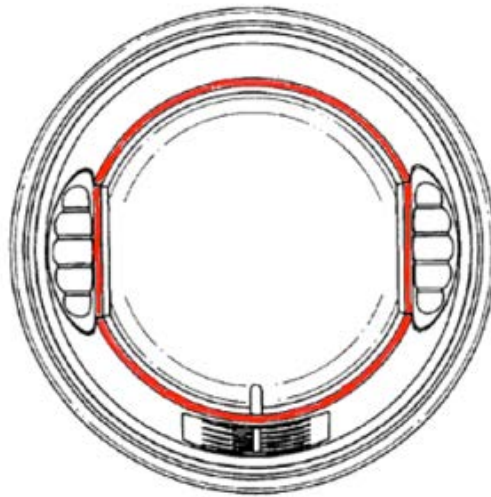
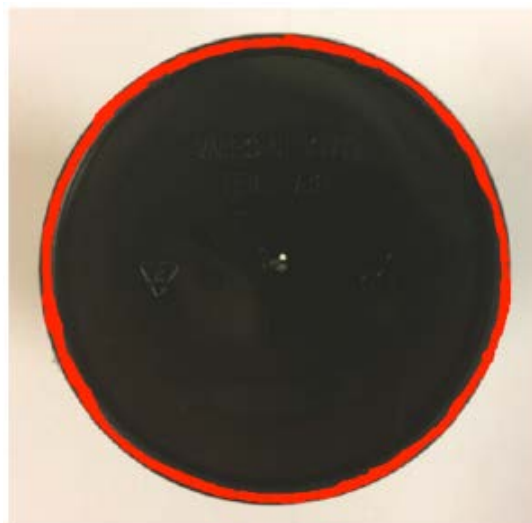
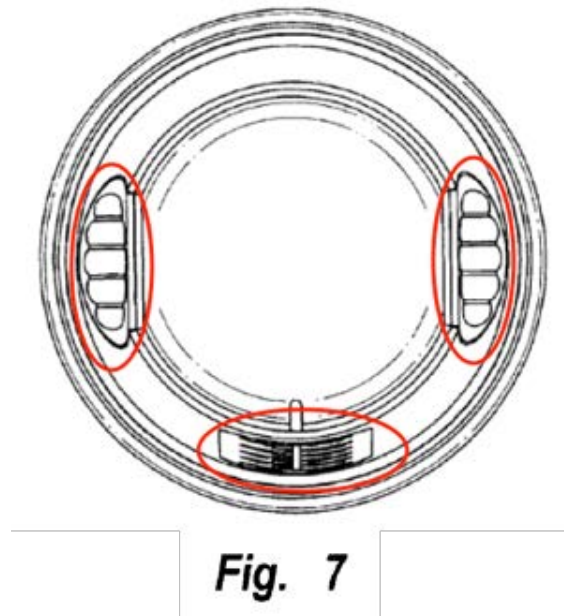


Fig. 7

37. The bottom of Pinpoint's Gold's Gym bottle is round as shown by the highlights below.

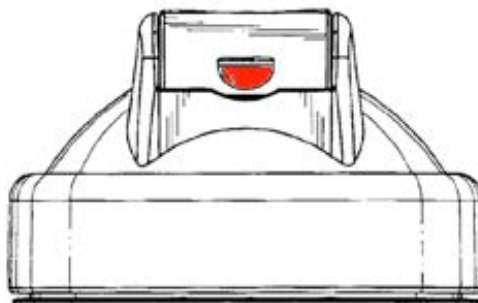


38. Figure 7 of the Patent-in-Suit shows five bulbous protrusions on opposite sides of the claimed bottle as highlighted below.



39. As shown in the picture of ¶ 36, Pinpoint's Gold's Gym Bottle does not have these protrusions on any sides of its round bottom.

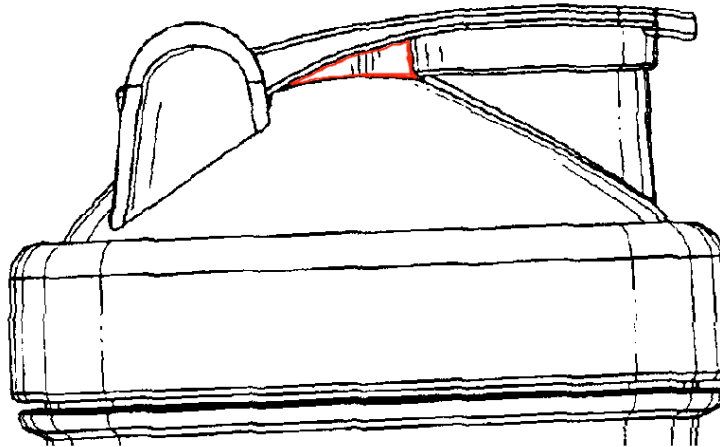
40. As shown in Figure 4 of the Patent-in-Suit, the hinge on the lid of the claimed bottle has a semi-circular protrusion as highlighted below.



41. As shown below, Pinpoint's Gold's Gym Bottle has a small rectangle on the base of its hinge piece as indicated below.



42. As shown in Figure 2 of the Patent-in-Suit, the spout of the claimed bottle is relatively short leading to a relatively small space between the flip-top lid and the top of the dome as highlighted below.



43. As shown below, Pinpoint's Gold's Gym Bottle has a relatively tall spout leading to a larger space between the flip-top lid and the top of the dome as highlighted below.



44. No ordinary observer, when considering Pinpoint's Gold's Gym Bottle, in view of the prior art discussed below in Count 2, would believe the design to be substantially the same as the design claimed in the Patent-in-Suit.

**COUNT 2: DECLARATORY JUDGMENT OF INVALIDITY OF
THE D510,235 PATENT**

45. Pinpoint realleges and incorporates paragraphs 1 through 21 as if fully set forth herein.

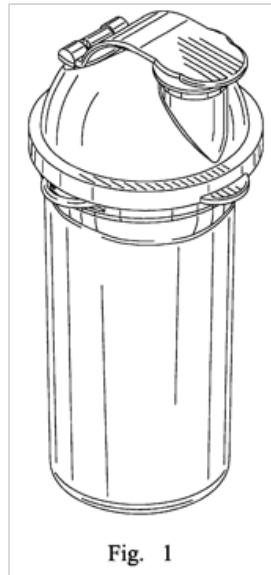
46. U.S. Patent No. D421,547 to Brian Demers (the "Demers Prior Art Patent") (attached hereto as Exhibit 3) issued on March 14, 2000.

47. The Demers Prior Art Patent's March 14, 2000 issue date is more than a year before the September 9, 2003 filing date of the Patent-in-Suit.

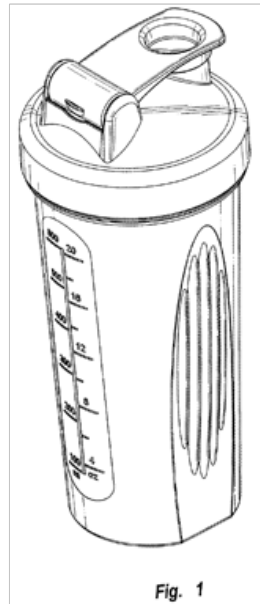
48. The Demers Prior Art Patent, therefore, qualifies as prior art under at least 35 U.S.C. 102(a).

49. The following diagram shows a comparison between Figure 1 of the Demers Prior Art Patent and Figure 1 of the Patent-in-Suit.

Demers Prior Art Patent

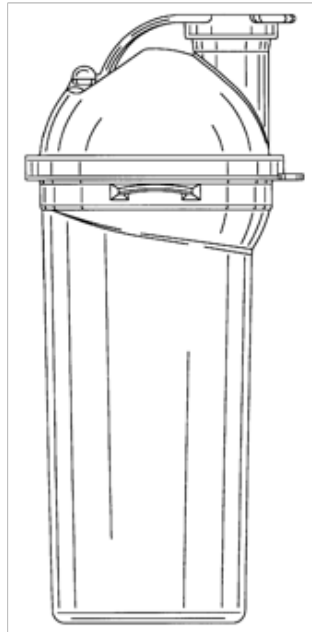


Patent-in-Suit

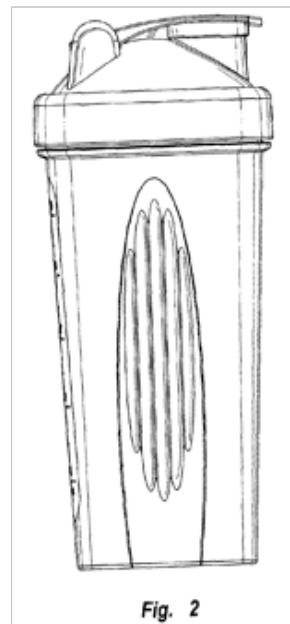


50. The following diagram shows a comparison between Figure 2 of the Demers Prior Art Patent and Figure 2 of the Patent-in-Suit.

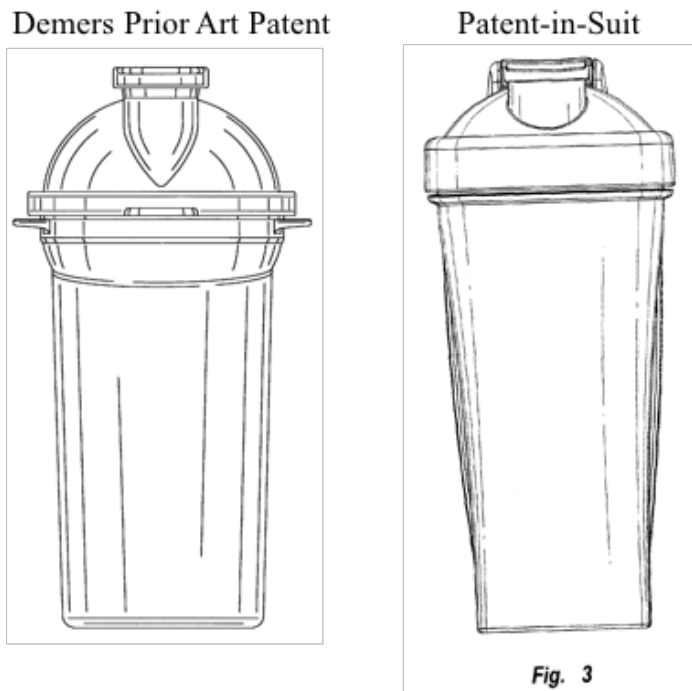
Demers Prior Art Patent



Patent-in-Suit

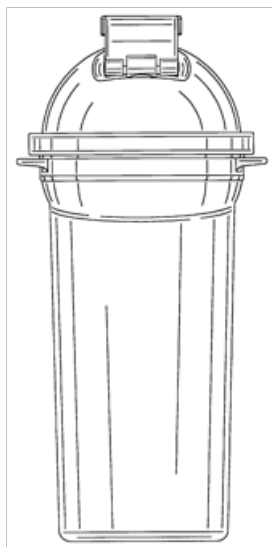


51. The following shows a comparison between Figure 4 of the Demers Prior Art Patent and Figure 3 of the Patent-in-Suit.



52. The following shows a comparison between Figure 5 of the Demers Prior Art Patent and Figure 4 of the Patent-in-Suit.

Demers Prior Art Patent



Patent-in-Suit

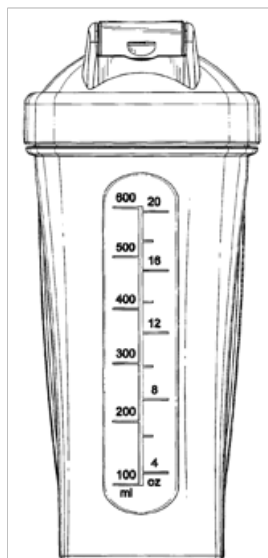
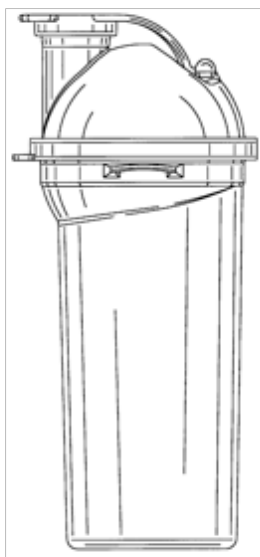


Fig. 4

53. The following is a comparison between Figure 3 of the Demers Prior Art Patent and Figure 5 of the Patent-in-Suit.

Demers Prior Art Patent



Patent-in-Suit

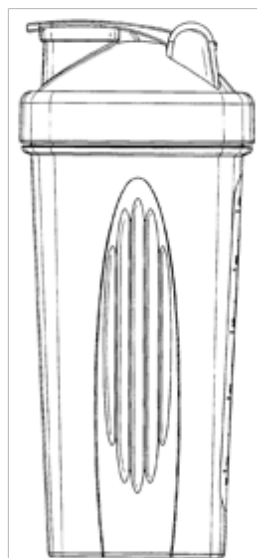
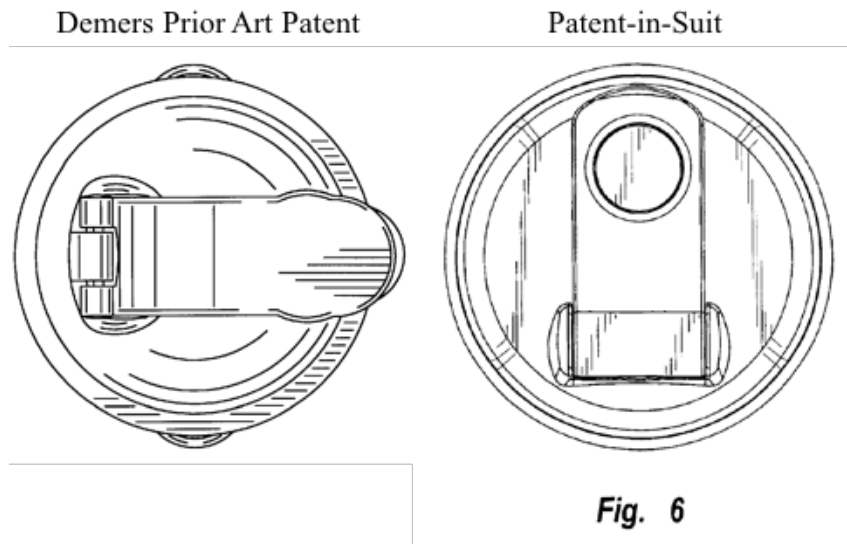
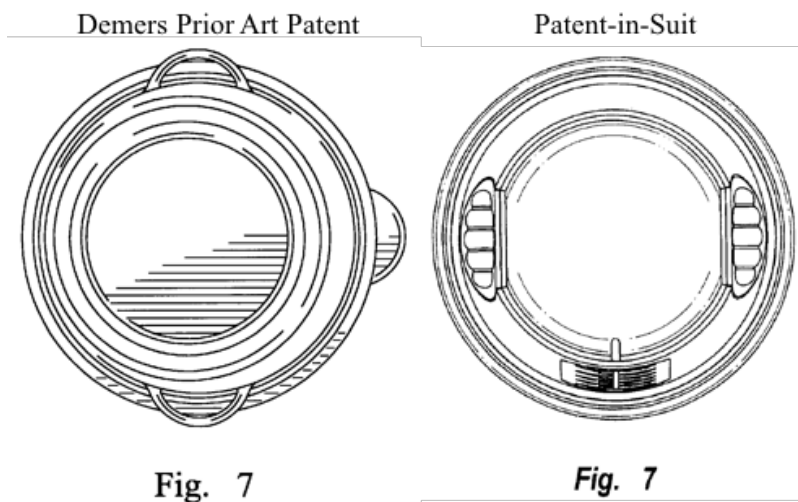


Fig. 5

54. The following is a comparison between Figure 6 of the Demers Prior Art Patent and Figure 6 of the Patent-in-Suit.



55. The following is a comparison between Figure 7 of the Demers Prior Art Patent and Figure 7 of the Patent-in-Suit.



56. As the above comparisons of ¶¶ 49-55 illustrate, an ordinary observer would find the bottle claimed by the Patent-in-Suit to be substantially the same as the Demers Prior Art Patent. Consequently, the Patent-in-Suit is invalid as anticipated by the Demers Prior Art Patent.

57. On information and belief, other prior art exists that also renders the Patent-in-Suit invalid by anticipation and obviousness. The likely prior art includes at least the following:

U.S. Pat. No. 5,704,504 (attached hereto as Exhibit 4), U.S. Pat. No. D508,186 (attached hereto as Exhibit 5), the bodybuilding.com shaker bottle from July 31, 2003 (attached hereto as Exhibit 6), U.S. Pat. No. 4,949,865 (attached hereto as Exhibit 7), U.S. Pat. No. 3,820,692 (attached hereto as Exhibit 8), U.S. Pat. No. 5,547,275 (attached hereto as Exhibit 9), U.S. Pat. No. 5,415,312 (attached hereto as Exhibit 10), and U.S. Pat. No. 6,749,075 (attached hereto as Exhibit 11).

**COUNT 3: DECLARATORY JUDGMENT OF FALSE MARKING
UNDER 35 U.S.C § 292 OF PRODUCTS WITH THE D510,235 PATENT**

58. Pinpoint realleges and incorporates paragraphs 1 through 21 as if fully set forth herein.

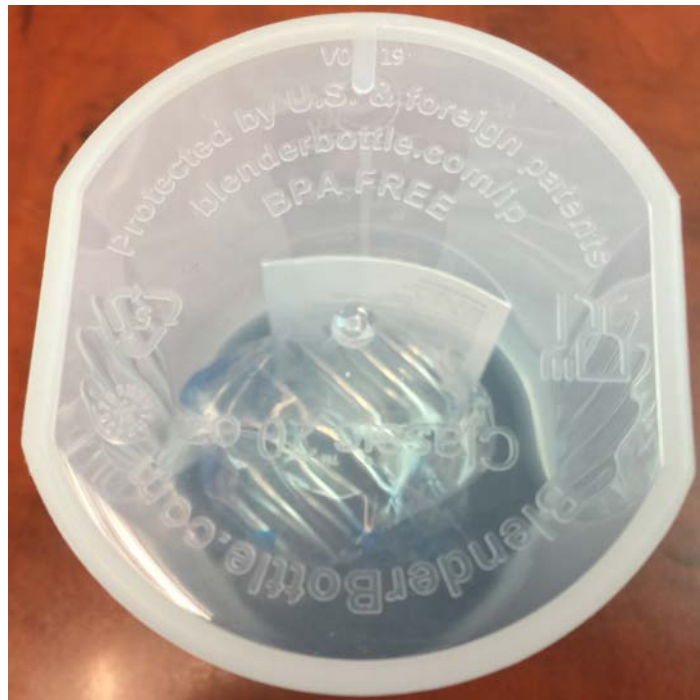
59. Defendants mark or have marked some 28 oz bottles with the D510,235 Patent Number as shown in the following picture.



60. Defendants mark or have marked some Classic 28 oz bottles with the phrase “Protected by U.S. & foreign patents blenderbottle.com/ip” as shown in the following picture.



61. Defendants mark or have marked some Classic 20 oz bottles with the phrase “Protected by U.S. & foreign patents blenderbottle.com/ip” as shown in the following picture.



62. Defendants’ “blenderbottle.com/ip” website lists patents purported to be applicable to several different products.

63. The portion of the “blenderbottle.com/ip” website applicable to the Classic 28 oz bottle is the section labeled “BlenderBottle® Classic™.”

64. The portion of the “blenderbottle.com/ip” website applicable to the Classic 20 oz bottle is also the section labeled “BlenderBottle® Classic™.”

65. The portion of the “blenderbottle.com/ip” website labeled “BlenderBottle® Classic™” lists the D510,235 Patent-in-Suit.

66. At least some of the Classic 28 oz bottles and the Classic 20 oz bottles have been marked with the D510,235 Patent-in-Suit.

67. Figures 1, 2, 4, and 5 of the Patent-in-Suit show the hinge being above the scale on the side of the bottle.

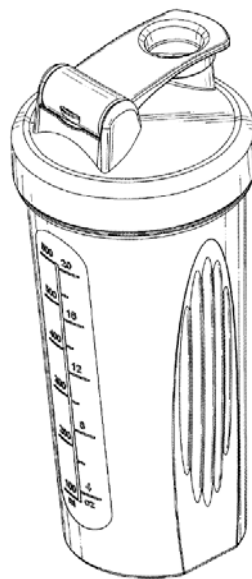


Fig. 1

68. The position of the hinge and spout relative to the scale on the side of the bottle is a design choice determined by the orientation of the threading on the bottle and lid.

69. The following illustration shows the difference in orientation between the 28 oz bottle marked with the D510,235 Patent number and figure 4 of that patent.



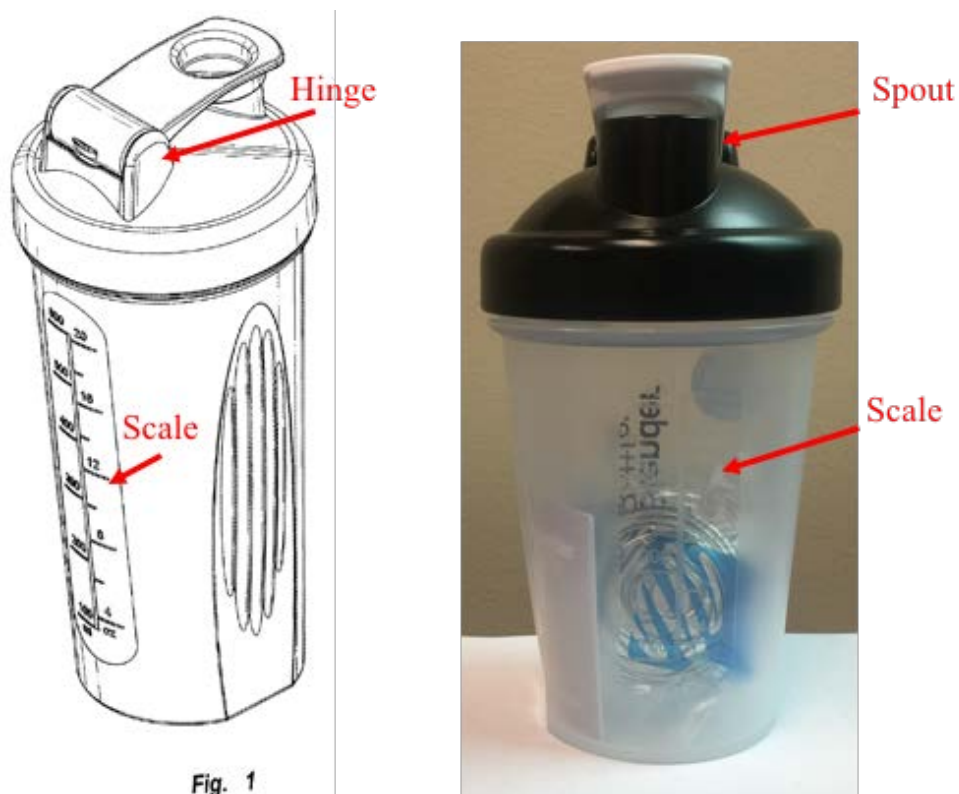
70. The marked blender bottles have the spout above the scale on the side of the bottle.

71. The figures of the Patent-in-Suit do not have a plastic ring protruding from the hinge.

72. Some versions of the Blender Bottle 28 oz have a plastic ring attached at the hinge. This difference between the marked products and the figures of the Patent-in-Suit is illustrated below.

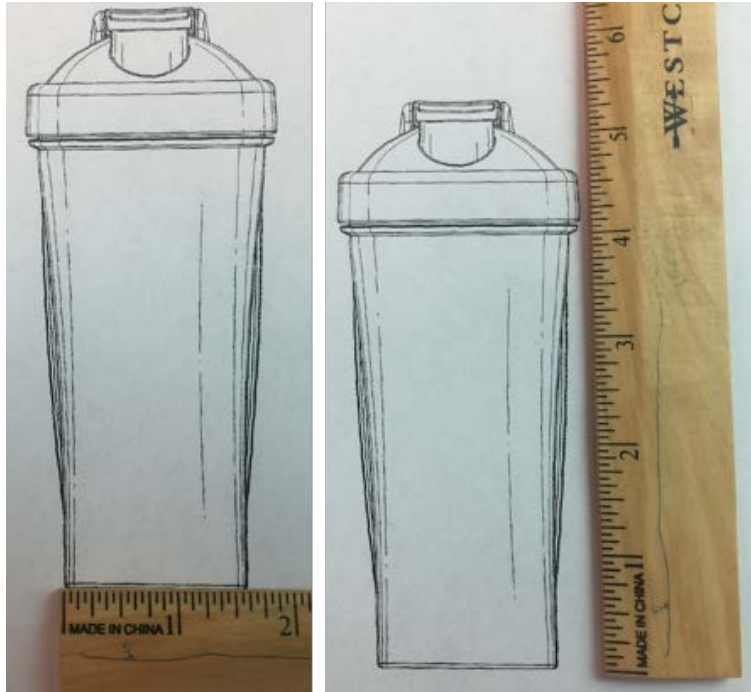


73. The Blender Bottle Classic 20 oz has the spout above the scale rather than the hinge above the scale as illustrated below.



74. The Blender Bottle Classic 20 oz has different proportions than the claimed invention.

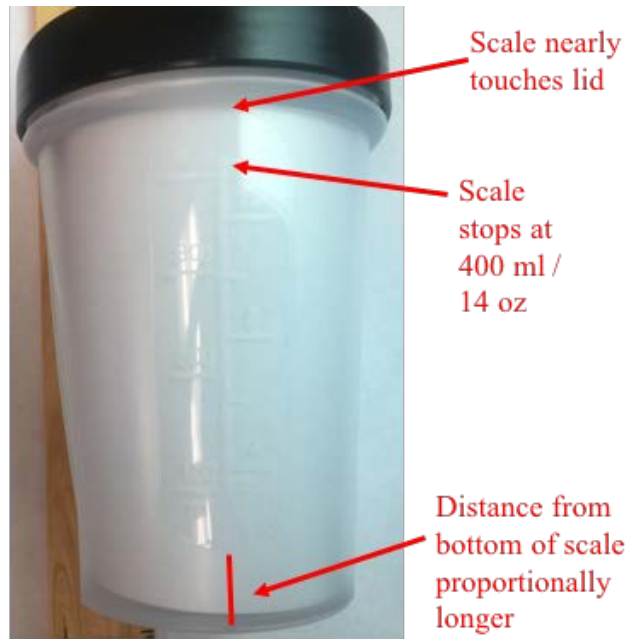
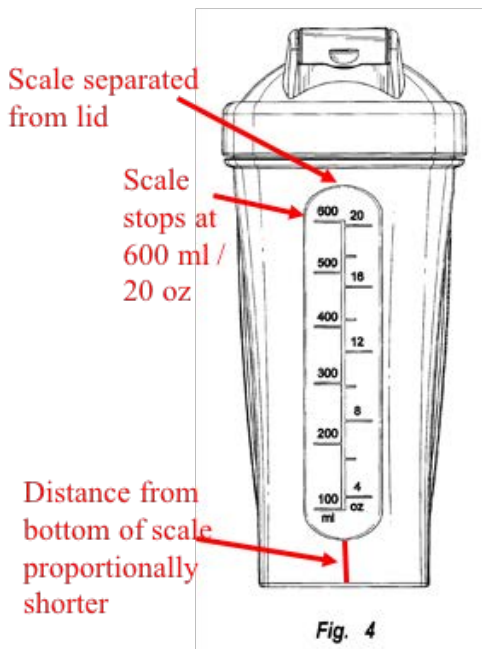
75. The ratio of the height-to-width in the asserted patent is roughly 3.58:1. This ratio was determined by measuring the width to be roughly 1.5 inches at the base and roughly 5.375 inches tall as shown in the following figures.



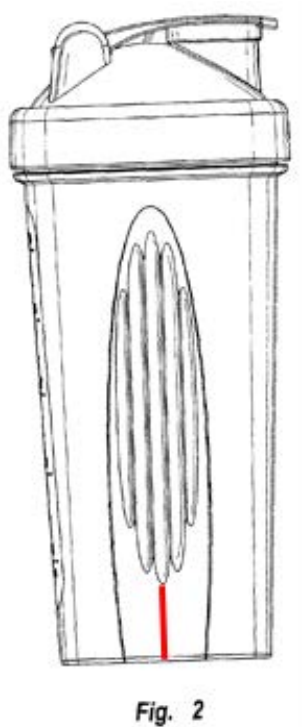
76. The ratio of the height-to-width of the Blender Bottle Classic 20 oz is determined by the measured width of 2.5 inches at the base and the measured height of 6.75 inches tall for a height-to-width ratio of roughly 2.7:1 as shown in the following pictures.



77. The Patent-in-Suit shows in Figure 4 the scale on the side of the bottle. This scale shows measurements of 600 ml and 20 oz. In contrast, the Blender Bottle Classic 20 oz shows a scale that stops at 400 ml and 14 oz. Additionally, the top of the scale in Figure 4 is separated from the start of the lid by some distance. In contrast, the top of the scale on the Blender Bottle Classic 20 oz is nearly touching the lid. Also, the distance from the base of the scale to the bottom of the bottle in Figure 4 is proportionally shorter than that same distance in the Blender Bottle Classic 20 oz bottle. These differences are further illustrated in the following drawing.



78. The side ribbings of the Blender Bottle Classic 20 oz are significantly closer to the bottom of the bottle than is shown in the claimed Figures 1-2 and 4. This difference is shown in the following comparison.



79. Pinpoint and Defendants are each in the business of manufacturing bottles and are competitors within the meaning of 35 U.S.C. § 292 (b).

80. Pinpoint has suffered competitive injury due to the lack of clarity of the scope of the claim of the Patent-in-Suit in the form of lost business due to a self-imposed moratorium on sales while investigating Pinpoint's freedom to operate.

**COUNT 4: DECLARATORY JUDGMENT OF
PATENT MISUSE**

81. Pinpoint realleges and incorporates paragraphs 1 through 21 as if fully set forth in this paragraph.

82. The Defendants have misused the Patent-in-Suit by impermissibly attempting to broaden the physical scope of the patent grant to cover Pinpoint's product.

83. No reasonable Patent owner could look at the Demers Prior Art patent and the Patent-in-Suit and conclude that the ornamental aspects of the side ribbings could be excluded from the physical scope of the Patent-in-Suit.

84. The Defendants were aware or should have been aware of the Demers Prior Art patent when they sent their letter to Pinpoint because the Demers Prior Art patent is cited on the face of at least 13 of Defendant Runway Blue's other patents.

85. Since the receipt of Defendants' demand letter, Pinpoint has ceased selling the products accused of infringing the Patent-in-Suit. This cessation has caused Pinpoint financial harm in the form of lost sales. These lost sales are the direct and foreseeable result of Defendants' impermissible broadening of the physical scope of their patent grant.

86. Due to the receipt of Defendants' demand letter, Pinpoint has incurred the cost of retaining the undersigned attorneys to investigate and protect Pinpoint's rights. These attorney

fees are the direct and foreseeable result of Defendants' impermissible broadening of the physical scope of their patent grant.

REQUEST FOR RELIEF

Wherefore, Pinpoint respectfully requests for this Court to grant the following relief:

- a) A declaration that Pinpoint has not infringed, either directly or indirectly, any valid and enforceable claim of U.S. Patent No. D510,235;
- b) A declaration that the claim of U.S. Patent No. D510,235 is invalid for anticipation or obviousness in view of the prior art;
- c) A declaration that the Defendants' Blender Bottle products have been falsely marked with the U.S. Patent No. D510,235 designation;
- d) A declaration that the Defendants have misused U.S. Patent No. D510,235 causing financial harm to Pinpoint;
- e) An order declaring that Pinpoint is a prevailing party and that this is an exceptional case, awarding Pinpoint its profits from lost sales, costs, expenses, and reasonable attorney's fees under 35 U.S.C. § 285; and
- f) That Pinpoint be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Pinpoint demands a trial by jury on all issues presented in this Complaint and so triable.

**PINPOINT MARKETING GROUP, INC.'S ANSWER TO DEFENDANTS'
COUNTERCLAIMS**

Plaintiff Pinpoint Marketing Group, Inc. d/b/a Gold's Gear ("Pinpoint"), by and through its undersigned counsel, hereby submits its Answer to Defendants Sundesa, LLC and Runway Blue, LLC's (collectively, "Defendants") counterclaims.

THE PARTIES

1. Sundesa, LLC is a limited liability company duly organized and existing under the laws of the state of Utah with its principle place of business located at 250 South 850 East Lehi, Utah 84043.

RESPONSE: Admitted.

2. Runway Blue, LLC is a limited liability company duly organized and existing under the laws of the State of Utah with its principle place of business located at 35 S Pfeifferhorn Drive, Alpine, Utah 84004.

RESPONSE: Admitted.

3. Pinpoint is a corporation organized under the laws of the State of Texas with its principal place of business located at 3710 West Royal Lane, Suite 125, Irving, Texas 75063. On information and belief Pinpoint also does business as Pinpoint Merchandising, Inc.

RESPONSE: Admitted.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

RESPONSE: Pinpoint admits that Defendants' counterclaims purport to state a cause of action for patent infringement. To the extent any additional response is required,

Pinpoint denies the allegations of this paragraph and expressly denies that it has infringed any valid claim of any patent.

5. This is also a civil action for unfair competition arising under Utah Code Ann. § 13-5a-101, et seq.

RESPONSE: Pinpoint admits that Defendants' counterclaims purport to state a cause of action for unfair competition. To the extent any additional response is required, Pinpoint denies the allegations of this paragraph and expressly denies that Utah's unfair competition law is applicable and that it has engaged in any unfair competition. Pinpoint also notes that this case is a civil action for patent misuse and false patent marking.

6. This Court has original jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338(a). This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

RESPONSE: Pinpoint admits that this Court has original jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338(a) for the claims relating to United States patents. Pinpoint admits that this Court has the power to adjudicate state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367, but denies that any state law claims are proper here.

7. This Court has personal jurisdiction over Pinpoint because Pinpoint is organized under the laws of the State of Texas and its principal place of business is located within this District.

RESPONSE: Admitted.

8. As such, this Court's exercise of personal jurisdiction over Pinpoint is consistent with the Constitutions of the United States of America and the State of Texas.

RESPONSE: Admitted.

9. Venue is proper in this judicial district under at least 28 U.S.C. §§ 1391 and 1400.

RESPONSE: Admitted.

FACTUAL BACKGROUND

10. Sundesa's technological innovations are protected by, inter alia, a portfolio of utility and design patents, including the '235 Patent.

RESPONSE: Pinpoint is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph, and, therefore, denies those allegations.

11. Sundesa has marked all products embodying the claims of the '235 Patent since introduction to the market.

RESPONSE: Denied.

12. Sundesa is an exclusive licensee of the '235 Patent and has been granted all rights thereunder, including the right and standing to enforce the '235 Patent.

RESPONSE: Pinpoint is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph, and, therefore, denies those allegations.

13. Pinpoint is in the business of selling promotional products and accessories. In particular, Pinpoint sells and offers for sale, inter alia, shaker cups that embody the claimed design of the '235 Patent (the "Accused Products").

RESPONSE: Pinpoint admits that it sells and offers for sale cups. Pinpoint denies that any of its cups embody any valid claim of the '235 Patent. Pinpoint denies any other allegations of this paragraph.

14. Examples of the Accused Products are pictured below:

RESPONSE: Pinpoint admits that the pictured cups are of products Defendants accuse of infringement. Pinpoint denies all other allegations of this paragraph.

15. The Accused Products include all shaker cups sold by Pinpoint that include the same, or similar, design as those pictured hereinabove.

RESPONSE: Pinpoint admits that Defendants accuse Pinpoint's cups of infringement. Pinpoint denies all other allegations of this paragraph.

16. The design of the Accused Products are substantially the same as the design that is claimed in the '235 Patent.

RESPONSE: Denied.

17. Furthermore, the designs of the Accused Products are so similar to the design that is the subject matter of the '235 Patent that customers are likely to be deceived and persuaded to buy the Accused Product thinking they are actually buying products protected by the '235 Patent.

RESPONSE: Denied.

18. Pinpoint had pre-suit knowledge of the '235 Patent at least because of Sundesa's marking of its products that embody the claims of the '235 Patent.

RESPONSE: Pinpoint admits that it had knowledge of the '235 Patent prior to filing a declaratory judgment action for non-infringement of that patent. Pinpoint denies all other allegations of this paragraph.

19. Furthermore, on December 5, 2016, Sundesa sent a letter to Pinpoint marketing that identified the '235 Patent and Pinpoint's infringement of the same. This letter included a courtesy copy of the '235 Patent.

RESPONSE: Pinpoint admits that on or around December 5, 2016, Sundesa's counsel, Larry Laycock, sent a letter to Pinpoint regarding the '235 Patent and that this letter included a copy of the '235 Patent. Pinpoint denies all other allegations of this paragraph.

20. Thus, Pinpoint has had actual knowledge of the '235 Patent since at least as early as December 5, 2016.

RESPONSE: Pinpoint admits that it learned of the '235 Patent from Larry Laycock's December 5, 2016 letter. Pinpoint denies all other allegations of this paragraph.

FIRST CLAIM FOR RELIEF

21. By this reference, Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

RESPONSE: Pinpoint repeats, realleges, and incorporates by reference, its responses to the allegations of the foregoing paragraphs as if fully set forth herein.

22. Pinpoint has infringed, and continues to infringe, the '235 Design Patent by manufacturing, using, offering to sell, selling, or importing, in this District, and elsewhere in the United States, the Accused Products, the design of which is substantially the same as the design of the '235 Patent.

RESPONSE: Denied.

23. Pinpoint's actions constitute infringement of the '235 Patent in violation of 35 U.S.C. § 271.

RESPONSE: Denied.

24. Sundesa has sustained damages and will continue to sustain damages as a result of Pinpoint's aforementioned acts of infringement.

RESPONSE: Denied.

25. Sundesa is entitled to recover damages sustained as a result of Pinpoint's wrongful acts in an amount to be proven at trial.

RESPONSE: Denied.

26. Pinpoint's infringement of Sundesa's rights under the '235 Design Patent will continue to damage Sundesa's business causing irreparable harm, for which there is no adequate remedy at law, unless Pinpoint is enjoined by this Court.

RESPONSE: Denied.

27. Pinpoint has willfully infringed the '235 Patent, entitling Sundesa to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

RESPONSE: Denied.

28. Alternatively, Sundesa is entitled to recover Pinpoint's total profits from its sale of the Accused Products under 35 U.S.C. § 289.

RESPONSE: Denied.

29. By this reference Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

RESPONSE: Pinpoint repeats, realleges, and incorporates by reference, its responses to the allegations of the foregoing paragraphs as if fully set forth herein.

SECOND CLAIM FOR RELIEF

30. Pinpoint has infringed, and continues to infringe, the '235 Design Patent by manufacturing, using, offering to sell, selling, or importing, in this District, and elsewhere in the United States, the Accused Products, the design of which is substantially the same as the design of the '235 Patent.

RESPONSE: Denied.

31. Pinpoint's actions constitute infringement of the '235 Patent in violation of 35 U.S.C. § 271.

RESPONSE: Denied.

32. Sundesa has suffered injury in fact and has lost money or property as a result of Pinpoint's unfair and unlawful business practices in the form of damage to its good will, lost sales, and other actual damages, including material diminution in the value of the '235 Patent.

RESPONSE: Denied.

33. Because Pinpoint had pre-suit knowledge of the '235 Patent, by its continued infringing conduct, Pinpoint has engaged in unfair competition against Sundesa in willful and deliberate disregard of the rights of Sundesa and the consuming public.

RESPONSE: Pinpoint admits that it had knowledge of the '235 Patent prior to filing a declaratory judgment action for non-infringement of that patent. Pinpoint denies all other allegations of this paragraph.

34. As such, Pinpoint's infringing acts constitute an unlawful and unfair business act/practice in violation of Utah Code Ann. § 13-5-101, et seq.

RESPONSE: Denied.

DEFENDANTS' PRAYER FOR RELIEF

These paragraphs set forth the statement of relief by Defendants to which no response from Pinpoint is required. Pinpoint denies that Defendants are entitled to any of the relief prayed for in their answer, or any other relief.

GENERAL DENIAL

Pinpoint denies each and every allegation in Defendants' Answer that is not affirmatively admitted herein.

Dated: May 19, 2017

/s/ Gary R. Sorden
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 19th day of May, 2017, with a copy of this document via the Court's CM/ECF system per Local Rule CV 5.1(d). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Gary R. Sorden