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B.V. and Fatboy USA, LLC
12

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 FATBOY THE ORIGINAL B.V. and
17 FATBOY USA, LLC,

18 Plaintiffs,

19 vs.

20 THE WOODEN TOYZ D/B/A
21 CHILLOUT BUDDY, MUHSIN
KAYIKCI, and JASON BONO,

22 Defendants.
23
24
25
26
27
28

Case No.

COMPLAINT

1 **ORIGINAL COMPLAINT**

2 Plaintiffs Fatboy the Original B.V. (“Fatboy”) and Fatboy USA, LLC (“Fatboy
3 USA” and, together with Fatboy, “Plaintiffs”), for their Complaint against Defendants
4 The Wooden Toyz d/b/a ChillOut Buddy, Muhsin Kayikci, and Jason Bono
5 (collectively “Defendants”), allege as follows:

6 **SUBSTANCE OF THE ACTION**

7 1. Fatboy is the owner of all rights worldwide in and relating to the wildly
8 popular LAMZAC THE ORIGINAL inflatable lounge (the “LAMZAC Lounge”),
9 including U.S. Patent Nos. D764,823 and D775,479 (the “LAMZAC Lounge
10 Patents”). Fatboy USA has an exclusive license from Fatboy to distribute and
11 promote the LAMZAC Lounge in the United States. All of the claims asserted
12 herein arise out of and are based on Defendants’ brazen and willful infringement of
13 Plaintiffs’ intellectual property rights not only in the LAMZAC Lounge Patents,
14 but also in Plaintiffs’ copyrights associated with marketing materials for the
15 LAMZAC Lounge.

16 2. Plaintiffs bring claims for design patent infringement under Section 271
17 of the U.S. Patent Act, 35 U.S.C. § 271; copyright infringement under Sections 106
18 and 501 of the U.S. Copyright Act of 1976, 17 U.S.C. §§ 106, 501; removal of
19 copyright management information and use of false copyright management
20 information in violation of the Digital Millennium Copyright Act (“DMCA”), 17
21 U.S.C. § 1202; unfair competition under Section 43(a) of the U.S. Trademark
22 (Lanham) Act, 15 U.S.C. § 1125(a), and unfair competition in violation of
23 California State Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

24 3. Plaintiffs seek injunctive relief to stop Defendants’ unlawful
25 distribution and sale of their infringing product, as well as their unlawful use of the
26 LAMZAC Lounge marketing material. Plaintiffs also seek monetary relief in an
27 amount sufficient to compensate for their loss, an accounting and award of
28 Defendants’ profits flowing from their infringing activities, statutory damages

1 under Section 1203 of the DMCA, prejudgment interest, costs and attorneys' fees,
2 and all other relief the Court deems just and proper.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction under Section 39 of the Lanham Act, 15
5 U.S.C. § 1121, and Sections 1331, 1332, and 1338(a) and (b) of the Judicial Code,
6 28 U.S.C. §§ 1331, 1332, 1338(a) & (b).

7 5. This Court has personal jurisdiction over Defendants pursuant to
8 California Code of Civil Procedure § 410.10 because, upon information and belief,
9 (i) Defendants reside in the State of California; (ii) Defendants regularly do and
10 solicit business within the State of California; (iii) Defendants have engaged in the
11 marketing, promotion, advertising and offering for sale of their infringing product
12 within the State of California, including via their interactive ecommerce website;
13 and (iv) Defendants have committed torts in the State of California, namely the
14 marketing, promotion, advertising, sale and/or offering for sale of their infringing
15 product in California, in violation of Plaintiffs' rights.

16 6. Venue is proper under Section 1391(b) and 1400 of the Judicial Code,
17 28 U.S.C. §§ 1391(b), 1400, as Defendants reside and may be found in this District,
18 and have committed acts of infringement and have a regular and established place
19 of business within this District.

20 **THE PARTIES**

21 7. Plaintiff Fatboy the Original B.V. is a limited liability company
22 organized and existing under the laws of the Netherlands, having a place of
23 business at De Steenbok 19 Den Bosch, 5215 MG Netherlands.

24 8. Plaintiff Fatboy USA, LLC is a limited liability company organized
25 and existing under the laws of the State of North Carolina, with its principal place
26 of business at 875 West Sandy Lake Road, #100, Coppell, TX 75019.

27 9. Upon information and belief, Defendant The Wooden Toys d/b/a
28 ChillOut Buddy, is an entity organized and existing under the laws of California,

1 which has a place of business at 1900 S. Campus Avenue, #39a, Ontario, California
2 91761.

3 10. Upon information and belief, Defendant Kayikci is an individual and
4 resident of California. Upon information and belief, Kayikci is an officer and/or
5 director of ChillOut Buddy.

6 11. Upon information and belief, Defendant Bono is an individual and
7 resident of California. Upon information and belief, Bono is an officer and/or
8 director of ChillOut Buddy.

9 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

10 **I. THE LAMZAC LOUNGER PATENTS**

11 **A. Plaintiffs' Design Patents in the LAMZAC Lounger**

12 12. Mr. Marijn Oomen, a resident of the Netherlands, is the designer of the
13 LAMZAC Lounger.

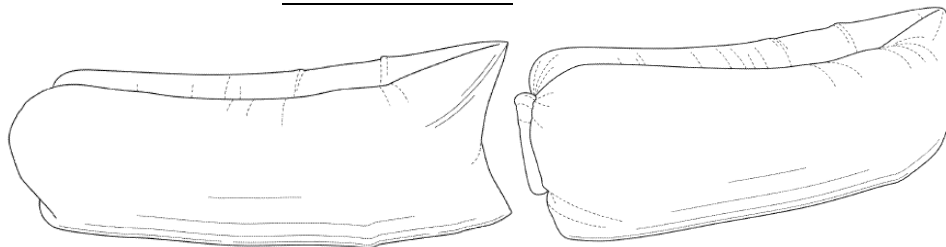
14 13. Mr. Oomen has assigned to Fatboy all of his rights in the design of the
15 LAMZAC Lounger, as well as his copyrights in all marketing materials for
16 LAMZAC Lounger.

17 14. The LAMZAC Lounger Patents each depict the design of a lounger.
18 Profile views of the patented designs as they appear in the LAMZAC Lounger
19 Patents are shown below:

20 U.S. Patent No. D764,823



24 U.S. Patent No. D775.479



1 15. Fatboy USA has an exclusive license from Fatboy to distribute and
2 promote products embodying the LAMZAC Lounger Patents in the United States.

3 16. The LAMZAC Lounger Patents each claim a priority date of January
4 28, 2015, based on Fatboy's Registered European Community Design No.
5 002621904-0001.

6 **B. Plaintiffs' Copyrights in the LAMZAC Marketing Material**

7 17. Mr. Oomen is the author of numerous photographs and videos of the
8 LAMZAC Lounger, which images were subsequently used in connection with the
9 advertisement, promotion, and sale of the LAMZAC Lounger.

10 18. Mr. Oomen created these works in the Netherlands. His copyrights in
11 the LAMZAC Lounger marketing materials were assigned to Fatboy and Fatboy
12 USA is the exclusive licensee of those copyrights.

13 **II. DEFENDANTS' INFRINGING ACTIVITIES**





14 19. On information and belief, Defendants have manufactured, advertised,
15 offered for sale, sold, distributed, imported, and/or exported an inflatable lounger
16 called the "ChillOut Buddy" (the "Infringing Product"), with a design that is
17 substantially the same as the designs depicted in the LAMZAC Lounger Patents.
18 An example of the Infringing Product is shown below:



24 Breeze Blue

25
26 20. Upon information and belief, Defendants market and sell their
27 Infringing Product online at its website, <https://chilloutbuddy.com>, as well as at
28 various fairs and shows throughout the United States.

21. In addition, without Plaintiffs’ authorization, Defendants have displayed exact copies and digitally-altered versions of Plaintiffs’ LAMZAC Lounger marketing materials, examples of which are shown below:

Fatboy Original Images	ChillOut Buddy Copied Images
	
	

(collectively, the “LAMZAC Marketing Materials”).

22. Upon information and belief, Defendants have used these images not only on their website but also in social media posts and Internet advertising. Through this conduct, Defendants have falsely represented that Plaintiffs’ proprietary LAMZAC Marketing Materials depict Defendants’ Infringing Product.

23. Upon information and belief, Defendants engaged and continue to engage in the above activities willfully, with the knowledge that the design of the Infringing Product is substantially same as the designs depicted in the LAMZAC Lounger Patents without authorization.

1 24. Defendants are not related to or affiliated with Plaintiffs in any way.
2 Defendants have not received a license or authorization from Plaintiffs for any
3 purpose whatsoever, including for the acts described herein.

4 25. Defendants' unauthorized acts as described herein have caused and will
5 continue to cause irreparable damage to Plaintiffs and their business unless
6 restrained by this Court.

7 **FIRST CLAIM FOR RELIEF:**

8 **DESIGN PATENT INFRINGEMENT**
9 **IN VIOLATION OF 35 U.S.C. § 271 (Patent No. D764,823)**

10 26. Plaintiffs repeat and incorporate by reference the foregoing allegations
11 as if fully set forth herein.

12 27. Fatboy owns U.S. Patent No. D764,823, which issued on August 30,
13 2016. Fatboy USA has an exclusive license from Fatboy to distribute and promote
14 products embodying the design set forth in U.S. Patent No. D764,823 in the United
15 States.

16 28. U.S. Patent No. D764,823 is valid and subsisting.

17 29. Upon information and belief, Defendants, without authorization from
18 Plaintiffs, have distributed, advertised, promoted, offered for sale and sold the
19 Infringing Product, the design of which is substantially the same as the design set
20 forth in U.S. Design Patent No. D764,823, and embodies the design protected by
21 such patent.

22 30. Defendants' Infringing Product appropriates the novel ornamental
23 features set forth in U.S. Patent No. D764,823 such that an ordinary observer
24 familiar with the prior art designs, giving such attention as a purchaser usually
25 gives, would find Plaintiffs' and Defendants' designs to be substantially the same
26 and would be deceived into believing that the Infringing Product is the same as
27 Fatboy's patented design.
28

1 31. By the foregoing acts, Defendants have directly infringed, infringed
2 under the doctrine of equivalents, contributorily infringed, and/or induced
3 infringement of, and continues to so infringe, U.S. Patent No. D764,823.

4 32. Upon information and belief, Defendants' aforesaid conduct has been
5 undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiffs'
6 rights.

7 33. Defendants' conduct violates Section 271 of the Patent Act, 35 U.S.C.
8 § 271 and has caused, and unless enjoined by this Court, will continue to cause,
9 Plaintiffs to sustain irreparable damage, loss, and injury, for which Plaintiffs have
10 no adequate remedy at law.

11 34. Plaintiffs have complied with 35 U.S.C. § 287 to the extent it is
12 applicable to them.

13 **SECOND CLAIM FOR RELIEF:**

14 **DESIGN PATENT INFRINGEMENT**
15 **IN VIOLATION OF 35 U.S.C. § 271 (Patent No. D775,479)**

16 35. Plaintiffs repeat and incorporate by reference the foregoing allegations
17 as if fully set forth herein.

18 36. Fatboy owns U.S. Patent No. D775,479, which issued on January 3,
19 2017. Fatboy USA has an exclusive license from Fatboy to distribute and promote
20 products embodying the design set forth in U.S. Patent No. D775,479 in the United
21 States.

22 37. U.S. Patent No. D775,479 is valid and subsisting.

23 38. Upon information and belief, Defendants, without authorization from
24 Plaintiffs, have distributed, advertised, promoted, offered for sale and sold the
25 Infringing Product, the designs of which is substantially the same as the design set
26 forth in U.S. Design Patent No. D775,479 and embodies the design protected by
27 such patent.
28

1 39. Defendants' Infringing Product appropriates the novel ornamental
2 features set forth in U.S. Patent No. D775,479 such that an ordinary observer
3 familiar with the prior art designs, giving such attention as a purchaser usually
4 gives, would find Plaintiffs' and Defendants' designs to be substantially the same
5 and would be deceived into believing that the Infringing Product is the same as
6 Fatboy's patented design.

7 40. By the foregoing acts, Defendants have directly infringed, infringed
8 under the doctrine of equivalents, contributorily infringed, and/or induced
9 infringement of, and continues to so infringe, U.S. Patent No. D775,479.

10 41. Upon information and belief, Defendants' aforesaid conduct has been
11 undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiffs'
12 rights.

13 42. Defendants' conduct violates Section 271 of the Patent Act, 35 U.S.C.
14 § 271 and has caused, and unless enjoined by this Court, will continue to cause,
15 Plaintiffs to sustain irreparable damage, loss, and injury, for which Plaintiffs have
16 no adequate remedy at law.

17 43. Plaintiffs have complied with 35 U.S.C. § 287 to the extent it is
18 applicable to them.

19 **THIRD CLAIM FOR RELIEF:**

20 **COPYRIGHT INFRINGEMENT IN VIOLATION OF 17 U.S.C. § 501**

21 44. Plaintiffs repeat and incorporate by reference the foregoing allegations
22 as if fully set forth herein.

23 45. The LAMZAC Marketing Materials are original and creative works of
24 visual art that were authored in the Netherlands and are protected under U.S.
25 Copyright Law. Fatboy is the owner by assignment of all rights under U.S.
26 copyright in the LAMZAC Marketing Materials and Fatboy USA is the exclusive
27 licensee of all such rights.
28

1 46. Defendants, without Plaintiffs’ authorization or consent, have
2 advertised, reproduced, and/or displayed the LAMZAC Marketing Materials on
3 Defendants’ website and social media and Internet advertising.

4 47. Defendants had access to the LAMZAC Marketing Materials.

5 48. Defendants have violated and, upon information and belief, continue to
6 violate, Plaintiffs’ exclusive rights in the LAMZAC Marketing Materials under
7 Section 106 of the Copyright Act, 17 U.S.C. § 106, in violation of Section 501 of
8 the Copyright Act, 17 U.S.C. § 501.

9 49. Defendants’ aforesaid conduct has been undertaken knowingly,
10 willfully and in bad faith.

11 50. Defendants’ infringement of Plaintiffs’ exclusive rights in the
12 LAMZAC Marketing Materials has caused Plaintiffs damage, and has enabled
13 Defendants to profit illegally therefrom.

14 51. Defendants’ copyright infringement has caused, and unless enjoined by
15 this Court, will continue to cause, Plaintiffs to sustain irreparable damage, loss and
16 injury, for which Plaintiffs have no adequate remedy at law.

17 **FOURTH CLAIM FOR RELIEF:**

18 **VIOLATION OF THE DIGITAL MILLENIUM COPYRIGHT ACT, 17**
19 **U.S.C. § 1202**

20 52. Plaintiffs repeat and incorporate by reference the foregoing allegations
21 as if fully set forth herein.

22 53. Defendants have intentionally removed copyright management
23 information (“CMI”)—namely, the FATBOY name—from the LAMZAC
24 Marketing Materials.

25 54. Defendants have intentionally used false CMI—namely, the
26 CHILLOUT BUDDY name and mark—in connection with the LAMZAC
27 Marketing Materials.
28

1 64. Upon information and belief, Defendants’ aforesaid conduct has been
2 undertaken knowingly, willfully, and in bad faith.

3 65. Defendants’ aforesaid conduct has caused, and unless enjoined by this
4 Court, will continue to cause, Plaintiffs to sustain irreparable damage, loss, and
5 injury, for which Plaintiffs have no adequate remedy at law.

6 **SIXTH CLAIM FOR RELIEF:**

7 **UNFAIR COMPETITION**
8 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *et seq***

9 66. Plaintiffs repeat and incorporate by reference the foregoing allegations
10 as if fully set forth herein.

11 67. The aforesaid conduct of Defendants – patent infringement, bait-and-
12 switch unfair competition, copyright infringement, and violation of the DMCA –
13 constitutes unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200 *et*
14 *seq.*

15 68. Defendants’ conduct is causing immediate and irreparable injury to
16 Plaintiffs and will continue both to damage Plaintiffs and deceive the public unless
17 enjoined by this Court. Plaintiffs have no adequate remedy at law.

18 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

19 1. Permanently enjoining and restraining Defendants, their agents, servants,
20 employees, successors, and assigns and all those in active concert or participation with it,
21 from:

22 (a) infringing or inducing infringement of the LAMZAC Lounger
23 Patents;

24 (b) Infringing the LAMZAC Marketing Materials, including, without
25 limitation, by reproducing, distributing, displaying, advertising, promoting, offering for
26 sale, selling, importing or exporting any works copied or derived from the LAMZAC
27 Marketing Materials;

1 (c) Removing or altering any CMI from, or providing or distributing any
2 false CMI in connection with, the LAMZAC Marketing Materials; or

3 (d) assisting, aiding or abetting any other person or business entity in
4 engaging in or performing any of the activities referred to in subparagraphs (a) – (c)
5 above.

6 2. Directing that Defendants turn over to Plaintiffs for impoundment and
7 eventual destruction, without compensation to Defendants, all materials in their
8 possession or control that violate the provisions of paragraph 1(a) above, along with all
9 articles by means of which such unauthorized copies may be reproduced.

10 3. Directing that Defendants, at their own expense, recall from any distributors,
11 retailers, vendors, or others to whom it has distributed materials that violate the provisions
12 of paragraph 1(a) above, and that Defendants deliver up to Plaintiffs for destruction all
13 materials returned to it.

14 4. Directing that Defendants file with the Court and serve upon Plaintiffs,
15 within thirty (30) days of the entry of injunction prayed for herein, a written report under
16 oath or affirmed under penalty of perjury setting forth in detail the form and manner in
17 which they have complied with the permanent injunction.

18 5. Awarding Plaintiffs all damages sustained as a result of Defendants’
19 infringement described above, together with appropriate interest thereon and that such
20 sums be trebled pursuant to 35 U.S.C. § 284.

21 6. Awarding Plaintiffs the total profits realized by Defendants from their
22 infringement described above pursuant to 35 U.S.C. § 289.

23 7. If Plaintiffs so elect and as the Court considers just, awarding Plaintiffs
24 statutory damages of up to \$25,000 per violation of the DMCA pursuant to 17 U.S.C. §
25 1203(c)(3)(B).

26 8. Granting Plaintiffs punitive damages.
27
28

1 9. Granting Plaintiffs their full costs, including, as part of such costs,
2 reasonable attorneys' fees pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(4)-(5), and
3 35 U.S.C. § 285.

4 10. Granting Plaintiffs both pre-judgment and post-judgment interest on each
5 and every monetary award.

6 11. Granting Plaintiffs such other and further relief as the Court may consider
7 equitable, just and proper.

8

9 DATED: July 12, 2017

THEODORA ORINGHER PC

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11

By: /s/ Scott K. Behrendt

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