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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, TREND  
WATCHER GROUP, LLC, MUHSIN  
22 KAYIKCI, and JASON BONO,

23 Defendants.  
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Case No. 17-cv-01399-GHW (KKx)

**FIRST AMENDED COMPLAINT**

1 **FIRST AMENDED 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, Trend Watcher Group, LLC, Muhsin  
5 Kayikci, and Jason Bono (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 Products, as well as their unlawful use of  
26 the LAMZAC Lounge marketing material. Plaintiffs also seek monetary relief in  
27 an amount sufficient to compensate for their loss, an accounting and award of  
28

1 Defendants' profits flowing from their infringing activities, statutory damages  
2 under Section 1203 of the DMCA, prejudgment interest, costs and attorneys' fees,  
3 and all other relief the Court deems just and proper.

4 **JURISDICTION AND VENUE**

5 4. This Court has jurisdiction under Section 39 of the Lanham Act, 15  
6 U.S.C. § 1121, and Sections 1331, 1332, and 1338(a) and (b) of the Judicial Code,  
7 28 U.S.C. §§ 1331, 1332, 1338(a) & (b).

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

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

21 **THE PARTIES**

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

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

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1           9.     Upon information and belief, Defendant The Wooden Toys d/b/a  
2 ChillOut Buddy, is an entity organized and existing under the laws of California,  
3 which has a place of business at 1900 S. Campus Avenue, #39a, Ontario, California  
4 91761.

5           10.    Upon information and belief, Defendant Trend Watcher Group, LLC, is  
6 a limited liability company organized and existing under the laws of California,  
7 which has a place of business at 9155 Archibald Avenue, Suite 102, Rancho  
8 Cucamonga, California 91730.

9           11.    Upon information and belief, Defendant Kayikci is an individual and  
10 resident of California. Upon information and belief, Kayikci is an officer and/or  
11 director of ChillOut Buddy and Trend Watcher Group, LLC.

12           12.    Upon information and belief, Defendant Bono is an individual and  
13 resident of California. Upon information and belief, Bono is an officer and/or  
14 director of ChillOut Buddy.

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

16 **I.     THE LAMZAC LOUNGER PATENTS**

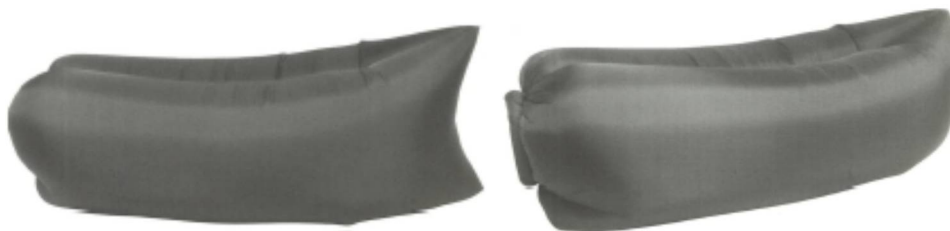
17           **A.     Plaintiffs' Design Patents in the LAMZAC Lounger**

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

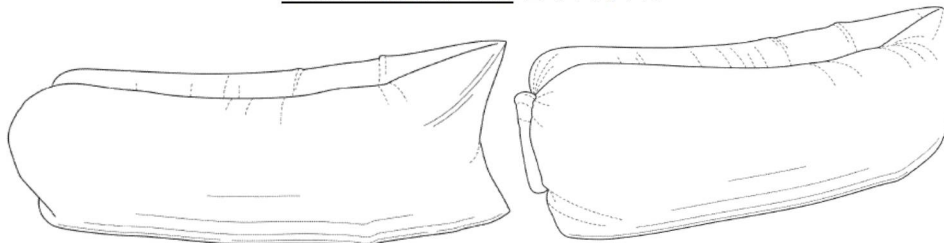
20           14.    Mr. Oomen has assigned to Fatboy all of his rights in the design of the  
21 LAMZAC Lounger, as well as his copyrights in all marketing materials for  
22 LAMZAC Lounger.

23           15.    The LAMZAC Lounger Patents each depict the design of a lounger.  
24 Profile views of the patented designs as they appear in the LAMZAC Lounger  
25 Patents are shown below:  
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U.S. Patent No. D764,823



U.S. Patent No. D775,479



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

17. The LAMZAC Lounger Patents each claim a priority date of January 28, 2015, based on Fatboy’s Registered European Community Design No. 002621904-0001.

**B. Plaintiffs’ Copyrights in the LAMZAC Marketing Material**

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

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

**II. DEFENDANTS’ INFRINGING ACTIVITIES**

20. On information and belief, Defendants have manufactured, advertised, offered for sale, sold, distributed, imported, and/or exported an inflatable lounger called the “ChillOut Buddy” (the “Chillout Buddy Product”), with a design that is

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1 substantially the same as the designs depicted in the LAMZAC Lounger Patents.  
2 An example of the Chillout Buddy Product is shown below:



7  
8 Breeze Blue

9 21. On information and belief, Defendants have manufactured, advertised,  
10 offered for sale, sold, distributed, imported, and/or exported a second inflatable  
11 lounger design that is also substantially the same as the designs depicted in the  
12 LAMZAC Lounger Patents. An example of the second design is shown below:



18 (together with the Chillout Buddy Product, the “Infringing Products”).

19 22. Upon information and belief, Defendants have marketed and sold their  
20 Infringing Products online at the website <https://chilloutbuddy.com>, as well as at  
21 various fairs and trade shows throughout the United States.

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

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**Fatboy Original Images**

**ChillOut Buddy Copied Images**



(collectively, the “LAMZAC Marketing Materials”).

24. Upon information and belief, Defendants have used these images not only on their website <https://chilloutbuddy.com> but also in social media posts and Internet advertising. Through this conduct, Defendants have falsely represented that Plaintiffs’ proprietary LAMZAC Marketing Materials depict Defendants’ Chillout Buddy Product.

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

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





1 34. Upon information and belief, Defendants' aforesaid conduct has been  
2 undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiffs'  
3 rights.

4 35. Defendants' conduct violates Section 271 of the Patent Act, 35 U.S.C.  
5 § 271 and has caused, and unless enjoined by this Court, will continue to cause,  
6 Plaintiffs to sustain irreparable damage, loss, and injury, for which Plaintiffs have  
7 no adequate remedy at law.

8 36. Plaintiffs have complied with 35 U.S.C. § 287 to the extent it is  
9 applicable to them.

10 **SECOND CLAIM FOR RELIEF:**

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

13 37. Plaintiffs repeat and incorporate by reference the foregoing allegations  
14 as if fully set forth herein.

15 38. Fatboy owns U.S. Patent No. D775,479, which issued on January 3,  
16 2017. Fatboy USA has an exclusive license from Fatboy to distribute and promote  
17 products embodying the design set forth in U.S. Patent No. D775,479 in the United  
18 States.

19 39. U.S. Patent No. D775,479 is valid and subsisting.

20 40. Upon information and belief, Defendants, without authorization from  
21 Plaintiffs, have distributed, advertised, promoted, offered for sale and sold the  
22 Infringing Products, the designs of which are substantially the same as the design  
23 set forth in U.S. Design Patent No. D775,479 and embody the design protected by  
24 such patent.

25 41. Defendants' Infringing Products appropriate the novel ornamental  
26 features set forth in U.S. Patent No. D775,479 such that an ordinary observer  
27 familiar with the prior art designs, giving such attention as a purchaser usually  
28 gives, would find Plaintiffs' and Defendants' designs to be substantially the same

1 and would be deceived into believing that the Infringing Products are the same as  
2 Fatboy's patented design.

3 42. By the foregoing acts, Defendants have directly infringed, infringed  
4 under the doctrine of equivalents, contributorily infringed, and/or induced  
5 infringement of, and continues to so infringe, U.S. Patent No. D775,479.

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

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

13 45. Plaintiffs have complied with 35 U.S.C. § 287 to the extent it is  
14 applicable to them.

15 **THIRD CLAIM FOR RELIEF:**

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

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

19 47. The LAMZAC Marketing Materials are original and creative works of  
20 visual art that were authored in the Netherlands and are protected under U.S.  
21 Copyright Law. Fatboy is the owner by assignment of all rights under U.S.  
22 copyright in the LAMZAC Marketing Materials and Fatboy USA is the exclusive  
23 licensee of all such rights.

24 48. Defendants, without Plaintiffs' authorization or consent, have  
25 advertised, reproduced, and/or displayed the LAMZAC Marketing Materials on  
26 Defendants' website and social media and Internet advertising.

27 49. Defendants had access to the LAMZAC Marketing Materials.  
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1 59. Defendants' aforesaid conduct has been undertaken knowingly,  
2 willfully and in bad faith.

3 60. Defendants' violation of the DMCA has caused Plaintiffs damage, and  
4 has enabled Defendants to profit illegally therefrom.

5 61. Defendants' infringement has caused, and unless enjoined by this  
6 Court, will continue to cause, Plaintiffs to sustain irreparable damage, loss and  
7 injury, for which Plaintiffs have no adequate remedy at law.

8 **FIFTH CLAIM FOR RELIEF:**

9 **UNFAIR COMPETITION**  
10 **IN VIOLATION OF 15 U.S.C. § 1125(a)**

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

13 63. Defendant has engaged in bait-and-switch advertising by using the  
14 LAMZAC Marketing Materials, which depict the LAMZAC Lounger, to promote  
15 sales, and then delivering to purchasers the Chillout Buddy Product instead of  
16 genuine LAMZAC Loungers.

17 64. Defendants' conduct constitutes a false designation of origin, false or  
18 misleading description of fact, and false or misleading representation of fact that is  
19 likely to cause confusion, or to cause mistake, or to deceive as to the origin,  
20 sponsorship, or approval of the Chillout Buddy Product.

21 65. As a result of the foregoing, Defendants have engaged in unfair  
22 competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23 66. Upon information and belief, Defendants' aforesaid conduct has been  
24 undertaken knowingly, willfully, and in bad faith.

25 67. Defendants' aforesaid conduct has caused, and unless enjoined by this  
26 Court, will continue to cause, Plaintiffs to sustain irreparable damage, loss, and  
27 injury, for which Plaintiffs have no adequate remedy at law.  
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1           2.       Directing that Defendants turn over to Plaintiffs for impoundment and  
2 eventual destruction, without compensation to Defendants, all materials in their  
3 possession or control that violate the provisions of paragraph 1(a) above, along with all  
4 articles by means of which such unauthorized copies may be reproduced.

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

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

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

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

18           7.       If Plaintiffs so elect and as the Court considers just, awarding Plaintiffs  
19 statutory damages of up to \$25,000 per violation of the DMCA pursuant to 17 U.S.C.  
20 § 1203(c)(3)(B).

21           8.       Granting Plaintiffs punitive damages.

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

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

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

3  
4 DATED: August 9, 2017

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7 By:           /s/ Scott K. Behrendt          

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