

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

POPSOCKETS LLC)	
)	
Plaintiff,)	Case No. 17-cv-3653
)	
v.)	
)	
QUEST USA CORP. and ISAAC SROUR)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
)	

FIRST AMENDED COMPLAINT

Plaintiff PopSockets LLC (“PopSockets”), by and through its undersigned attorneys, for its First Amended Complaint for Patent, Copyright, and Trademark Infringement against Defendants Quest USA Corp. (“Quest USA”) and Isaac Srour (“Srour”) (collectively, “Defendants”), hereby alleges:

INTRODUCTION

1. PopSockets is one of the nation’s leading providers of grips and clip accessories for handheld electronic devices and its products are, and for several years have been, sold in stores and online throughout the country.
2. Quest USA was formed in 2013 in the State of New York.
3. Isaac Srour is and has been a substantial owner and manager of Quest USA. On information and belief, Defendants have made unauthorized use of PopSockets’ patented technology by importing, making, using, selling, and/or offering for sale infringing products covered by PopSockets’ patent.

4. Defendants copied PopSockets' photographs from PopSockets', or PopSockets' authorized resellers' website(s) and used these photographs to create identical, or strikingly or substantially similar versions of these photographs.

5. Defendants copied PopSockets' design mark and used that mark in connection with Defendants' products, as well as copied an image of PopSockets' mount product protected by United States Design Patent No. D777,022, to create a likelihood of confusion as to the source of Defendants' products.

NATURE OF THE CASE

6. This action arises under the patent laws of the United States, 35 U.S.C. § 271 for Defendants' infringement of the U.S. Patent No. 8,560,031 ("the '031 Patent"), under the Copyright Act for Defendants' unlawful copying of PopSockets' registered photographs, and under the Lanham Act and the laws of the State of New York for Defendants' unlawful use of PopSockets' mark.

THE PARTIES

7. PopSockets is a corporation organized under the laws of Colorado with its corporate headquarters and principle place of business at 3033 Sterling Circle, Boulder, Colorado 80301.

8. Quest USA is a corporation organized under the laws of the State of New York and has its principal place of business at 495 Flatbush Ave., Brooklyn, New York 11225.

9. Srour is and has been the President and substantial owner of Quest USA, and has an address in Brooklyn, New York 11223-3241.

10. Based upon representations made by counsel for Quest Basics, LLC, Quest Basics, LLC is not the proper party to this action.

JURISDICTION AND VENUE

11. The action arises under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*, the copyright laws of the United States 17 U.S.C. § 101 *et seq.*, the Lanham Act, 15 U.S.C. § 1125(a), and the laws of the State of New York. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 1367(a).

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendants reside in this District as well as have committed acts of infringement in this District and have a regular and established place of business in this District.

13. Personal jurisdiction exists over Defendants because: (1) Defendants are incorporated and have their principal places of business, and/or otherwise reside in this District, (2) Defendants regularly conduct business in this District and throughout this State, and (3) Defendants have committed, and continue to commit, acts of patent, copyright, and trademark infringement, and/or induced acts of patent, copyright, and trademark infringement by others, in this District and throughout this State.

FACTUAL BACKGROUND THE 8,560,031 PATENT

14. PopSockets is the assignee, and the sole and exclusive owner of all right, title, and interest in the United States Patent No. 8,560,031, entitled “Extending Socket for Portable Media Player.” The ’031 patent was duly and legally issued by the United States Patent and Trademark Office on October 15, 2013. A copy of the ’031 patent is attached hereto as Exhibit A.

15. Mr. Barnett, named inventor of the inventions claimed in the ’031 patent, is the CEO of PopSockets.

16. PopSockets has been producing its collapsible socket product since 2012. PopSockets' collapsible socket product is well-known nationwide and carried in retail stores throughout the country such as Target and Best Buy.

17. Since its inception, PopSockets has been recognized and touted by major media outlets. In 2012, National Public Radio (NPR) recognized PopSockets' innovativeness. The Wall Street Journal identified PopSockets' collapsible socket product as the "best" compact "smartphone support" accessory in 2015. USA Today named PopSockets "the coolest tech you have to see" in 2015. PopSockets won the "Fueling Innovation" contest sponsored by Mercedes Benz in 2013, was featured at the 2015 Consumer Electronics Show, and was the first recipient of Kate Galliet's "Fit For Real Life Seal of Approval" award in 2016.

18. PopSockets' collapsible socket product can be used in a variety of different ways. For example, consumers can use PopSockets' collapsible sockets as a grip for taking pictures, as a stand to prop up a mobile device, or to ease a consumer's texting, scrolling, or other common portable media player device uses.

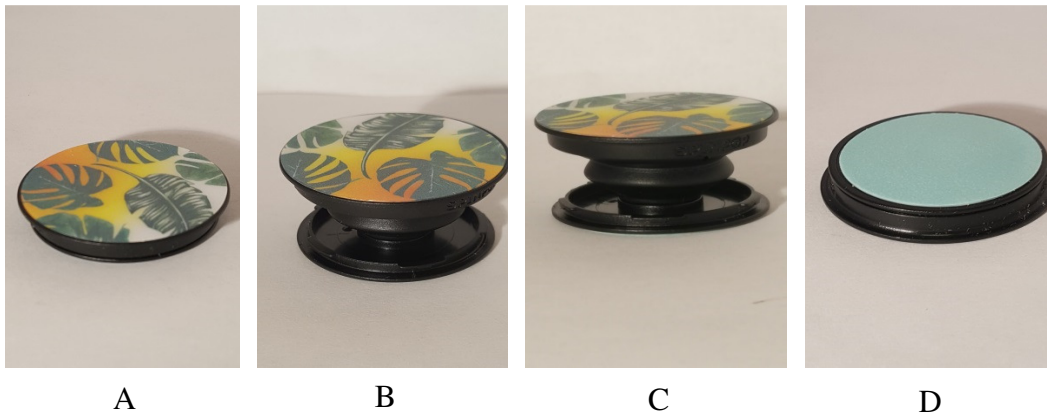
19. PopSockets allows customers to customize the collapsible sockets with various graphics and designs. PopSockets currently sells over 120 different decorative designs with various base and accordion colors. In addition, users can upload graphics or images to customize the collapsible socket product.

20. To the extent required by law, PopSockets has complied with the provisions of 35 U.S.C. § 287.

21. On information and belief, Defendants' SpinPop, SpinClip, or a similar product ("Accused Product") is marketed as a universal phone holder and phone hold and stand.

22. On information and belief, Defendants are responsible for the making, import, use, selling, and offering for sale of the Accused Product.

23. Each Defendant has infringed, is currently infringing, and unless enjoined, will continue to infringe at least claims 9 and 16 of the '031 patent in this District and elsewhere in the United States by importing, making, using, selling, and/or offering for sale the Accused Product. Examples of Defendants' infringement of claim 9 includes the importing, making, using, selling, and/or offering for sale the Accused Product:



a. a securing element for attaching the socket to the back of a portable media player or player case and an accordion forming a tapered shape connected to the securing element, as illustrated in figures C and D above.

b. the accordion is capable of extending outward generally along its axis from the portable media player or player case and retracting back toward the portable media player or player case by collapsing generally along its axis, as illustrated in figures A, B, and C above.

24. Examples of Defendants' infringement of claim 16 includes performing the claimed method steps of:

a. attaching a socket including the accordion to a portable media player or player case, as shown in figure D above and in the promotional materials, attached hereto as Exhibit C.

b. selectively extending the socket by unfolding the accordion generally along its axis, as shown in figure C above.

c. selectively retracting the socket by folding the accordion generally along its axis such that the walls fold next to each other, as shown in figure A.

Defendants' Unauthorized Use of PopSockets' Photographs

25. PopSockets holds and owns the copyrights in the photographs, attached hereto as Exhibit B ("Photographs"), that were unlawfully copied by Defendants. *See* Registration Nos. VA2051113; VA2051417; VA2063808; VA2063808.

26. PopSockets', and/or PopSockets' authorized resellers', website(s) includes photos of its collapsible socket product, including the images copied by Defendants.

27. On information and belief, Defendants have and continue to promote, offer for sale, and sell the Accused Product at tradeshow and to nationwide retailers including Target and Wal-Mart.

28. In their promotion of the Accused Product, and without permission or authorization from PopSockets, Defendants copied and used four photographs, shown below, that are identical or strikingly or substantially similar to photos displayed on PopSockets', or PopSockets' authorized resellers' website(s).

PopSockets' Registered Photographs	Defendants' Use of Photographs
	
	
	





Defendants’ Unauthorized Use of PopSockets’ Trademark

29. PopSockets owns federal trademark registrations for POPSOCKETS. *See* U.S. Registration Nos. 5204637; 4942725; 4575440; 4572125.

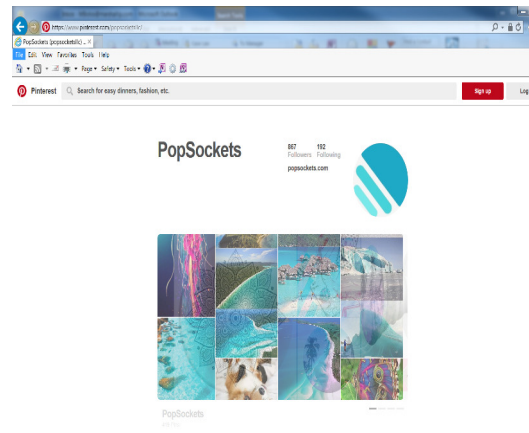
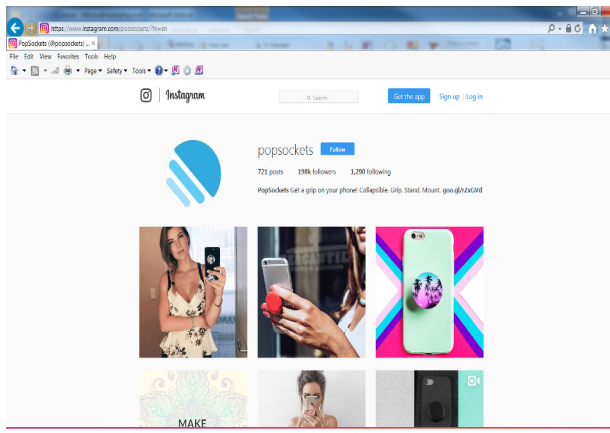
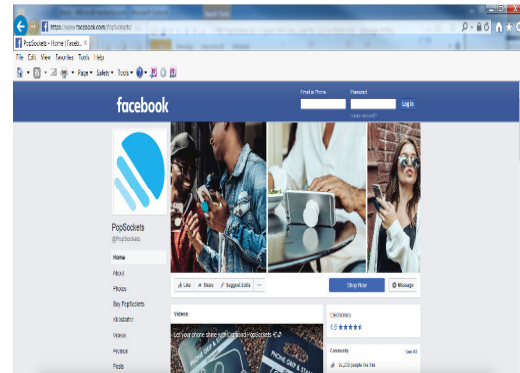
30. PopSockets is the owner of and has common law rights in the trademark shown below (the “Design Mark”). A use-based application for the Design Mark (Serial No. 87,321,001) is pending with the U.S. Patent and Trademark Office.

31. PopSockets has used the Design Mark since at least as early as 2014.

32. The Design Mark has been continuously used on PopSockets’ mount product embodied in Design Patent D777,022 prior to Defendants’ use and dissemination of the confusingly similar mark shown below.

PopSockets’ Design Mark	Defendants’ Use of the Design Mark
	

33. PopSockets has used and continues to use the Design Mark on its websites, product packaging, product displays, trade dress, advertisements, and social media pages. For example, see PopSockets' Twitter, Facebook, Instagram, and Pinterest pages and product packaging reproduced below.



34. As a result of PopSockets' marketing and advertising efforts, the Design Mark serves as a source identifier for PopSockets' products.

35. Without PopSockets' permission or authorization, Defendants use PopSockets' Design Mark and sell products that include the Design Mark.

36. On information and belief, at the time Defendants began making, using, importing, selling and/or offering for sale products that bear that Design Mark, they had actual knowledge, or should have known, of PopSockets' use of the Design Mark.

37. Defendants' use of an identical or confusingly similar variation of the Design Mark creates a likelihood of confusion as to the source of the Defendants' products.

**COUNT ONE
INFRINGEMENT OF THE '031 PATENT BY QUEST USA**

38. PopSockets hereby incorporates the allegations of paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. Quest USA has infringed, is currently infringing, and unless enjoined, will continue to infringe at least claims 9 and 16 of the '031 Patent.

40. Quest USA has directly infringed the '031 Patent by importing, making, using, selling, and/or offering for sale the Accused Product.

41. On information and belief, Quest USA has willfully infringed and continues to willfully infringe the '031 Patent despite knowledge of the '031 Patent (at least as of the date of the filing of the original Complaint, and likely before through PopSockets' patent markings) and despite an objectively high likelihood that the sale and use of the Accused Product would infringe one or more claims of the '031 patent. Quest USA's knowledge of the '031 patent and its claimed invention is further evidenced by Quest USA's copying and use of photographs from

PopSockets' website that depict PopSockets' collapsible socket product embodying the claimed inventions.

42. On information and belief, Quest USA knew or should have known that its acts would result in the actual infringement by one or more of its customers of one or more of the claims of the '031 Patent, and thereby intended such infringement.

43. Quest USA's acts did, in fact, induce such infringement of one or more claims of the '031 Patent by instructing and encouraging these persons, by means of promotional and instructional guides, and/or physical demonstration, to use the Accused Product in a manner that infringed the '031 Patent.

44. As a direct and proximate consequence of Quest USA's infringement of the '031 Patent, PopSockets has suffered and will continue to suffer irreparable injury and damages, in an amount that an award of money would never be adequate to fully remedy, for which PopSockets is entitled to relief. PopSockets seeks damages, as well as injunctive relief against further infringement.

**COUNT TWO
INFRINGEMENT OF THE '031 PATENT BY SROUR**

45. PopSockets hereby incorporates the allegations of paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. On information and belief, Srouer actively assisted with Quest USA's infringement of the '031 Patent and is liable for inducing infringement.

47. On information and belief, as the President and substantial owner of Quest USA, Srouer is directly responsible for the day-to-day operations of Quest USA and had knowledge of PopSockets' patented technologies and the '031 Patent at least as of the date of service of the original Complaint in this action, and likely before through PopSockets' patent markings.

Despite such knowledge and awareness, on information and belief, Srour intentionally directed Quest USA to perform the actions giving rise to Quest USA's infringement of the '031 Patent.

**COUNT THREE
COPYRIGHT INFRINGEMENT BY QUEST USA**

48. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 47 as if fully set forth herein.

49. PopSockets is the copyright owner of each of the original, published Photographs contained in Exhibit B. The corresponding copyright registration certificates are also attached as Exhibit B.

50. Each of the Photographs contained in Exhibit B are copyrightable subject matter under the laws of the United States.

51. Access is not required for identical or strikingly similar works such as these but, even so, Quest USA had access to the Photographs through PopSockets', or PopSockets' authorized resellers', website(s).

52. Quest USA has never asked for permission to use or reproduce the Photographs.

53. Quest USA used images that are identical or strikingly or substantially similar to PopSockets' registered Photographs in its promotional materials.

54. Quest USA copied and reproduced identical or strikingly or substantially similar versions of the Photographs without PopSockets' consent.

55. Quest USA engaged in acts of infringement by using exact copies of the Photographs or strikingly or substantially similar variations in materials distributed to third parties.

56. PopSockets is informed and thereon alleges that Defendants further infringed PopSockets' copyright by making or causing to be made derivative works based on the Photographs and producing and distributing reproductions without PopSockets' permission.

57. Quest USA's aforesaid acts violate PopSockets' exclusive rights under section 106 of the Copyright Act, and constitute copyright infringement.

58. PopSockets is entitled to injunctive relief prohibiting Quest USA's further infringement.

**COUNT FOUR
COPYRIGHT INFRINGEMENT BY SROUR**

59. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 58 as if fully set forth herein.

60. PopSockets is the copyright owner of each of the original, published Photographs contained in Exhibit B. The corresponding copyright registration certificates are also attached as Exhibit B.

61. Each of the Photographs are copyrightable subject matter under the laws of the United States.

62. Access is not required for identical or strikingly similar works such as these but, even so, Srouer had access to the Photographs through PopSockets', or PopSockets' authorized resellers', website(s).

63. On information and belief, as the President and substantial owner of Quest USA, Srouer is directly responsible for the day-to-day operations of Quest USA, and Srouer willfully, knowingly, and personally participated in and directed all of the infringing activities undertaken by Quest USA.

64. On information and belief, Srour instructed and induced Quest USA to use the infringing Photographs which lead to the infringing uses, and therefore Srour engaged in copyright infringement.

65. Srour's aforementioned acts violate PopSockets' exclusive rights under section 106 of the Copyright Act and constitute copyright infringement.

66. PopSockets is entitled to injunctive relief prohibiting Srour's further infringement.

**COUNT FIVE
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
BY QUEST USA**

67. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 66 as if fully set forth herein.

68. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part that "[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any false designation of origin . . . which is likely to cause confusion or to cause mistake, or to deceive as to affiliation . . . or as to origin, sponsorship, or approval of goods [or] services . . . shall be liable in a civil action."

69. Quest USA's use of confusingly similar imitations of PopSockets' Design Mark is likely to cause confusion, deception, or mistake by creating the false and misleading impression that Quest USA's business and services are affiliated, connected, or associated with PopSockets.

70. Defendants are passing off their product as those of PopSockets' in a manner that is false, misleading, and misrepresentative of the nature, characteristics, and quality of PopSockets' products.

71. On information and belief, Quest USA's activities and conduct have been willful and deliberate, knowingly and intentionally designed to tread upon the significant goodwill of PopSockets' trademarks, to cause confusion or mistake, and to deceive the public as to the source or origin of Defendants' goods.

72. Quest USA's aforementioned acts constitute false designation of origin and trademark infringement in violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

73. Quest USA's actions have caused and are likely to cause substantial injury to the public and to PopSockets, its business, goodwill, and reputation.

74. PopSockets is entitled to injunctive relief, and to recover Defendants' profits associated with the infringement and PopSockets' costs.

COUNT SIX
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
BY SROUR

75. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

76. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part that "[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any false designation of origin . . . which is likely to cause confusion or to cause mistake, or to deceive as to affiliation . . . or as to origin, sponsorship, or approval of goods [or] services . . . shall be liable in a civil action."

77. On information and belief, as the President and substantial owner of Quest USA, Srour is directly responsible for the day-to-day operations of Quest USA, and Srour willfully, knowingly, and personally participated in and directed all of the infringing activities undertaken by Quest USA.

78. On information and belief, Srour instructed and induced Quest USA to use the infringing Design Mark which lead to the infringing uses, and therefore Srour engaged in trademark infringement.

79. Defendants' use of confusingly similar imitations of PopSockets' Design Mark is likely to cause confusion, deception, or mistake by creating the false and misleading impression that Defendants' business and services are affiliated, connected, or associated with PopSockets.

80. Srour is passing off Defendants' product as those of PopSockets' in a manner that is false, misleading, and misrepresentative of the nature, characteristics, and quality of PopSockets' products.

81. On information and belief, Srour's activities and conduct have been willful and deliberate, knowingly and intentionally designed to tread upon the significant goodwill of PopSockets' trademarks, to cause confusion or mistake, and to deceive the public as to the source or origin of Defendants' goods.

82. Srour's aforementioned acts constitute false designation of origin and trademark infringement in violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

83. Srour's actions have caused and are likely to cause substantial injury to the public and to PopSockets, its business, goodwill, and reputation.

84. PopSockets is entitled to injunctive relief, and to recover Defendants' profits associated with the infringement and PopSockets' costs.

COUNT SEVEN
COMMON LAW TRADEMARK INFRINGEMENT BY QUEST USA

85. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 84 as if fully set forth herein.

86. PopSockets' inherently distinctive Design Mark is extensively used in connection with its product packaging, websites, social media, product displays, and products, including used on PopSockets' mount product, and PopSockets' use of the Design Mark predates any use by Defendants.

87. Quest USA's conduct constitutes trademark infringement in violation of New York common law, and on information and belief, is done willfully with full knowledge of PopSockets' rights in the Design Mark.

88. On information and belief, Quest USA has used confusingly similar imitations of PopSockets' Design Mark with the willful and calculated purpose of harming or trading on PopSockets' goodwill and reputation, and in a manner calculated to imply false sponsorship of or approval by PopSockets' for the purpose of misleading and deceiving the public.

89. Quest USA's acts of common law trademark infringement have damaged and will continue to irreparably damage PopSockets unless enjoined by this Court.

COUNT EIGHT
COMMON LAW TRADEMARK INFRINGEMENT BY SROUR

90. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 89 as if fully set forth herein.

91. PopSockets' inherently distinctive Design Mark is extensively used in connection with its product packaging, websites, social media, product displayed, and products, including

used on PopSockets' mount product, and PopSockets' use of the Design Mark predates any use by Defendants.

92. On information and belief, as the President and substantial owner of Quest USA, Srour is directly responsible for the day-to-day operations of Quest USA, and Srour willfully, knowingly, and personally participated in and directed all of the infringing activities undertaken by Quest USA.

93. On information and belief, Srour instructed and induced Quest USA to continue using the mark without permission from PopSockets although Srour knew or should have known about PopSockets' Design Mark. Therefore, Srour engaged in trademark infringement.

94. Srour's acts of common law trademark infringement have damaged and will continue to damage PopSockets irreparably unless enjoined by this Court.

**COUNT NINE
COMMON LAW UNFAIR COMPETITION BY QUEST USA**

95. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 94 as if fully set forth herein.

96. Quest USA's use of the Design Mark constitutes unfair competition under New York common law.

97. Through Defendants' use of the Design Mark in connection with the Accused Product, Defendants are passing off their product as those of PopSockets in a manner that is false, misleading, and misrepresentative of the source, nature, characteristics, and quality of PopSockets' services.

98. On information and belief, Quest USA has and will continue to make profits and gains as a result of its infringing activity.

99. Quest USA's acts have damaged and will continue to damage PopSockets, including damage to its goodwill and reputation, and PopSockets has no adequate remedy at law.

**COUNT TEN
COMMON LAW UNFAIR COMPETITION BY SROUR**

100. PopSockets repeats and incorporates by reference the allegations contained in paragraphs 1 through 99 as if fully set forth herein.

101. On information and belief, as the President and substantial owner of Quest USA, Srour is directly responsible for the day-to-day operations of Quest USA, and Srour willfully, knowingly, and personally participated in and directed all of the infringing activities undertaken by Quest USA.

102. On information and belief, Srour instructed and induced Quest USA to continue using the mark without permission from PopSockets although Srour knew or should have known about PopSockets' Design Mark.

103. Srour's use of the Design Mark constitutes unfair competition under New York common law.

104. Through Defendants use of the Design Mark in connection with the Accused Product, Defendants are passing off their product as those of PopSockets in a manner that is false, misleading, and misrepresentative of the source, nature, characteristics, and quality of PopSockets' services.

105. On information and belief, Srour have and will continue to make profits and gains as a result of their infringing activity.

106. Srour's acts have damaged and will continue to damage PopSockets, including damage to its goodwill and reputation, and PopSockets has no adequate remedy at law.

PRAYER FOR RELIEF

PopSockets respectfully requests that the Court enter judgment against Defendants as follows:

- A. The '031 Patent has been infringed by each Defendant;
- B. Each Defendant's infringement of the '031 Patent has been willful;
- C. An injunction against further infringement of the '031 Patent;
- D. PopSockets' copyrights in the Photographs have been infringed by each Defendant;
- E. An injunction against further infringement of PopSockets' copyrights;
- F. PopSockets' trademark rights in the Design Mark have been infringed by each Defendant;
- G. Any injunction against further infringement of PopSockets' Design Mark or any variant thereof;
- H. An award of damages not less than a reasonable royalty, together with pre-judgment and post-judgment interest; to compensate for Defendants' infringement of the '031 Patent and copyrights as allowed by law;
- I. An award to PopSockets for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' unlawful conduct, as provided under 35 U.S.C. § 284;
- J. A determination that this is an exceptional case within the meaning of 35 U.S.C. § 285 and an award to PopSockets of its costs, expenses, and reasonable attorneys' fees incurred in this action;

K. Order the impoundment and destruction of all copies of the infringing work in the possession or control of any of the defendants or their agents, employees, and affiliated companies;

L. Award PopSockets statutory damages, or such actual damages as it has sustained as a result of Defendants' copyright infringement, pursuant to 17 U.S.C. § 504(b);

M. Require Defendants to account for and disgorge to PopSockets all gains, profits and advantages derived by its copyright infringement, pursuant to 17 U.S.C. § 504(b);

N. Require Defendants pay damages incurred by PopSockets as a result of Defendants' violations of 15 U.S.C. § 1125(a) and New York law;

O. Award PopSockets trebling damages for all trademark damages assessed herein;

P. Award PopSockets exemplary and punitive trademark damages;

Q. Award PopSockets attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

R. Such other equitable or legal relief as this Court deems just and proper under the circumstances.

Date: September 1, 2017

Respectfully submitted,

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