

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOCUS PRODUCTS GROUP
INTERNATIONAL, LLC, ZAHNER DESIGN
GROUP, LTD., AND HOOKLESS SYSTEMS
OF NORTH AMERICA, INC., SF HOME
DÉCOR, LLC, SURE FIT HOME DÉCOR
HOLDINGS CORP., and SURE FIT HOME
PRODUCTS, LLC,

Plaintiffs,

v.

KARTRI SALES COMPANY, INC. AND
MARQUIS MILLS, INTERNATIONAL, INC.

Defendants.

Civil Action No.:

1:15-cv-10154 (PAE)(RLE)

(JURY TRIAL DEMANDED)

PLAINTIFFS' FOURTH AMENDED COMPLAINT

Plaintiffs Focus Products Group International, LLC (“Focus”), Zahner Design Group, Ltd. (“ZDG”), Hookless Systems of North America, Inc. (“HSNA”), SF Home Décor, LLC, Sure Fit Home Décor Holdings Corp., and Sure Fit Home Products, LLC (collectively “Sure Fit”, with Focus, ZDG, and Sure Fit being collectively, “Plaintiffs”) by their attorneys, hereby complain of Defendant Kartri Sales Company, Inc. (“Kartri”), and Defendant Marquis Mills, International, Inc. (“Marquis Mills”) (collectively “Defendants”), as set forth below.

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §101 *et seq.*, and for trademark infringement and unfair competition under federal law and the laws of the State of New York. This Court has jurisdiction over the federal claims of this action pursuant to 28 U.S.C. §1331 and 28

U.S.C. §1338, and has jurisdiction over the state claims under 28 U.S.C. §1338(b) and further pursuant to its supplemental jurisdiction under 28 U.S.C. §1367. The state claims asserted herein are so related to the federal claims as to form part of the same case or controversy.

2. This action arises from Defendants' use, sale, offer for sale, and/or importing of products, and conduct of activities, that infringe Plaintiffs' patents, trademarks, and trade dress.

3. This action is related to Civil Action No. 1:15-cv-05108 (PAE) previously filed within this district. The present Third Amended Complaint is directed against both Defendants, and supersedes all of the prior Complaints that have been filed in both actions.

4. This Court has personal jurisdiction over Defendants in that Defendants have engaged in acts constituting doing business in the State of New York, including in this judicial district and have intentionally directed its tortious activities toward the State of New York, including this judicial district. Defendants have committed acts of intellectual property infringement in New York, including this judicial district, and has delivered the accused products into the stream of commerce with the expectation that they will be purchased by consumers in the State of New York, including this judicial district. Defendants have sold or offered for sale products, including products that are the subject of this Complaint, to consumers in the State of New York, including this judicial district.

5. With respect to the non-patent claims, venue is proper in this district in that Defendants are corporations subject to personal jurisdiction within this judicial district, and deemed to reside in this district, pursuant to 28 U.S.C. §§ 1391(b) - (d), and in that Defendants have committed acts of infringement in this district. Venue is also proper in this Court with respect to the patent claims in that Defendants previously have expressly consented to venue in this district, without preserving any objections of any form to the same, and have interposed patent counterclaims against Plaintiffs in this district, by which they have sought and obtained the benefit of venue in this district.

THE PARTIES

6. Plaintiff Zahner Design Group, Ltd. is a corporation organized and existing under the laws of the State of New York having a principal place of business at 145 West 78th Street, New York, NY 10024. ZDG is the owner of the patents that are the subject of this Complaint.

7. Plaintiff Hookless Systems of North America, Inc. is a corporation organized and existing under the laws of the State of New York having a principal place of business at 179 Christopher Street, New York, NY 10014. HSNA has been licensed ZDG's intellectual property that is the subject of this Complaint.

8. Focus Products Group International, LLC ("Focus") was the prior name of a corporation organized and existing under the laws of the State of Illinois, and having a principal place of business at 300 Knightsbridge Parkway, Suite 500, Lincolnshire, IL 60069.

9. Focus is the successor-in-interest to intellectual property rights of ZDG licensed to HSNA, which HSNA licensed to Arcs and Angles, Inc. and Arcs and Angles, LLC (collectively “Arcs and Angles”).

10. Plaintiff SF Home Décor, LLC (“SF Home Décor”) is a Delaware Limited Liability Company having a principal place of business at 8000 Quarry Road, Alburdis, Pennsylvania 18011.

11. Previously, Focus was licensed HSNA’s intellectual property for shower curtains.

12. Subsequent thereto, Focus underwent a corporate name change to Sure Fit Home Décor, LLC.

13. Recently, Sure Fit Home Décor, LLC (formerly known as Focus) sold to Plaintiff SF Home Décor LLC all of the intellectual property assets of Focus which are the subject of this suit.

14. Accordingly, SF Home Décor LLC currently holds, and is the successor-in-interest to, all intellectual property rights relating to this suit that were previously held by Focus.

15. Plaintiff Sure Fit Home Décor Holdings Corp. (“Sure Fit Home Décor Holdings”) is a Delaware corporation having a principal place of business at One Grand Central Place, 60 E. 42nd Street, Suite 1250, New York, New York 10165.

16. Plaintiff Sure Fit Home Products, LLC (“Sure Fit Home Products”) is a Delaware Limited Liability Company having a principal place of business at 8000 Quarry Road, Alburdis, Pennsylvania 18011.

17. Sure Fit Home Décor Holdings Corp. is the parent company of SF Home Décor LLC, which is the parent company of Sure Fit Home Products, LLC. Sure Fit Home Décor Holdings, Corp. SF Home Décor, LLC, and Sure Fit Home Products, LLC are collectively referred to herein as “Sure Fit”, with Focus, ZDG, and Sure Fit being collectively referred to as “Plaintiffs”).

18. Unless otherwise stated, references to Plaintiffs’ intellectual property rights herein are references to intellectual property rights owned by Plaintiff ZDG, with those rights having been licensed by ZDG to HSNA, and by HSNA to Focus (now Sure Fit). In addition, rights that were accrued by Focus have in some cases been previously further sublicensed by Focus with ZDG’s consent. By the term “Plaintiffs’ patent rights,” or “Plaintiffs’ trademark rights,” or “Plaintiffs’ trade dress rights,” or similar such phrases herein, Plaintiffs refer to their ownership of valid, protectable, such rights, as set forth in further detail below. Likewise, the term “trademark rights” includes within its scope trade dress.

19. Defendant Kartri Sales Company, Inc. (“Kartri”) is a corporation organized and existing under the laws of the State of Pennsylvania having a principal place of business at 100 Delaware Street PO Box 126, Forest City, PA 18421. Upon information and belief, Kartri Sales Company, Inc. distributes furniture and other home accessories, including shower curtains, for sale in the United States.

20. Defendant Marquis Mills International, Inc. (“Marquis”) is a corporation organized and existing under the laws of the State of New Jersey, and with principal offices located at 1000 Lenola Road, Maple Shade, NJ 08052. Upon information and

belief, Marquis Mills International, Inc. makes, imports, offers for sale and/or sells furniture and other home accessories, including shower curtains, for sale in the United States.

FACTS

PLAINTIFFS' PATENTS

21. David Zahner of ZDG is the inventor of new technology and designs, including new inventions relating to shower curtains.

22. Plaintiffs' unique and innovative shower curtains are well known throughout the United States and foreign countries as a result of the popular products that Plaintiffs have designed, introduced, and commercialized in interstate and international commerce.

23. On December 29, 2015, United States Design Patent No. D746,078 entitled "Shower Curtain" was duly and lawfully issued to ZDG for Mr. Zahner's inventions by the United States Patent and Trademark Office (hereafter "the '078 patent" or "the Design Patent"). A copy of the '078 patent is attached as Exhibit 1 hereto.

24. The patent application which gave rise to the '078 patent was thoroughly examined by the U.S. Patent and Trademark Office (also referred to herein as "the PTO"). After Plaintiff ZDG filed the patent application, the PTO specifically examined the issue of priority under 35 U.S.C. §120 and §112. Upon doing so, the PTO duly and lawfully issued the '078 patent, and afforded the claimed subject matter of the '078 patent a priority date (or effective filing date) of no later than July 17, 2000.

25. On December 17, 2002, United States Patent No. 6,494,248 B1 entitled “Suspended Materials Having External Slits” was duly and lawfully issued to ZDG for Mr. Zahner’s inventions by the United States Patent and Trademark Office (hereafter “the ‘248 patent”). A copy of the ‘248 patent is attached as Exhibit 2 hereto.

26. On July 14, 2016, Defendant Kartri filed an *ex parte reexamination* request with the U.S. Patent and Trademark Office regarding the ‘248 patent. In the request, Kartri alleged that the ‘248 patent was invalid, and asked the Patent Office to invalidate the ‘248 patent.

27. Pursuant to Kartri’s request, the Patent Office instituted a proceeding to engage in reexamination the ‘248 patent.

28. On August 29, 2017 the Patent Office completed its reexamination proceedings regarding the ‘248 patent. It issued an Ex Parte Reexamination Certificate regarding the patent, under U.S. Patent No. 6,494,248 C1.

29. A copy of the Reexamination Certificate is attached as Exhibit 7 hereto.

30. In the Reexamination Certificate, the Patent Office ruled that the patent, as reexamined and amended, is valid.

31. In particular, in the Reexamination Certificate the Patent Office set forth its rulings with respect to each claim under reexamination. The Patent Office ruled that claim 1 was determined to be patentable as amended. The Patent Office also ruled that claims 2 and 4, dependent on an amended claim, were determined to be patentable. The Patent Office also ruled that new claims 30 and 31 were determined to be patentable. (Claims 3, 5, 8, and 9-29 were not reexamined.)

32. On November 20, 2007, United States Patent No. 7,296,609 entitled “Hanging Products” was duly and lawfully issued to ZDG for Mr. Zahner’s inventions by the United States Patent and Trademark Office (hereafter “the ‘609 patent”). A copy of the ‘609 patent is attached as Exhibit 3 hereto.

33. On August 7, 2012, United States Patent No. 8,235,088 entitled “Hanging Products” was duly and lawfully issued to ZDG for Mr. Zahner’s inventions by the United States Patent and Trademark Office (hereafter “the ‘088 patent”). A copy of the ‘088 patent is attached as Exhibit 4 hereto.

34. On June 29, 2016, Defendants Kartri and Marquis filed a Petition for *Inter Partes* Review of the ‘088 patent.

35. In the Petition, Defendants alleged that claims 1-14 of the ‘088 patent are invalid, and requesting institution of an *inter partes* review.

36. On January 3, 2017, the Patent Trial and Appeal Board (PTAB) of the U.S. Patent and Trademark Office issued a unanimous decision rejecting Defendants’ positions and request.

37. Specifically, the Patent Office ruled that the Defendants had failed to establish a reasonable likelihood that they would prevail in showing that claims 1-14 of the ‘088 patent are unpatentable.

38. Subsequently, the Defendants filed a Request for Rehearing, requesting that the Patent Office reconsider its decision.

39. On April 3, 2017, the Patent Office denied Defendants’ Request for Rehearing, rejecting the grounds set forth in Defendants’ Request.

40. The Patent Office's decisions indicate its rulings that the '088 patent is patentable, and that all of the claims therein are valid.

41. Both of the Patent Office's decisions rejected the Defendants' positions that the '088 patent's claims are invalid.

42. Plaintiffs' '248, '609, and '088 patents are collectively referred to as Plaintiffs' Utility Patents.

43. Plaintiffs' Utility and Design Patents have a presumption of validity as a matter of law, pursuant to 35 U.S.C. §282, and are all valid.

44. Moreover, that presumption of validity has been further considered and confirmed by the Patent Office with respect to the '248 and '088 patents.

45. Plaintiff ZDG's aforementioned intellectual property has been exclusively licensed to HSNA, who has exclusively licensed that intellectual property to Focus for use on shower curtains.

46. Plaintiffs invested significant time, funds, and effort into their products.

47. As a result of Plaintiffs' efforts and promotional, advertising, and marketing activities, Plaintiffs' product designs have become widely known throughout the United States and worldwide.

48. Plaintiffs' intellectual property and their associated goodwill directed to their shower curtains are all valuable assets of Plaintiffs.

**DEFENDANTS' INFRINGEMENT OF
PLAINTIFFS' DESIGN PATENT**

49. Defendants Kartri and Marquis have and are manufacturing, offering for sale, selling, using, and/or importing products embodying the patented design of the '078

patent, and engaging in activities infringing the same.

50. Defendants' products that infringe Plaintiffs' patent include, but are not limited to, Defendants' "Ezy-Hang" shower curtains.

51. An image of a sample of Defendants' infringing products is attached as Exhibit 5 hereto.

52. Defendants have also sold a subsequent version of the infringing products, in which the slits are "mirrored," which version is also accused herein. By mirrored, the present Complaint refers to the configuration in which the slits are provided in facing pairs, as shown in Exhibit 6 hereto.

53. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, Defendants' accused design and Plaintiffs' patented design are substantially the same.

54. A purchaser of shower curtains would consider Defendants' accused design and Plaintiffs' patented design to be substantially the same.

55. Such a purchaser would consider the two designs to be substantially the same whether the purchaser is a commercial buyer of shower curtains for a hotel or motel chain, or a retail buyer of shower curtains, or a consumer buying or using shower curtains, or otherwise.

56. An ordinary purchaser of shower curtains would see the design of Defendants' accused shower curtains and the patented design of the '078 patent to be making the same design impression, or to be the same design.

57. An ordinary observer would view the two designs, in the context of the prior art, and with the attention as that particular observer would have as a purchaser, to be the same.

58. In the eye of the ordinary observer, giving such attention as a purchaser usually gives, the accused design and patented design are substantially the same, with the resemblance being such as to deceive such an observer, inducing him to purchase one supposing it to be the other.

59. In fact, Defendants' accused design is virtually identical, if not identical, to Plaintiffs' patented design.

60. Defendants' accused design infringes Plaintiffs' design patent rights.

**DEFENDANTS' INFRINGEMENT OF
PLAINTIFFS' UTILITY PATENTS**

61. In Civil Action No. 1:15-cv-05108 (PAE) filed within this district, Plaintiffs previously filed suit against Defendant Kartri for infringement of Plaintiffs' rights ("the prior suit"), which suit has been consolidated with the present action.

62. Defendant Marquis manufactures and supplies to Defendant Kartri some or all of the accused products in the prior suit and in the present suit.

63. During the term of the Plaintiffs' patent, Defendants have manufactured, offered for sale, sold, used, and/or imported products embodying the patented inventions of the '248 patent, and engaged in activities infringing the same.

64. During the term of the Plaintiffs' patent, Defendants have manufactured, offered for sale, sold, used, and/or imported products embodying the patented inventions of the '609 patent, and engaged in activities infringing the same.

65. During the term of the Plaintiffs' patent, Defendants have manufactured, offered for sale, sold, used, and/or imported products embodying the patented inventions of the '088 patent, and engaged in activities infringing the same.

66. A sample of Defendants' infringing product is attached as Exhibit 5 hereto.

67. As an example of Defendants' infringement, claim 1 of the '248 patent, as reexamined, recites the following:

1. A product comprising:

an item for hanging, said item comprising an opening for suspending said item from a rod, said item comprising a ring attached to said opening such that said opening is reinforced by said ring, said ring comprising an inner circumference, said inner circumference comprising a top when said item is hanging, said item comprising an upper edge, said item comprising a slit extending from said upper edge through said ring to said opening, said slit intersecting said inner circumference of said ring at a point offset from said top, said slit further comprising an approximately horizontal component when said item is hanging from the rod, and wherein said slit exits said ring at said upper edge of said curtain.

68. As shown in Exhibit 5, Defendants' accused product is an item for hanging, namely, a shower curtain, the shower curtain having an opening for suspending the curtain from a rod (a shower curtain rod), the curtain having a ring attached to the opening such that the opening is reinforced by the ring, the ring having an inner

circumference, the inner circumference having a top when the item is hanging, the item having an upper edge, the item having a slit extending from the upper edge through the ring to the opening, the slit intersecting the inner circumference of the ring at a point offset from the top, the slit further having an approximately horizontal component when the item is hanging from the rod, and the slit exiting the ring at the upper edge of the curtain.

69. As such, Defendants' accused product is a direct infringement of claim 1 of the '248 patent.

70. The product is likewise an infringement of various dependent claims.

71. As a further example of Defendants' infringement, claim 1 of the '609 patent recites the following:

1. A product, said product comprising: a curtain, said curtain comprising a ring, said ring comprising an outer circumference; said curtain comprising an opening such that said curtain is suitable for suspension from a rod; said ring comprising a slit extending through said ring to said opening; wherein said ring comprises a projecting edge, said projecting edge being an edge which projects from said outer circumference of said ring, and wherein said projecting edge is provided next to said slit.

72. Defendants' accused product is a curtain, the curtain having a ring, the ring having an outer circumference; the curtain having an opening such that the curtain is suitable for suspension from a rod; the ring having a slit extending through the ring to the opening; and ring has a projecting edge, the projecting edge being an edge which projects

from the outer circumference of the ring, with the projecting edge being provided next to the slit.

73. As such, Defendants' accused product is a direct infringement of claim 1 of the '609 patent.

74. The product is likewise an infringement of various dependent claims.

75. As a further example of Defendants' infringement, claim 1 of the '088 patent recites the following:

1. A product, said product comprising: a shower curtain, said shower curtain comprising an outer edge and an opening such that said product is suitable for suspension from a rod, said shower curtain further comprising a ring, wherein said ring reinforces said opening; said ring comprising a flat upper edge, an inner circumference, and an outer circumference; said ring further comprising a slit extending from said inner circumference through said ring and through said outer edge of said shower curtain; said ring further comprising a projecting edge, said projecting edge being an edge which projects from said outer circumference of said ring; and, wherein said slit exits said inner circumference at a location which is offset from the 12 o'clock position on said inner circumference.

76. Defendants' accused product is a shower curtain having an outer edge and an opening such that the product is suitable for suspension from a rod, the shower curtain has a ring, wherein the ring reinforces the opening; the ring has a flat upper edge, an inner circumference, and an outer circumference; the ring further has a slit extending

from the inner circumference through the ring and through the outer edge of the shower curtain; the ring further has a projecting edge, the projecting edge being an edge which projects from the outer circumference of the ring; and, the slit exits the inner circumference at a location which is offset from the 12 o'clock position on the inner circumference.

77. As such, Defendants' accused product is a direct infringement of claim 1 of the '088 patent.

78. The product is likewise an infringement of various dependent claims.

79. The features of Defendants' accused products fall directly within the scope of Plaintiffs' patents-in-suit, and Plaintiffs have never legally or factually disclaimed the right to sue for infringement of products falling within the scope of the limitations of the claims of Plaintiffs' patents-in-suit.

80. Defendants' products are infringements of all of Plaintiffs' patents-in-suit.

**DEFENDANTS' INFRINGEMENT OF
PLAINTIFFS' TRADEMARK RIGHTS**

81. In addition to its patents, Plaintiff owns various trademark rights to its products.

82. Plaintiffs' trademark rights include common law trademark rights that Plaintiffs own to the mark EZ-ON. Plaintiffs' EZ-ON mark has been used on shower curtains sold continuously and exclusively in interstate commerce throughout the entire United States at a through Carnation Home Fashions, Inc., a sublicensee of Plaintiffs, and through Plaintiffs' sales. Regarding Carnation, Plaintiffs, in a written license agreement have granted Carnation an exclusive sublicense in connection with the sale of one

particular design falling within the scope of Plaintiffs' trade dress, which particular design has been sold, and is currently being sold by Carnation under the EZ-ON trademark. Those sales of product, including use of the associated product design and associated trademark, legally, and by the terms of the sublicense, accrue trademark and trade dress rights to the Plaintiffs. Plaintiffs' continuous and exclusive trademark use on such products commenced well before Defendants' adopted their infringing trademark and product, and Plaintiffs' use has continued to the present.

83. Plaintiffs' EZ-ON trademark is distinctive for shower curtain products, including, Plaintiffs' products for which it owns trade dress rights, and has accrued secondary meaning.

84. Defendants, upon information and belief, use the mark "Ezy-hang" on the accused shower curtain products.

85. Defendants' use of the Ezy-hang mark and their use of Plaintiffs' trade dress, for the same type of goods, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

86. The "Ezy-hang" mark infringes Plaintiffs' EZ-ON trademark.

87. Plaintiff ZDG also owns trademark rights to the mark HOOKLESS®, including U.S. Trademark Registration Nos. 2,355,554 ("the '554 registration"); 2,381,995 ("the '995 registration"); 3,829,837 ("the '837 registration"); and 4,127,283 ("the '283 registration") (collectively "the HOOKLESS® Trademark Registrations").

88. The HOOKLESS® Trademark Registrations have all been lawfully and duly issued by the U.S. Patent and Trademark Office.

89. In addition, the HOOKLESS® Trademark Registrations remain in force, with all necessary filings having been completed, including, for example, but not limited to, Sections 8 and 15 in the '554 registration.

90. ZDG's trademark rights to the HOOKLESS marks are licensed by ZDG to its affiliate HSNA, who has, in turn, licensed those rights to Focus (which rights are now owned by SF Home Décor LLC).

91. Defendant Kartri, has used the mark HOOKLESS when referring to Defendants' accused shower curtain products, to represent to buyers that it sells a HOOKLESS® product.

92. Defendant Kartri has also used the mark HOOKLESS when referring to Defendants' accused shower curtain products, to represent to buyers that it sells one of the versions of HOOKLESS® products.

93. Defendant Kartri's use of the HOOKLESS® mark and its use of Plaintiffs' trade dress, for the same type of goods, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

94. Both Defendants' use of Plaintiffs' trade dress, and their use of the Ezy-hang mark, for the same type of goods, are individually, and collectively, intended, and likely to cause confusion, to cause mistake, and/or to deceive as to the affiliation,

connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

95. Defendants' use of the HOOKLESS® mark infringes Plaintiffs' HOOKLESS® trademark.

96. Defendants' use of Plaintiffs' marks and trade dress, or marks and products confusingly similar therewith, are deliberate.

97. Defendants use both marks and products that are intended to copy, imitate, or mimic, Plaintiffs' marks, trade dress, and products.

98. Defendants' uses constitute unfair competition.

99. Defendants' uses constitute willful infringement.

100. Plaintiffs' trademark rights also include rights to its HOOKLESS® brand trademarks and the products and designs associated therewith, including Plaintiffs' trade dress rights therein, and in Plaintiffs' packaging.

101. The overall appearance of the design of Plaintiffs' HOOKLESS® brand shower curtains is protectable, distinctive, non-functional trade dress.

102. Plaintiffs' trade dress rights are rights to the characteristics of the visual appearance of Plaintiffs' HOOKLESS® brand shower curtain products.

103. Plaintiffs' trade dress rights likewise have also accrued via sales of the EZ ON brand shower curtains, which incorporates Plaintiffs' trade dress.

104. Plaintiffs' trade dress rights include rights to the visual appearance of their HOOKLESS® brand shower curtain products (and EZ On brand products), which provide the visual appearance of:

- a. a shower curtain wherein the curtain lacks any hooks protruding above the upper edge of the curtain, so that Plaintiffs' shower curtain provides the visual appearance of an essentially "neat" and "orderly" upper edge;
- b. and wherein the shower curtain has a row of rings along the upper portion of the shower curtain, those rings being attached to the material of the shower curtain such that the bottom surface of each ring (on one or both sides of the shower curtain) is essentially coplanar with the material of the shower curtain, also providing an essentially "neat" and "orderly" appearance;
- c. wherein each ring includes a slit or gap in the ring;
- d. and wherein the shower curtain's rings or pairs of rings, and the associated slits or gaps, are each fixed in place on the shower curtain and provide an organized and symmetrical repeating visual pattern along the top width of the shower curtain.

105. The combination and arrangement of the design elements set forth above constitute the trade dress owned by Plaintiffs.

106. Plaintiffs have extensively and exclusively sold numerous HOOKLESS® brand products throughout the United States over the years, from 1997 to the present, incorporating Plaintiffs' trade dress listed above, with such products having been sold either directly by Plaintiffs and/or through licensees.

107. Plaintiffs' trade dress provides a more symmetrical and neat overall appearance for their shower curtains, as compared to traditional shower curtains having hooks.

108. Plaintiffs' trade dress is not essential to the use or purpose of a shower curtain.

109. Numerous alternative constructions perform the same shower curtain function as Plaintiffs' trade dress.

110. Traditional shower curtains having hooks have long fulfilled the function of a shower curtain, but are not within the scope of Plaintiffs' trade dress.

111. Plaintiffs' trade dress is not necessary to achieve the function of a shower curtain, but rather provides an aesthetic appearance designed by Plaintiff ZDG.

112. Plaintiffs' trade dress is non-functional.

113. Plaintiffs have created their designs, including their trade dress, and have extensively marketed, promoted, and sold their products, including their associated trademarks and trade dress, through extensive time, labor, skill, and money.

114. As a result thereof, Plaintiffs' products have been extensively sold throughout the United States, and, have become an extremely popular shower curtain design, including, the leading shower curtain in the hospitality market.

115. In addition to being distinctive, Plaintiffs' trade dress has acquired secondary meaning, and is recognized as identifying Plaintiffs' high-quality products.

116. Over more than eighteen years, Plaintiffs, directly or through their licensee(s) and/or predecessors, have expended at least hundreds of thousands, or

millions of dollars in advertising their products and their associated trade dress, including, but not limited to, marketing and advertising their products at trade shows throughout the country, extensive marketing on QVC, internet marketing on YouTube, and so forth.

117. Buyers, including, for example, buyers in the hospitality industry widely recognize Plaintiffs trade dress as originating with Plaintiffs, with such trade dress being associated by them with Plaintiffs.

118. Plaintiffs' trade dress has also been the subject of repeated unsolicited media coverage. Such coverage has included laudatory articles in numerous magazines, including, but not limited to, New York magazine and Woman's Day magazine, and has included television coverage.

119. Plaintiffs' trademarks and trade dress has also been the subject of industry awards, including, for example, awards on QVC for Best New Product, and awards at trade shows.

120. Plaintiffs' trade dress has also been the subject of immense sales success. Plaintiffs' shower curtain products bearing their trade dress were originally a new, unknown, product in the late nineties. From there, they have shot up to their current status as the leading shower curtain in the hospitality industry (e.g. hotels and motels) throughout the U.S. – if not the number one shower curtain.

121. Plaintiffs have had sales of many millions of dollars in shower curtain products bearing Plaintiffs' trade dress.

122. Plaintiffs' products bearing their trade dress have been installed in over one million hotel bathrooms. As some examples, the trade dress has been adopted by Amerisuites, Baymont, Clarion, Comfort Suites, Crossland, Days Inn, Drury Inns, Extended Stay America, Hampton Inn & Suites, Holiday Inn Express, Holiday Inn Select, Homestead Village, Homewood Suites, La Quinta, Motel 6, Prime Hotels, Quality Inn, Ramada, Red Roof Inns, Studio Plus, Sunsuites, Super 8, Wellesley Inns and Wingate.

123. Plaintiffs' trade dress has also been the subject of numerous attempts by third parties to plagiarize Plaintiffs' trade dress.

124. In each and every instance of plagiarism to date, Plaintiffs have successfully enforced their rights against third parties.

125. The activities of Defendants that are accused in the present suit, are the latest example of plagiarism, in addition to the numerous past instances.

126. Plaintiffs, whether directly or through licensees and/or predecessors-in-interest, have for a period of over eighteen years, continuously, exclusively, and extensively, used their trade dress in interstate commerce throughout the United States.

127. Plaintiffs' trade dress is associated with their HOOKLESS® mark.

128. Plaintiffs' trademarks, trade dress, and associated intellectual property and goodwill directed to its shower curtain products, are valuable assets of Plaintiffs.

129. Defendants' "Ezy-Hang" shower curtains products infringe Plaintiffs' trade dress rights.

130. Based on the relevant facts, including, for example, the strong trademark rights that Plaintiffs have accrued from their extensive and extremely successful use of

their marks in commerce (including their trade dress and common law word mark), the high degree of similarity between the Plaintiffs' trademarks and Defendants' infringing marks, the lack of a gap between Plaintiffs' and Defendants' products, information and belief as to actual confusion, Defendants' bad faith in adopting the accused marks, and the nature of the products and purchasers, there is a likelihood of confusion between Plaintiffs' common law EZ-ON mark, Plaintiffs' registered HOOKLESS® mark, and Plaintiffs' trade dress, and Defendants' accused infringements.

131. Defendants' products were introduced to trade off of the good will, secondary meaning, and success that Plaintiffs had accrued in Plaintiffs' trade dress and products, and in the marketplace.

132. Defendants use Plaintiffs' mark and trade dress to confuse and mislead customers into believing that their goods originate from, are sponsored by, or are affiliated with Plaintiffs, and that use poses a likelihood of confusing customers into believing that Defendants' goods originate from, are sponsored by, or are affiliated with Plaintiffs.

WILLFUL INFRINGEMENT

133. Defendants' activities have been and are deliberate and willful.

134. Defendants are aware of Plaintiffs' inventions and trademarks, including, Plaintiffs' designs and trade dress, and have deliberately chosen to use, sell, and offer for sale, products and use marks and dress, intended to copy or imitate the same.

135. Defendants were both aware of Plaintiffs' inventions and trademarks, before introducing them into commerce, including, Plaintiffs' designs and trade dress, but

have deliberately chosen to use, sell, and offer for sale, products and use marks and dress, intended to copy or imitate the same.

136. Defendant Marquis is Defendant Kartri's supplier of the accused products.

137. Before Plaintiffs' filing of the present suit against Defendant Marquis, Marquis was in communication with Kartri regarding Plaintiffs' infringement allegations, and regarding the suits filed by Plaintiffs against Kartri.

138. Before Plaintiffs' filing of the present suit against Marquis, Marquis had knowledge of Plaintiffs' patents-in-suit, and Plaintiffs' allegations as to Plaintiffs' trademark rights.

139. Before Plaintiffs' filing of the present suit against Marquis, Marquis also had knowledge of the two infringement suits against Kartri.

140. Defendant Marquis also knew that Plaintiffs' infringement allegations against Kartri equally applied to Marquis, since Marquis was supplying the accused products in the two suits originally filed against Kartri (which accused products in the suits against Kartri are the same as the accused products herein against Marquis).

141. Despite Marquis' knowledge set forth above, Marquis chose to continue to make, sell, offer for sale, use and/or import the accused products.

142. Marquis' infringing conduct was with knowledge of Plaintiffs' asserted patent and trademark rights in suit, and was in reckless disregard of an objectively high risk that it was infringing Plaintiffs' patent and trademark rights.

143. When Marquis engaged in the activities accused herein, it did so despite an objectively high likelihood that its actions constituted infringement of valid patent and trademark rights.

144. In the alternative, upon information and belief, Marquis has engaged in willful blindness regarding Plaintiffs' patent and trademark rights, and regarding its accused products' infringement of Plaintiffs' patents-in-suit and trademark rights, and has recklessly chosen to continue to make, sell, offer for sale, use and/or import the accused products.

145. Marquis chose to infringe Plaintiffs' patent and trademark rights despite an objectively high likelihood that its actions constituted infringement of valid patent and trademark rights, with this objectively-defined risk being either known, or so obvious that it should have been known, to Marquis.

146. Marquis' actions constitute willful infringement under the current legal standards, and any future standards of law applicable thereto. Such standards, include any current and future standards for willfulness, and for enhanced damages under 35 U.S.C. §284.

147. Marquis' willful infringement is ongoing.

148. Defendants, in bad faith, adopted Plaintiffs' inventions and marks, including Plaintiffs' designs and trade dress.

149. Defendants' acts have been without license or authority of Plaintiffs.

150. Defendants' bad faith activities have caused and will continue to cause a likelihood of deception and confusion in the marketplace among consumers, and extensive damage to Plaintiffs and their business, goodwill and reputation.

151. Defendants have illegally profited, and are illegally profiting, from their infringements of Plaintiffs' rights.

152. Defendants' acts have been without license or authority of Plaintiffs.

153. Defendants' actions have caused and are causing irreparable harm to Plaintiffs.

154. Plaintiffs have been damaged by Defendants' activities and will continue to be damaged unless Defendants are restrained and enjoined by this Court.

155. Plaintiffs have no adequate remedy at law.

156. Plaintiffs have been damaged by Defendants' illegal actions in an amount to be determined by a jury and this Court, including recovery and relief for Plaintiffs' lost sales, lost profits, price erosion, and damage to Plaintiffs' reputation and good will, and/or a disgorgement of Defendants' revenues and profits.

COUNT I
PATENT INFRINGEMENT
35 U.S.C. §101 et seq.

157. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

158. This claim arises under 35 U.S.C. §101 *et seq.*

159. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331.

160. Defendants' acts constitute infringement of the '078 Design Patent, under 35 U.S.C. §271.

161. Defendants' acts also constitute infringement of Plaintiffs' Utility Patents.

162. Defendants' are infringing directly and under the doctrine of equivalents.

163. Upon information and belief, Defendants' acts of infringement were and are willful and deliberate.

164. Defendants are profiting from their infringing activities.

165. As a result of Defendants' conduct, Plaintiffs are being substantially harmed, and are suffering actual damages, including lost profits, and have been forced to retain legal counsel and pay costs of court to bring this action.

COUNT II
LANHAM ACT TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION
15 U.S.C. §1125(a)

166. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

167. This claim arises under the Lanham Act, 15 U.S.C. §1051 et seq.

168. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331.

169. Defendants are intentionally using a trademark which is confusingly similar to Plaintiffs' trademark EZ-ON directed to shower curtain products, in a manner that has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

170. Defendant Kartri has intentionally using the mark HOOKLESS, which is identical to Plaintiffs' HOOKLESS® trademark, with respect to shower curtain products, in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

171. Defendants are intentionally using trade dress which is confusingly similar to Plaintiffs' trade dress in its shower curtain products in a manner that has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods by Plaintiffs.

172. Defendants' sale and offer for sale of products with a mark and trade dress which is confusingly similar to Plaintiffs' trademark and dress, constitutes unfair competition, false designation of origin, and false description and representations, and false advertising, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

173. Defendants' acts of infringement were and are willful and deliberate.

174. Defendants have profited from their illegal and bad faith activities.

175. Plaintiffs have suffered, and continue to suffer, substantial damages as a result of Defendant Marquis' bad faith activities, in an amount to be determined by the jury and this Court.

COUNT III
NEW YORK COMMON LAW OF UNFAIR COMPETITION

176. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

177. This claim arises under the common law of the State of New York. *See e.g., Luv n' care, Ltd. v. Walgreen Co.*, 695 F. Supp. 2d 125, 135 (S.D.N.Y. 2010).

178. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1367.

179. Plaintiffs have created their marks and designs, including their trade dress, and have extensively marketed, promoted, and sold their products, including their associated designs, trademarks, and trade dress, through extensive time, labor, skill, and money.

180. Defendants have engaged in unfair competition under New York common law by Defendants' bad faith misappropriation of the labors and expenditures of Plaintiffs, which is likely to cause confusion or to deceive purchasers as to the origin of Defendants' goods.

181. Defendants have misappropriated business value of Plaintiffs, and have misappropriated the results of Plaintiffs' labor and skill and the expenditures of Plaintiffs, by marketing and selling goods that are confusingly similar to the designs and marks of Plaintiffs' goods, including Plaintiffs' trade dress in those goods.

182. Defendants have used marks, designs, and trade dress that are confusingly similar to that of the Plaintiffs', for the same type of goods, and have done so in bad faith.

183. Defendants have used those marks, designs, and trade dress, in competition with Plaintiffs, gaining an unfair advantage, because Defendants bore little or no burden of expense of Plaintiffs' creation, development, marketing, and promotion of those marks, designs, trade dress, and goods.

184. Defendants have engaged in bad faith misappropriation of the labors of Plaintiffs in Plaintiffs' creating, marketing, promoting, and selling of their products bearing their marks, designs, and trade dress, which misappropriation is likely to cause confusion, to deceive purchasers as to the origin of the goods, and to dilute the value of Plaintiffs' marks, designs and trade dress and the value of Plaintiffs' products bearing the same.

185. Defendants' bad faith activities are intended to copy or mimic the trademarks and trade dress associated with Plaintiffs' HOOKLESS® brand, and to copy and mimic the same.

186. Defendants' actions have caused significant commercial damage to Plaintiffs.

187. Defendants' conduct is illegal and actionable under the common law of unfair competition of the State of New York.

188. Plaintiffs have been injured by Defendants' illegal actions and are entitled to the remedies provided under New York law.

DAMAGES

189. Plaintiffs are being irreparably harmed by Defendants' infringing activities, and have no adequate remedy at law.

190. Plaintiffs have been extensively damaged by Defendants' intellectual property infringement in an amount to be determined by a jury and this Court.

191. Plaintiffs seek damages as a result of Defendants' infringement which include, but are not limited to: Plaintiffs' lost sales, lost profits, price erosion, and

damage to their reputation and good will; and/or disgorgement of Defendants' revenues and profits; from Defendants' sales of infringing products, associated parts thereof, and from convoyed sales.

192. Plaintiffs request that this honorable Court assess enhanced damages against Defendants in the fullest amount permissible by law, including, but not limited to, treble damages under federal law and punitive damages under New York law, in view of the willful, egregious, malicious, and extensive nature of Defendants' bad faith activities complained of herein, and in view of the numerous violations, the willful nature of the violations, and the significant damage to Plaintiffs, as set forth above.

193. Plaintiffs further request injunctive relief to bar further acts infringing Plaintiffs' rights under federal and/or New York law, absent which the willful violations complained of herein will all continue.

JURY TRIAL DEMAND

194. Pursuant to Rule 38, Fed. R. Civ. P. Plaintiffs hereby demand a trial by jury on all issues set forth herein that are properly triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court, upon final hearing of this matter, grant the following relief against Defendants:

- A. That Defendants be adjudged to have engaged in patent infringement of Plaintiffs' rights under United States Design Patent D746,078 ("the '078 patent") under 35 U.S.C. §101 *et seq.*;
- B. That Defendants be adjudged to have engaged in patent infringement of

Plaintiffs' rights under United States Patent No. 6,494,248 C1 ("the '248 C1 patent"), under 35 U.S.C. §101 et seq.;

- C. That Defendants be adjudged to have engaged in patent infringement of Plaintiffs' rights under United States Patent No. 7,296,609 ("the '609 patent"), under 35 U.S.C. §101 et seq.;
- D. That Defendants be adjudged to have engaged in patent infringement of Plaintiffs' rights under United States Patent No. 8,235,088 ("the '088 patent"), under 35 U.S.C. §101 et seq.;
- E. That Defendants be adjudged to have engaged in federal unfair competition and trademark infringement under Section 43 of the Lanham Act, 15 U.S.C. §1125, and trademark infringement under the common law of the State of New York.
- F. That Defendants be adjudged to have engaged in unfair competition under the common law of the State of New York.
- G. That the '078 patent, was duly and legally issued by the U.S. Patent Office, and is valid and enforceable;
- H. That the '248 patent, was duly and legally issued by the U.S. Patent Office, and is valid and enforceable;
- I. That the '609 patent, was duly and legally issued by the U.S. Patent Office, and is valid and enforceable;
- J. That the '088 patent, was duly and legally issued by the U.S. Patent Office, and is valid and enforceable;

- K. That each of Defendants, its officers, agents, servants, employees, representatives, distributors and all persons in concert or participation with Defendants be enjoined pursuant to 35 U.S.C. §283 from engaging in any activities which infringe Plaintiffs' rights in Plaintiffs' patents under 35 U.S.C. §271;
- L. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with them be enjoined pursuant to 35 U.S.C. §283 from making, using, importing, exporting, offering for sale and selling any products and activities which directly infringe Plaintiffs patents under 35 U.S.C. §271;
- M. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendants be preliminarily and permanently enjoined from offering for sale, selling or marketing merchandise that copies or imitates any of Plaintiffs' trademark rights, including, Plaintiffs' trade dress, be preliminarily and permanently enjoined from offering for sale, selling or marketing merchandise that tends in any way to deceive, mislead or confuse the public into believing that Defendants' merchandise in any way originates with, is sanctioned by, or is affiliated with Plaintiffs; and be preliminarily and permanently enjoined from engaging in any activities violating Plaintiffs' rights under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and the common law of the State of New York;

- N. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendants be preliminarily and permanently enjoined from otherwise competing unfairly with Plaintiffs;
- O. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendants be preliminarily and permanently enjoined from engaging in any and all further deceptive and unfair business practices with respect to Plaintiffs;
- P. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendants be preliminarily and permanently enjoined from engaging in further acts infringing Plaintiffs' rights under federal and/or N.Y. law;
- Q. That Defendants be directed to file with this Court and serve on Plaintiffs within thirty (30) days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction;
- R. That Defendants be required to account for and pay over to Plaintiffs any and all revenues and profits derived by it and all damages sustained by Plaintiffs by reason of the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled, pursuant to 35 U.S.C. §§284 and 289, and 15 U.S.C.

§1117 and all further applicable law;

- S. That Defendants be required to account for and pay over to Plaintiffs such actual damages as Plaintiffs have sustained as a consequence of Defendants' infringement; that the damages relating to patent infringement be trebled pursuant to 35 U.S.C. §284, that the damages relating to trademark and trade dress infringement be trebled pursuant to 15 U.S.C. §1117, and that any and all damages likewise be enhanced to the maximum available under all applicable federal and New York law; and that Defendants be required to account for and pay to Plaintiffs all of Defendants' gains, revenues, profits and advantages attributable to or derived by Defendants' infringement;
- T. That each such award of damages be enhanced to the maximum available for each infringement in view of Defendants' willful infringement of Plaintiffs' rights;
- U. That Defendants be required to deliver up for impoundment during the pendency of this action, and for destruction thereafter, all copies of the infringing materials in its possession or under its control and all materials, including molds and master models, used for making same;
- V. That Plaintiffs be awarded punitive or exemplary damages under New York law because of the egregious, malicious, and tortious conduct of Defendants complained of herein;
- W. That Plaintiffs recover the costs of this action including their expenses and

reasonable attorney's fees pursuant to 35 U.S.C. §285 and 15 U.S.C. §1117 and all further applicable law, because of the deliberate and willful nature of the infringing activities of Defendants sought to be enjoined hereby, which make this an exceptional case warranting such award;

- X. That Plaintiffs be awarded pre-judgment and post-judgment interest;
- Y. That Plaintiffs obtain all further relief permitted under the laws of the United States and the State of New York; and,
- Z. That Plaintiffs obtain all such other and further relief as the Court may deem just and equitable.

Dated: September 29, 2017

/s/Morris E. Cohen

Morris E. Cohen (MC-4620)

Lee A. Goldberg (LG-9423)

Limor Wigder (LW-1986)

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2017, a true and correct copy of the foregoing document was served via the Court's ECF system on counsel of record in this action.

Dated: September 29, 2017

/s/Morris E. Cohen
Morris E. Cohen