

1 **ART HASAN, CA Bar No. 167323**
ahasana@LRRRC.com
2 **ANNE WANG, CA Bar No. 151000**
awang@LRRRC.com
3 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**
655 N. Central Avenue, Suite 2300
4 **Glendale, California 91203-1445**
Telephone: (626) 795-9900
5 **Facsimile: (626) 577-8800**

6 Attorneys for Plaintiff
Timely Inventions, LLC
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 TIMELY INVENTIONS, LLC, a
Delaware Limited Liability Company,

12 Plaintiff,

13 vs.
14

15 BERKLEY INTERNATIONAL (NC),
LLC, a California Limited Liability
Company, BERKLEY INDUSTRIES,
16 LLC, an Arkansas Limited Liability
Company, and BERKLEY
17 INTERNATIONAL, LLC, an Arizona
Limited Liability Company

18 Defendants.
19

Case No. 2:17-cv-08173 RGK (SSx)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

20
21 Plaintiff Timely Inventions, LLC (“Timely” or “Plaintiff”) through its
22 undersigned counsel, brings this action against Defendants Berkley International
23 (NC), LLC (“Berkley International (NC)”), Berkley Industries, LLC (“Berkley
24 Industries”), and Berkley International, LLC (“Berkley International”)
25 (collectively, “Defendants”). In support of the Complaint, Plaintiff alleges as
26 follows:
27
28

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE

JURISDICTION

1
2 1. This is an action for patent infringement in violation of the patent
3 laws of the United States, 35 U.S.C. § 271, *et seq.* This Court has exclusive
4 subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5 2. This Court has personal jurisdiction over each of the Defendants.
6 Berkley International (NC) is formed within, and has conducted and does conduct
7 business within, the State of California. On information and belief, Berkley
8 Industries and Berkley International have conducted and do conduct business
9 within, the State of California. Defendants, directly or through subsidiaries or
10 intermediaries, including distributors, retailers, and others, ships, distributes, offer
11 for sale and sell their products in the United States, the State of California, and
12 the Central District of California. Defendants, directly and through subsidiaries or
13 intermediaries, including distributors, retailers and others, have purposefully and
14 voluntarily placed one or more of their infringing products, as described below,
15 into the stream of commerce in the Central District of California. On information
16 and belief, these infringing products have been and continued to be purchased,
17 used and sold by businesses in the Central District of California. Defendants have
18 committed acts of patent infringement within the State of California and, more
19 particularly, within the Central District of California.

20 3. Venue is proper under 28 U.S.C. § 1391(b).

THE PARTIES

21
22 4. Plaintiff is a limited liability company organized and existing under
23 the laws of the State of Delaware having a principal place of business in Dover,
24 Delaware.

25 5. On information and belief, Defendant Berkley International (NC) is a
26 California limited liability company having a principal place of business in
27 Carson, California.

28

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE

1 6. On information and belief, Defendant Berkley Industries is an
2 Arkansas limited liability company having a principal place of business in
3 Bentonville, Arkansas.

4 7. On information and belief, Defendant Berkley International is an
5 Arizona limited liability company having a principal place of business in Tucson,
6 Arizona.

7 **FACTUAL BACKGROUND AND NATURE OF ACTION**

8 8. United States Patent No. 7,861,865 (“the ’865 Patent”) is titled
9 “PACKAGING ASSEMBLY,” and was issued by the United States Patent and
10 Trademark Office on January 4, 2011. A true and correct copy of the ’865 Patent
11 is attached as Exhibit A.

12 9. Timely owns by assignment the entire right, title, and interest in and
13 to the ’865 Patent. As the owner of the entire right, title, and interest in and to the
14 ’865 Patent, Timely possesses the right to sue and to recover for infringement of
15 the ’865 Patent.

16 10. Defendants have infringed and continue to infringe one or more
17 claims of the ’865 Patent by engaging in acts that constitute infringement under
18 35 U.S.C. § 271 *et seq.*

19 11. Defendants have infringed and continue to infringe the ’865 Patent
20 by manufacturing, making, using, offering for sale, and/or selling within the
21 United States certain products which embody, or in combination embody, one or
22 more claims of the ’865 Patent.

23 12. On information and belief, Defendants have offered for sale and sold
24 to Grace Digital, Inc. the ECOXGEAR packaging assemblies that meet all of the
25 limitations of at least claim 1 of the ’865 Patent (the “Accused Products”). As
26 such, Defendant is infringing the ’865 Patent in violation of 35 U.S.C. § 271.

27
28

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. That this Court adjudge and declare:

a. That it has jurisdiction of the parties and of the subject matter of this action;

b. That the '865 Patent is valid and owned by Plaintiff;

c. That Defendants have committed acts of patent infringement by its manufacture, importation, use, offer for sale and/or sale of the Accused Products;

2. That Defendants' infringement is willful;

3. That Defendants and all affiliates, subsidiaries, officers, employees, agents, representatives, licensees, successors, assigns, and all those acting in concert with, or for or on behalf of Defendants, be enjoined from further infringing the '865 Patent.

4. That Defendants be required by mandatory injunction to deliver up to Timely for destruction any and all of the Accused Products in Defendants' possession, custody or control, as well as any promotional literature and packaging which display the Accused Products;

5. That Plaintiff be awarded damages covered by the acts of patent infringement of Defendants in an amount not less than a reasonable royalty pursuant to 25 U.S.C. § 284 or in an amount equal to Defendants' profits pursuant to 35 U.S.C. § 289, whichever is greater and that such damages be trebled in accordance with the provisions of 35 U.S.C. § 284;

6. That Defendants pay Plaintiff prejudgment interest on all infringement damages;

7. That Plaintiff recover their costs in this action, including attorneys' fees; and

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. That Plaintiff has such other or further relief as the Court may deem just and proper.

Dated: November 15, 2017

Respectfully submitted,

LEWIS ROCA ROTHGERBER
CHRISTIE LLP

By/s/Art Hasan _____
Art Hasan
Anne Wang

Attorneys for Plaintiff
Timely Inventions, LLC

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff Timely Inventions, LLC, pursuant to Federal Rule of Civil Procedure 38, hereby demands a trial by jury of all issues so triable.

Dated: November 15, 2017

Respectfully submitted,

LEWIS ROCA ROTHGERBER
CHRISTIE LLP

By/s/Art Hasan _____
Art Hasan
Anne Wang

Attorneys for Plaintiff
Timely Inventions, LLC

SRD 102841916.1-*-11/15/2017 6:06 PM

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

Lewis Roca
ROTHGERBER CHRISTIE