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Attorneys for Handstands Promo, LLC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

HANDSTANDS PROMO, LLC, a Utah
limited liability company,

Plaintiff

v.

ADVANCE AUTO PARTS, INC. d/b/a
AUTOCRAFT, a Delaware corporation,

Defendant.

COMPLAINT

Case No. 2:18-cv-00267-BCW

Magistrate Judge Brooke C. Wells

Plaintiff Handstands Promo, LLC (hereinafter “Plaintiff” or “Handstands”), by and through its counsel, hereby files this Complaint with Jury Demand against Defendant Advance Auto Parts, Inc. d/b/a Autocraft (“Defendant” or “Autocraft”).

COMPLAINT

Plaintiff complains and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Handstands is a Utah limited liability company having a principal place of business at 102 West 12200 South, Draper, Utah 84020.

2. Upon information and belief, Defendant is a Delaware corporation with its principal place of business at 5008 Airport Road, Roanoke, Virginia 24012.

3. Plaintiff brings this action under U.S. patent laws, 35 U.S.C. §§ 1 et seq.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338.

5. This Court has supplemental jurisdiction over any state law, or statutory and common law claims pursuant to 28 U.S.C. § 1367.

6. Upon information and belief, this Court has specific personal jurisdiction over Defendant because Defendant has purposefully directed its activities toward the state of Utah by selling its products—which infringe the patents at issue in this case—directly into the state of Utah, thereby also inducing and contributing to the infringement of the patents at issue.

7. Upon information and belief, Defendant maintains an office and employees in the state of Utah and has substantial, continuous contacts with the state of Utah. Accordingly, this Court has general personal jurisdiction over the Defendant.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400 at least because Defendant has committed acts of infringement in this district, has a regular and established place of business in this district, conducts business in this district directly related to the patents at issue in this case, is subject to the court's personal jurisdiction in this case, and a

substantial part of the infringing activity giving rise to the Plaintiff's causes of action occurred in this judicial district.

BACKGROUND

9. Handstands is an industry leader in developing, manufacturing, marketing, distributing, and selling various phone, tablet and automotive accessories and other products, including frictional holding pads for removably attaching items, such as cell phones or digital music players, to a surface, such as an automobile dashboard.

10. One of Handstands' frictional holding pad devices is marketed as Roadster™ and is shown below.



Handstands' Frictional Holding Device Patents

11. Handstands has been awarded and is the owner of many patents relating to and covering its frictional holding devices. Among the patents that Handstands has been awarded are U.S. Patent Nos. 8,490,846 (the “846 Patent”), 8,851,349 (the “349 Patent”) and D739,396 (the “396 Patent”) (together, the “Patents-in-Suit”), attached as Exhibits 1-3, respectively.

12. In accordance with 35 U.S.C. § 287, Handstands has given notice to the public of the Patents-in-Suit by duly and properly marking all articles covered by these patents that have been sold, offered for sale, or imported by Handstands.

Autocraft Infringes Handstands' Patents

13. Autocraft is in the business of making, using, selling, offering for sale, and/or importing into the United States a variety of automobile accessories.

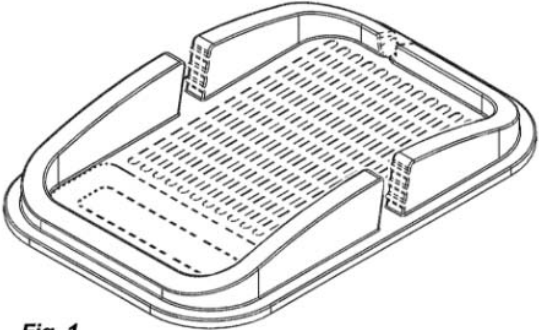

14. Autocraft's products are sold through brick and mortar and online retailers, where they are purchased by consumers throughout the United States, including the State of Utah.

15. Upon information and belief, Autocraft manufactures, markets, and sells a frictional pad product known as a Dash Cling, or part number AC2055 (hereinafter “Accused Product”). An example of the Accused Product is shown below.



16. Autocraft has not obtained permission from Handstands to use any of the rights attendant to the Patents-in-Suit in connection with the Accused Product.

17. The Accused Product includes design features that are substantially the same as the claimed subject matter of the '396 Patent, as illustrated in the example below:

The '396 Patent	The Accused Product
 <p>Fig. 1</p>	

18. As demonstrated above, the design of the Accused Product is substantially the same as the claim of the '396 Patent such that an ordinary observer purchasing an Accused Product would believe that he had purchased the patented Handstands design.

19. By reason of Autocraft's infringing acts, Handstands has suffered damage in an amount to be proven at trial. The harm to Handstands from Autocraft's infringing activities is not fully compensable by monetary damages, and Handstands will continue to suffer irreparable harm unless Autocraft's infringing conduct is enjoined.

20. Upon information and belief, Autocraft acted in an objectively reckless manner with respect to Handstands' patent rights. Upon information and belief, Autocraft has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the Patents-in-Suit. As a result, Autocraft has

engaged in willful infringement of the Patents-in-Suit, and Handstands is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

**FIRST CAUSE OF ACTION
(Infringement of the '846 Patent)**

21. Plaintiff hereby incorporates and realleges paragraphs 1-20 of this Complaint.

22. Upon information and belief, the Accused Product infringes at least one claim of the '846 Patent.

23. Upon information and belief, by making, using, selling, offering for sale, and/or importing into the United States the Accused Product, Autocraft has in the past, does now, and continues to directly infringe, contributorily infringe, and/or induce others to infringe the claims of the '846 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

24. Claim 1 of the '846 Patent recites:

A frictional pad in combination with an upward facing support surface of a dashboard or consol of a vehicle upon which the frictional pad is disposed and upon which a cell phone, GPS or digital music player is selectively disposed and held in a non-adhesive, non-slip, tacky fashion by the frictional pad, the frictional pad comprising:

- a) top and bottom surfaces, the bottom surface having a lowermost contact surface that is disposed on the upward facing support surface of the dashboard or console of the vehicle;
- b) a pair of opposite sidewalls extending upward on opposite sides of the pad;
- c) a pair of inclined slots each formed in a different one of the pair of sidewalls oriented at a non-perpendicular angle with respect to the pad and laterally aligned with respect to one another;
- d) the cell phone, GPS or digital music player removably disposable on and frictionally clinging to an uppermost contact surface of the pad between the

opposite sidewalls and substantially parallel with the pad or uppermost contact surface thereof; and

e) the cell phone, GPS or digital music player removably disposable in the pair of slots and held inclined with respect to the pad or uppermost contact surface thereof by the pair of sidewalls; and

f) the pad being flexible and bending at the pair of slots to increase a width of each of the pair of slots to receive the cell phone, GPS or digital music player therein, and to decrease the width of each of the slots to grip the cell phone, GPS or digital music player therein.

25. A claim chart cross referencing the elements of Claim 1 with an explanation of the infringing aspects of the Accused Product is attached hereto as Exhibit 4 and is incorporated by reference herein.

26. Upon information and belief, Autocraft's customers and others are using the Accused Product and at no time has Handstands granted Autocraft's customers and other users of the Accused Product permission to practice the claims of the '846 Patent.

27. Accordingly, Autocraft's customers and users of the Accused Product have infringed and are directly infringing the '846 Patent.

28. Upon information and belief, Autocraft knew about the '846 Patent at least by way of the constructive notice of Handstands patent marking, such that Autocraft acted despite an objectively high likelihood that its actions constituted infringement of the '846 Patent.

29. Upon information and belief, the packaging and/or manuals for Autocraft's Accused Product instruct customers and other users on how to use the Accused Product.

30. Upon information and belief, Autocraft has induced and is inducing its customers and other users of the Accused Product to infringe claims of the '846 Patent.

31. Furthermore, upon information and belief, the features provided by the Accused Product are material to practicing the '846 Patent and do not have a substantial non-infringing use.

32. Accordingly, Autocraft has contributed and is contributing to the infringement of the '846 Patent.

33. By reason of Autocraft's infringement of the claims of the '846 Patent alleged herein, Handstands has suffered damage in an amount to be proven at trial. The harm to Handstands from Autocraft's infringing activities are not fully compensable by monetary damages, and Handstands will continue to suffer irreparable harm unless Autocraft's infringing conduct is enjoined.

34. Upon information and belief, Autocraft acted in an objectively reckless manner with respect to Handstands' patent rights. Upon information and belief, Autocraft has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the '846 Patent. As a result, Autocraft has engaged in willful infringement of the '846 Patent, and Handstands is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

**SECOND CAUSE OF ACTION
(Infringement of the '349 Patent)**

35. Plaintiff hereby incorporates and realleges paragraphs 1-34 of this Complaint.

36. Upon information and belief, the Accused Product infringes at least one claim of the '349 Patent.

37. Upon information and belief, by making, using, selling, offering for sale, and/or importing into the United States the Accused Product, Autocraft has in the past, does now, and continues to directly infringe, contributorily infringe, and/or induce others to infringe the claims of the '846 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

38. Claim 1 of the '349 Patent recites:

A frictional pad in combination with an upward facing support surface of a dashboard or consol of a vehicle upon which the frictional pad is disposed and upon which a cell phone, GPS or digital music player is selectively disposed and held in a non-adhesive, non-slip, tacky fashion by the frictional pad, the frictional pad comprising:

- a) top and bottom surfaces, the bottom surface having a lowermost contact surface that is disposed on the upward facing support surface of the dashboard or console of the vehicle;
- b) a pair of opposite sidewalls extending upward on opposite sides of the pad;
- c) a pair of inclined slots each formed in a different one of the pair of sidewalls oriented at a non-perpendicular angle with respect to the pad and laterally aligned with respect to one another;
- d) the cell phone, GPS or digital music player removably disposable on and frictionally clinging to an uppermost contact surface of the pad;
- e) the cell phone, GPS or digital music player removably disposable in the pair of slots and held inclined with respect to the pad or uppermost contact surface thereof by the pair of sidewalls;
- f) the pair of opposite sidewalls form a portion of a perimeter wall surrounding a majority of the pad; and
- g) the perimeter wall includes a front wall with an elevational height less than an elevational height of the pair of sidewalls.

39. A claim chart cross referencing the elements of Claim 1 with an explanation of the infringing aspects of the Accused Product is attached hereto as Exhibit 5 and is incorporated by reference herein.

40. Upon information and belief, Autocraft's customers and others are using the Accused Product and at no time has Handstands granted Autocraft's customers and other users of the Accused Product permission to practice the claims of the '349 Patent.

41. Accordingly, Autocraft's customers and users of the Accused Product have infringed and are directly infringing the '349 Patent.

42. Upon information and belief, Autocraft knew about the '349 Patent at least by way of the constructive notice of Handstands patent marking, such that Autocraft acted despite an objectively high likelihood that its actions constituted infringement of the '349 Patent.

43. Upon information and belief, the packaging and/or manuals for Autocraft's Accused Product instruct customers and other users on how to use the Accused Product.

44. Upon information and belief, Autocraft has induced and is inducing its customers and other users of the Accused Product to infringe claims of the '349 Patent.

45. Furthermore, upon information and belief, the features provided by the Accused Product are material to practicing the '349 Patent and do not have a substantial non-infringing use.

46. Accordingly, Autocraft has contributed and is contributing to the infringement of the '349 Patent.

47. By reason of Autocraft's infringement of the claims of the '349 Patent alleged herein, Handstands has suffered damage in an amount to be proven at trial. The harm to

Handstands from Autocraft's infringing activities are not fully compensable by monetary damages, and Handstands will continue to suffer irreparable harm unless Autocraft's infringing conduct is enjoined.

48. Upon information and belief, Autocraft acted in an objectively reckless manner with respect to Handstands' patent rights. Upon information and belief, Autocraft has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the '349 Patent. As a result, Autocraft has engaged in willful infringement of the '349 Patent, and Handstands is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

**THIRD CAUSE OF ACTION
(Infringement of the '396 Patent)**

49. Plaintiff hereby incorporates and realleges paragraphs 1-48 of this Complaint.

50. Upon information and belief, the Accused Product includes design features that are substantially the same as the ornamental design claimed in the '396 Patent to an ordinary observer giving such attention as a purchaser usually gives.

51. By making, using, selling, offering for sale, and/or importing into the United States the Accused Product, Autocraft has in the past, does now, and continues to directly infringe the claims of the '396 patent in violation of 35 U.S.C. § 271.

52. By reason of Autocraft's infringement of the claim of the '396 Patent alleged herein, Handstands has suffered damage in an amount to be proven at trial. The harm to Handstands from Autocraft's infringing activities is not fully compensable by monetary

damages, and Handstands will continue to suffer irreparable harm unless Autocraft's infringing conduct is enjoined.

53. Upon information and belief, Autocraft acted in an objectively reckless manner with respect to Handstands' patent rights. Upon information and belief, Autocraft has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the '396 Patent. As a result, Autocraft has engaged in willful infringement of the '396 Patent, and Handstands is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and award Plaintiff relief as follows:

A. A judgment that Defendant is liable to Plaintiff for infringing the claims of the Patents-in-Suit either directly and/or by the doctrine of equivalents;

B. A judgment that Defendant is liable to Plaintiff for contributory infringement and/or induced infringement of the Patents-in-Suit.

C. Preliminary and permanent injunctions against Defendant, its officers, agents, servants, employees, successors, assigns and all other persons in active concert or participation with any of them, enjoining them from directly or indirectly infringing in any manner the claims of the Patents-in-Suit;

D. A judgment granting Plaintiffs damages adequate to compensate it for Defendant's infringement of the Patents-in-Suit, including an award of Defendant's total profits, in amounts to be proven at trial;

E. An order finding that Defendant willfully infringed the Patents-in-Suit, that this is an exceptional case, and award Plaintiff enhanced damages, costs, and attorney's fees in accordance with 35 U.S.C. § 285 or other applicable law;

F. Such other and further relief as shall seem just and proper to the Court under the circumstances.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this Complaint be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

DATED this 28th day of March, 2018.

THORPE NORTH & WESTERN LLP

/s/ Peter M. de Jonge

Peter M. de Jonge

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Attorneys for Handstands Promo, LLC