

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ULTRA ATHLETE LLC,

Plaintiff,

v.

**JALMAR ARAUJO, and
JB SPORTS, LLC dba/
FLEXIBRACE**

Defendants.

C. A. No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiff, Ultra Athlete, LLC ("UA"), an Indiana Limited Liability Company by and through its attorneys, hereby demands a jury trial and complains of the Defendants, JB Sports, LLC, a Massachusetts Limited Liability Company ("JB Sports" or "JBS"), and Mr. Jalmar C. Araujo, an individual residing in Massachusetts ("Araujo" or "JCA"), d/b/a (collectively referred to as "Defendants"), as follows:

NATURE OF THE ACTION

2. This is a complaint for willful violations of federal patent laws arising from Defendants' sales of products in contravention of UA's patent rights and resulting in damages to UA.

3. Specifically, this is a civil action for patent infringement, injunctive relief, and damages arising under the United States Patent Act, 35 U.S.C. §§ 1, et seq., to enjoin infringement and obtain damages resulting from Defendants' unauthorized and willful

manufacture, use, sale, offer to sell and/or importation into the United States for subsequent use or sale of articulating ankle brace products that infringe one or more claims of the following United States Patents: U.S. Pat. No. 6,749,578, (the “578 Patent”)(attached as Exhibit A) entitled “Ankle Brace With Cuff And Strap”; U.S. Pat. No. 6,858,017 (the “017 Patent”)(attached as Exhibit B) entitled “Ankle Brace With Cuff And Strap”; and U.S. Pat. No. D550,370, (the “D’370 Patent”) (attached as Exhibit C) entitled “Ankle Brace Shell”, collectively the “UA Patents” or “patents-in-suit.” UA seeks injunctive relief to prevent all Defendants from continuing to infringe the UA Patents. In addition, Plaintiff seeks to recover monetary damages resulting from Defendants’ past infringement of the UA Patents.

4. Plaintiff seeks to recover monetary damages resulting from Defendants’ patent infringements in an amount exceeding the sum or value of \$75,000.00, excluding interest and costs.

THE PARTIES

5. Plaintiff UA is a corporation organized and existing under the laws of Indiana, with a principal place of business located at 12800 N. Meridian Street, Suite 125, Carmel, Indiana, 46032.

6. Plaintiff UA is the lawful assignee of all right, title and interest in and to the UA Patents, including rights to sue for acts of past and future infringement.

7. Plaintiff UA was founded in 1999 and is based in Carmel, Indiana. The company is an innovator in developing performance ankle brace products for ankle stability and injury prevention, and acute injury treatment and rehabilitation. UA serves athletes,

volleyball teams, basketball and football players, and recreational sports enthusiasts, among others, throughout the United States and abroad. Specifically, and as it relates to the present action, UA manufactures, sells and distributes ankle brace products ("UA Products") covered by the UA Patents throughout the United States, including in Massachusetts and in this judicial district. Sales of UA Products occur both direct online (www.ultraankle.com) and through licensed distribution and retail channels.

8. Plaintiff has extensively promoted and used its patented products and design for years in the United States and Massachusetts. Plaintiff has enjoyed significant sales of its products throughout the United States, including sales to customers in the state of Massachusetts. Plaintiff has for many years directly and through its authorized licensee sold throughout the United States ankle brace products covered by the UA Patents.

9. On information and belief, Defendant JB Sports, LLC ("JB Sports" or "JBS") has an address at 30 Chelsea Street, Suite 810, Everett, Massachusetts, 02149. JB Sports imports for wholesale distribution joint support products (including the offending ankle brace products) for distribution to retail stores and other outlets. Defendant, Mr. Araujo, is managing member of JB Sports as well as its resident agent with an address at 30 Chelsea Street, Suite 810, Everett, Massachusetts, 02149. Individually and through JB Sports, Defendant Araujo operates under the business name Flexibrace ("Flexibrace").

10. On information and belief, Defendant Araujo is a resident of the United States and over the last sixteen years has imported a vast array of support wear products, including the offending ankle brace products, and has sold and continues to sell such imported products through, eBay, Amazon and other outlets to buyers around the world including Massachusetts

and this judicial district. Defendant Araujo has grown his business into a multimillion-dollar enterprise.

11. JB Sports, as represented in its corporate filings in its state of incorporation, Massachusetts, specifically referred to sales of ankle support products under the “Flexibrace” name, attached as Exhibit D. On information and belief JB Sports continues to this day to sell ankle brace products, including infringing products, under the Flexibrace name.

12. Araujo, as indicated by his eBay seller’s page, attached as Exhibit E, individually sold and continues to sell ankle brace products, including infringing products, under the “Flexibrace” name. Araujo is also the registered owner of the FLEXIBRACE trademark as shown in the trademark registration page attached as Exhibit F.

13. On information and belief, Supercare Medical and Sporting Articles Co., Ltd., also known as Dongguan Supercare Sporting Articles Co., Ltd. (“Supercare”), is the manufacturer of the infringing ankle brace products as indicated in Defendant Araujo’s Declaration of June 29, 2018, on pages 1-2, which is attached as Exhibit G. Supercare has address at one or more of: No. 3 Dayuan Street, Yale, Liaobu, Town, Dongguan City, Guangdon, China; No.9, Kaiyue St (1st), Liaobu Town, Dongguan, Guangdong, China; and Gangtou Industrial Zone, Shilongkeng, Liaobu Town, Dongguan, Guangdong, China. Supercare manufactures and sells products, including the Flexibrace ankle brace product, for distribution to companies and individuals, including JB Sports and Jalmar Araujo, for sale of such products throughout the United States, including in Massachusetts, and derives substantial revenues from sales of its products in the US, including Massachusetts, as

evidenced by the bills of lading for Supercare to JB Sports and product listings for Supercare attached as Exhibits H, I, and J.

14. On information and belief, Defendants JBS/JCA have and continue to market, offer to sell, and sell ankle brace products, including ankle brace products (e.g., “Flexibrace Ankle Brace Hinged Support Guard”) that infringe the patents-in-suit, throughout the United States, including Massachusetts and in this district at least via its commercial website and eBay and Amazon websites.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of the patent infringement claims pursuant to the United States Patent Act, 35 U.S.C. §§ 1, et seq., particularly including § 271 et seq., and pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 due to diversity of citizenship between the Plaintiffs and Defendants.

16. Defendants are subject to personal jurisdiction in Massachusetts and requiring Defendants to respond to this action will not violate due process. Defendants have committed acts of direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of each of the UA Patents resulting in injury in this judicial district and division. Defendants JBS/JCA are subject to the personal jurisdiction of this Court and are amenable to service of process as they are residents of this district and of Massachusetts and because Defendant JBS maintains its headquarters and principal place of business in Massachusetts.

17. Defendants JBS/JCA are subject to personal jurisdiction in Massachusetts because Defendants JBS/JCA regularly transact business in this State, offer products and services and/or contract to supply services or goods to customers, business affiliates and partners located in the State and in this judicial district. Defendants JBS/JCA have caused infringing products to be made and imported into the United States for offer for sale, sale, and/or delivery into and for use in this State thereby infringing UA's protected trade dress rights and infringing the UA Patents in this State and in this judicial district. Requiring Defendants JBS/JCA to respond to this action will not violate due process.

18. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 and 1400 at least because Defendants JBS/JCA are subject to personal jurisdiction in this district, have infringed the UA Patents in this district, and a substantial part of the events giving rise to the patent infringement claims have taken place and are still taking place in this judicial district and Defendants JBS/JCA are residents of this State and have a regular and established place of business in this State.

19. Upon information and belief, venue lies in this district for the further reasons that the products that give rise to this action are marketed for sale and delivery and have been sold and delivered to purchasers within this judicial district.

GENERAL ALLEGATIONS

20. UA is the exclusive owner of all right, title, and interest in and to the UA Patents, which are valid and subsisting. The patents-in-suit are directed to ankle brace products for protecting athletes and other users from injury. The patented ankle brace product includes an articulating, hinged side support to provide free movement along one axis while helping

prevent other unwanted movement. In addition, the patented ankle brace includes a tongue that extends under the user's foot to help keep the brace in good position and proper alignment when worn and used in physical activities.

21. The '578 Patent was duly and legally issued on June 15, 2004.

22. The '017 Patent was duly and legally issued on February 22, 2005.

23. The D'370 Patent was duly and legally issued on September 4, 2007.

24. UA has the legal right to enforce the patents-in-suit against all parties including Defendants JBS and JCA.

25. UA has spent considerable time, effort, and resources developing and promoting products embodying the inventions of the patents-in-suit. UA and/or its licensees have marked with one or more of the issued UA patent numbers commercial products covered by the claims of one or more of the patents-in-suit since no later than July of 2004.

26. Separate and apart from the functional aspects of the UA Products patented in the '578 Patent and the '017, UA has invested substantial time, effort and financial resources developing and promoting non-functional design features included in the UA Products as evidenced in the issuance of the D'370 Patent related to the aesthetic nature of the design. This protected design covers the look and feel of the UA Product and serves to identify UA and its authorized licensees as the source of high quality ankle brace products.

27. Without authorization, Defendants have copied protected functional and non-functional elements of UA's Products and in so doing have infringed the UA Patents causing

harm and damages to UA.

DEFENDANTS' ACTS INFRINGE UA'S PATENTS

28. Upon information and belief, Defendants make, use, import, export, distribute, sell and/or offer for sale products that directly infringe, contributorily infringe, and/or induce others to infringe one or more claims of each of the UA Patents. The infringing products include, by way of example but not limitation, ankle brace products identified as “Flexibrace Ankle Brace Hinged Support Guard” referred to herein as the “HSG Product.” Exemplary comparisons of the infringing device made for or imported by Defendants JBS/JCA and marketed and sold by Defendants JBS/JCA in and across the U.S. are shown below alongside exemplary figures from the ‘578 Patent and from the ‘017 Patent.

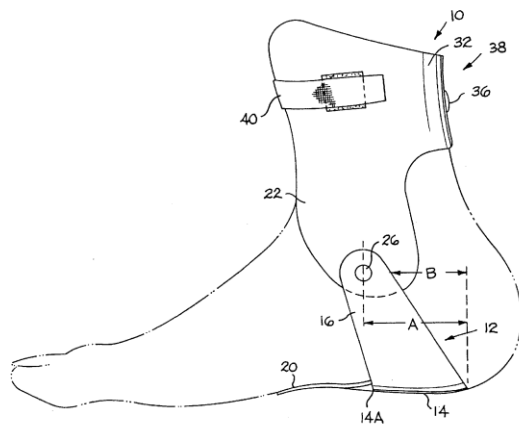


FIG 2

UA ‘578 Patent - Figure 2



Exemplary Flexibrace HSG Product

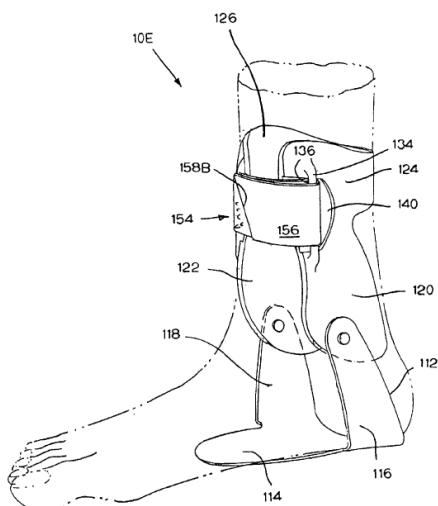


FIG. 24



UA '017 Patent - Figure 24

Exemplary Flexibrace HSG Product

29. UA, by certified letter from counsel Kevin T. Duncan (signed receipt by Defendant Araujo dated July 6, 2017), placed Defendants JBS/JCA on actual notice of, among other things, UA, the patents-in-suit, UA Products covered by the UA Patents, and Defendant JBS/JCA's infringement of the patents-in-suit. Moreover, Defendants JBS/JCA were placed on constructive notice of the UA Patents through UA's and its licensees' marking of ankle brace products with the UA Patents, this includes the McDavid product copied by Defendants JBS/JCA in making and marketing their infringing products. Since June 2017, UA has had continuing communications, including letters, and electronic mail, with Defendants JBS/JCA

including through counsel for Defendant Araujo concerning the infringing activities.

Defendants JBS/JCA have continued and expanded the infringing conduct uninterrupted since being placed on notice by UA through formal correspondence and via marked products placed in commerce.

30. Upon information and belief, Defendants JBS/JCA, by their representatives in a letter dated August 3, 2017, intentionally misrepresented that Defendant JCA had the infringing HSG products designed and created on his behalf as shown in Exhibit K. As can be seen in the product listings provided in Exhibit J, the infringing HSG products were designed and are sold by Supercare and were not created specifically for Defendants JBS/JCA. The statements by Defendants JBS/JCA were a deliberate attempt to mislead Plaintiff as to their business dealings and to obfuscate the relationship between the manufacturer Supercare and Defendants JBS/JCA.

31. Upon information and belief, Defendants JBS/JCA have had ongoing and systematic contacts with Massachusetts and within this judicial district. Defendants JBS/JCA have caused unauthorized and infringing products to be placed in the stream of commerce, knowing and expecting that such products would end up in this judicial district.

DEFENDANTS' INFRINGEMENTS IRREPARABLY HARM UA

32. Defendants' infringements of UA's valuable patent rights have irreparably harmed UA. Moreover, Defendants' unauthorized manufacture and/or importation of infringing goods incorporating Plaintiff's patented inventions and protected designs threatens the value of UA's valuable patent rights. For example, Defendants' acts have diminished Plaintiff's lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the

patented inventions.

33. Defendants' disregard for UA's property rights similarly threatens Plaintiff's relationships with potential and existing customers and licensees of the UA Patents. Defendants' have enjoyed and will derive a competitive advantage over Plaintiff's existing and potential licensees from using Plaintiff's patented technology and protected designs without paying compensation for such use. Accordingly, unless and until Defendants' acts of infringement are enjoined, Plaintiff will suffer irreparable harm for which there is no adequate remedy at law.

COUNT I

(Infringement of United States Patent No. 6,749,578)

34. Plaintiff hereby incorporates by reference paragraphs 1 through 33 as if fully restated herein.

35. UA is the lawful owner of and continues to maintain all right, title and interest in and to the '578 Patent, including the right to sue thereon and the right to recover for infringement thereof.

36. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products that infringe, directly and/or indirectly one or more of the claims of the '578 Patent.

37. Defendants have been and continue infringing one or more of the claims of the '578 Patent through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Plaintiff to suffer irreparable harm

resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

38. Defendants have had actual or at least constructive knowledge of one or more of the patents-in-suit since no later than 2004, prior to which time (beginning July of 2004) UA and its licensees have continuously marked their respective commercial products covered by the UA Patents pursuant to 35 U.S.C. §287(a). Defendants JBS/JCA have had actual knowledge of the patents-in-suit since no later than July 6, 2017.

39. Defendants' past and continuing infringement with actual knowledge of and in conscious and reckless disregard of the patents-in-suit, including the deliberate deception by Defendants JBS/JCA as to their business dealings with respect to the infringing HSG products, is willful and deliberate under 35 U.S.C. §284 and at least for the reasons stated herein makes this an exceptional case under 35 U.S.C. §285.

40. Defendants' infringement of the '578 Patent is knowing, willful and deliberate.

41. UA is entitled to enhanced damages and reasonable attorney fees adequate to compensate for Defendants' willful infringement and other conduct.

42. UA is entitled to recover damages adequate to compensate UA for Defendants' infringement and is entitled to injunctive relief against Defendants to restrain them from further acts of infringement.

COUNT II

(Infringement of United States Patent No. 6,858,017)

43. Plaintiff hereby incorporates by reference paragraphs 1 through 42 as if fully restated herein.

44. UA is the lawful owner of and continues to maintain all right, title and interest in and to the '017 Patent, including the right to sue thereon and the right to recover for infringement thereof.

45. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products that infringe, directly and/or indirectly one or more of the claims of the '017 Patent.

46. Defendants have been and continue infringing one or more of the claims of the '017 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

47. Defendants have had actual or at least constructive knowledge of one or more of the patents-in-suit since no later than 2004, prior to which time (beginning July of 2004) UA and its licensees have continuously marked their respective commercial products covered by the UA Patents pursuant to 35 U.S.C. §287(a). Defendants JBS/JCA have had actual knowledge of the patents-in-suit since no later than July 6, 2017.

48. Defendants' past and continuing infringement with actual knowledge of and

in conscious and reckless disregard of the patents-in-suit, including the deliberate deception by Defendants JBS/JCA as to their business dealings with respect to the infringing HSG products, is willful and deliberate under 35 U.S.C. §284 and at least for the reasons stated herein makes this an exceptional case under 35 U.S.C. §285.

49. Defendants' infringement of the '017 Patent is knowing, willful and deliberate.

50. UA is entitled to enhanced damages and reasonable attorney fees adequate to compensate for Defendants' willful infringement and other conduct.

51. UA is entitled to recover damages adequate to compensate UA for Defendants' infringement.

COUNT III

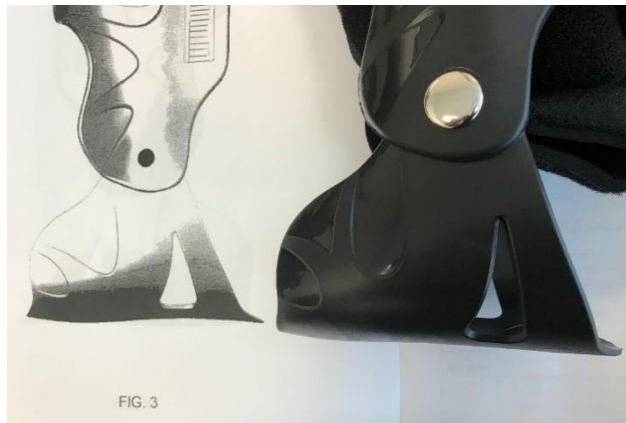
(Infringement of United States Patent No. D550,370)

52. Plaintiff hereby incorporates by reference paragraphs 1 through 51 as if fully restated herein.

53. UA is the lawful owner of and continues to maintain all right, title and interest in and to the D'370 Patent, including the right to sue thereon and the right to recover for infringement thereof.

54. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products that infringe, directly and/or indirectly one or more of the claims of the D'370 Patent. A comparison of the HSG Product with the ornamental design illustrated in the D'370 Patent confirm infringement.

55. The following is a comparison of a side view of the HSG Product (right) and the D'370 design (Fig. 3) (left):



56. The following is a comparison of the top down view into the stirrup of the HSG Product (left – with upper portion spread wide to facilitate view) and the D'370 design (Fig. 6) (right):



57. The following is a comparison of side perspective views of the HSG Product (left) and the D'370 design (Fig. 1) (right):



58. The similarities between the HSG Product and the ornamental design of the D'370 patent and associated UA product are unmistakable and striking and can only be the result of intentional copying as the design elements serve no functional purpose.

59. Defendants have infringed and continue to infringe the D'370 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing products incorporating the patented design.

60. Defendants have had actual or at least constructive knowledge of one or more of the patents-in-suit since no later than 2004, prior to which time (beginning July of 2004) UA and its licensees have continuously marked their respective commercial products covered by the UA Patents pursuant to 35 U.S.C. §287(a). Defendants JBS/JCA have had actual knowledge of the patents-in-suit since no later than July 6, 2017.

61. Defendants' past and continuing infringement with actual knowledge of and in conscious and reckless disregard of the patents-in-suit, including the deliberate deception by Defendants JBS/JCA as to their business dealings with respect to the infringing HSG products, is willful and deliberate under 35 U.S.C. §284 and at least for the reasons stated herein makes this an exceptional case under 35 U.S.C. §285.

62. Defendants' infringement of the D'370 Patent is knowing, willful and deliberate.

63. UA is entitled to enhanced damages and reasonable attorney fees adequate to compensate for Defendants' willful infringement and other conduct.

64. UA is entitled to recover damages adequate to compensate UA for Defendants' infringement and is entitled to injunctive relief against Defendants to restrain them from further acts of infringement.

DEMAND FOR JURY TRIAL

65. UA demands a trial by jury of all matters to which it is entitled to trial by jury pursuant to Fed. R. Civ. P. 38 and otherwise so entitled.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants JBS/JCA as follows and for the following relief:

(A) That this Court adjudge and decree that the '578 Patent is valid and enforceable against Defendants;

(B) That this Court adjudge and decree that the '017 Patent is valid and enforceable against Defendants

(C) That this Court adjudge and decree that the D'370 Patent is valid and enforceable against Defendants;

(D) That Defendants be held to have infringed each of the UA Patents;

(E) That Defendants and any subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation therewith, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the patent-in-suit, and specifically from directly or indirectly making, using, selling, importing or offering for sale, any products embodying the inventions of the patents-in-suit during the life of the claims of the patents-in-suit, without the express written authority of Plaintiff;

(F) That Defendants be directed to give a full accounting, including post-verdict accounting, to determine an award to fully compensate UA for all damages attributable to Defendants' infringement of the patents-in-suit in an amount consistent with proof at trial for UA's lost profits, to disgorge Defendants of their illegally obtained profits, and in no event less than a reasonable royalty;

(G) That this case be deemed exceptional and that Plaintiff be awarded reasonable attorney's fees in accordance with 35 U.S.C. §285 and other applicable state and federal law;

(H) That Defendants' infringement be found to be willful and that all damages awarded be enhanced to three-fold in accordance with 35 U.S.C. §284 and other applicable state and federal law;

(I) That Defendants be ordered to deliver to Plaintiff, for destruction at Plaintiff's option, any and all molds and other machines or devices fabricated for manufacture of the infringing products and all products that infringe the patents-in-suit;

(J) That this Court assess pre-judgment and post-judgment interests and costs against Defendants, together with an award of such interest and costs, including in accordance with 35 U.S.C. §284 and other applicable state and federal law;

and

(K) That Plaintiff have such other, further, and different relief as this Court deems proper under the circumstances.

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Dated: November 5, 2019

Table of Exhibits:

Exhibit A – U.S. 6,749,578

Exhibit B – U.S. 6,858,017

Exhibit C – U.S. D550,370

Exhibit D – JB Sports Massachusetts State Filings for 2010

Exhibit E – Jalmar Araujo – Flexibrace eBay Seller’s Page

Exhibit F – Flexibrace – USPTO Trademark Registration Page

Exhibit G – Declaration of Jalmar Araujo

Exhibit H – Search Results from Import Genius for JB Sports

Exhibit I – Search Results from Enigma Public for JB Sports

Exhibit J – Supercare Ankle Brace Product Listings

Exhibit K – August 3, 2017 Letter from Brendan Shortell to Kevin Duncan