

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

BLACKBIRD TECH LLC d/b/a  
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

RITE AID CORPORATION

Defendant.

Case No. \_\_\_\_\_

JURY TRIAL DEMANDED

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**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies” or “Plaintiff”) hereby alleges against Defendant Rite Aid Corporation (“Rite Aid” or “Defendant”), on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

**THE PARTIES**

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Ave., Suite 303, Concord, MA 01742.
2. Rite Aid is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 30 Hunter Lane, Camp Hill, PA 17011

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*
4. This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Defendant because Defendant is subject to general and specific jurisdiction in the state of Delaware. Defendant is subject to personal jurisdiction because Defendant is a Delaware corporation and because Defendant has transacted business within Delaware and committed acts of patent infringement in Delaware. Defendant has made certain minimum contacts with Delaware such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice. Defendant regularly conducts business in Delaware, including by offering for sale Rite Aid products in 16 Rite Aid stores located in Delaware. *See, e.g.*, <https://locations.riteaid.com/locations/search.html?q=delaware>.<sup>1</sup> Defendant has marketed, offered, and provided the infringing instrumentality in Delaware to citizens of Delaware through various interactive means, including but not limited to its website ([riteaid.com](http://riteaid.com)) and the retailers located in Delaware. The exercise of personal jurisdiction comports with Defendant's right to due process because, as described above, Defendant has purposefully availed itself of the privilege of Delaware corporate laws and of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, the acts by Defendant in this district have caused injury to Blackbird Technologies.

6. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1391(b) and (c) and § 1400(b) at least because Defendant resides in the District of Delaware, transacts business within this district, and has committed acts of infringement in this district.

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<sup>1</sup> All websites cited in this Complaint were accessed on or around November 6, 2019.

THE PATENT-IN-SUIT






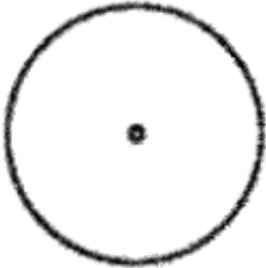

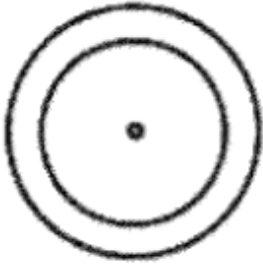

7. U.S. Design Patent No. D666,358 (the “‘358 patent”) entitled, “Face Sponge,” was duly and legally issued by the U.S. Patent and Trademark Office on August 28, 2012.

8. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the ‘358 patent, including all right to recover for any and all infringement thereof. The ‘358 patent is valid and enforceable. A true and correct copy of the ‘358 patent is attached as Exhibit A.

9. The claims of the ‘358 patent are directed to a unique ornamental design for a face sponge, as shown and described.

10. Rite Aid has not obtained permission from Blackbird Technologies to use the design of the ‘358 patent.

11. Below is a side-by-side comparison of the patented design of the ‘358 patent and the Rite Aid Daylogic Complexion Perfection Specialty Sponge product. As is apparent, Rite Aid has misappropriated Blackbird Technologies patented design.

'358 Patent	Accused Rite Aid Daylogic Complexion Perfection Specialty Sponge
 <p><i>FIG. 1</i></p>  <p><i>FIG. 2</i></p>  <p><i>FIG. 3</i></p>  <p><i>FIG. 4</i></p>	
 <p><i>FIG. 5</i></p>	
 <p><i>FIG. 6</i></p>	

COUNT I – INFRINGEMENT OF THE ‘358 PATENT

12. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

13. Rite Aid has infringed and continues to infringe the ‘358 patent by manufacturing, using, distributing, offering to sell and/or selling in the United States the Rite Aid Daylogic Complexion Perfection Specialty Sponge, which embodies the design covered by the ‘358 patent. Rite Aid’s infringing activities violate 35 U.S.C. § 271.

DAMAGES

14. Blackbird Technologies has sustained damages as a direct and proximate result of Rite Aid’s infringement of the ‘358 patent.

15. As a consequence of Rite Aid’s past infringement of the ‘358 patent, Blackbird Technologies is entitled to restitutionary relief against Rite Aid in the form of disgorgement of wrongfully obtained profits pursuant to 35 U.S.C. §289 and any other appropriate relief.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed the ‘358 patent, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant’s past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately

compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C. Restitutionary relief against Rite Aid in favor of Blackbird Technologies, including disgorgement of wrongfully obtained profits pursuant to 35 U.S.C. § 289 and any other appropriate relief;

D. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '358 patent on a going-forward basis;

E. Adjudging that this case is exceptional under 35 U.S.C. § 285 and awarding costs, expenses, and attorneys' fees to Blackbird Technologies;

F. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

G. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: November 7, 2019

STAMOULIS & WEINBLATT LLC

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