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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Kandypens, Inc., a Delaware corporation,

Plaintiff,

v.

Puff Corp., a Delaware corporation,

Defendant.

Case No.

COMPLAINT

**(Declaratory Judgment of Patent
Invalidity)**

Demand for Jury Trial

For its Complaint against Defendant Puff Corp. (“Puffco”), Plaintiff
Kandypens, Inc. (“Kandypens”) alleges as follows:

NATURE OF THE CASE

1. This action seeks a declaration that Puffco’s U.S. Patent No.
10,517,334 is invalid. Puffco’s patent is invalid because the claimed invention was
publicly used and otherwise available to the public more than one year before the
effective filing date of the claimed invention. 35 U.S.C. 31 thus acts as a statutory
bar to the patentability of the “portable electronic vaporizing device” described in
Puffco’s patent.

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THE PARTIES

2. Kandypens is a Delaware corporation with its principal place of business in Santa Barbara, California.

3. Puffco is a Delaware corporation with its principal place of business in Los Angeles, California.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the patent laws of the United States, 35 U.S.C. § 1 et seq.

5. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

6. Personal jurisdiction over Puffco is proper in this District because Puffco's principal place of business is in this District and therefore Puffco is a resident of this District.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because Puffco resides in this judicial district.

FACTS

8. Kandypens and Puffco are competitors in the emerging electronic vaporizer industry. The two parties design and market products for use in the inhalation of vaporizable substances.

9. One of Puffco's products is the Puffco Peak, a rig intended to facilitate inhaling smoke from vaporized concentrates (known by some as "dabbing").

10. On or about January 8, 2018, Puffco's CEO, Roger Volodarsky, demonstrated the Puffco Peak for seven individuals, apparently including members of the media, at the Mirage hotel before the Consumer Electronics Show opened.

11. Upon information and belief, Puffco conducted additional demonstrations and public exhibitions of the Puffco Peak, at the Mirage and on the

1 floor of CES, throughout the CES show running January 9, 2018 to January 12,
2 2018.

3 12. More than one year later, on January 14, 2019, Mr. Volodarsky and
4 others filed a provisional patent application, No. 62/792,202, and a non-provisional
5 application, PCT/US2019/013501.

6 13. On April 2, 2019, Mr. Volodarsky and others filed a non-provisional
7 patent application, No. 16/373,170, claiming priority from the earlier applications.

8 14. At no point in any of these applications did any of the applicants
9 disclose the public use and disclosures of the Puffco Peak more than one year
10 before the first application date.

11 15. On December 19, 2019, Puffco was issued U.S. Patent No.
12 10,517,334, “Portable Electronic Vaporizing Device” (the “’334 Patent”).

13 16. The ’334 Patent’s specification, including its drawings, describes the
14 Puffco Peak vaporizer.

15 17. The ’334 Patent’s claims read on the Puffco Peak vaporizer, or its use.

16 18. Among other products, Kandypens developed and markets the Oura
17 portable concentrate vaporizer.

18 19. On January 3, 2020, counsel for Puffco sent Kandypens a cease-and-
19 desist letter alleging that the Oura vaporizer directly infringes the ’334 Patent, and
20 that marketing and selling accessories for the Oura vaporizer may constitute
21 indirect infringement. Puffco further demanded that, to avoid “the disruption that a
22 court proceeding would entail,” Kandypens must “[c]ease and desist from any
23 further manufacture, use, sales, offers to sell, or importation into the United States
24 of the Oura, and other accessories therefor.”

25 20. Puffco sent at least one similar letter to one of Kandypens’
26 distributors, apparently in an effort to persuade the distributor to not carry the Oura
27 vaporizer.

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23. Absent a declaration of invalidity or unenforceability, Puffco will continue to wrongfully allege that Kandypens' marketing of the Oura vaporizer infringes the '334 Patent, and thereby cause Kandypens irreparable injury and damage

(Declaratory Judgment of Invalidity and/or Unenforceability)

28. Kandypens is entitled to a declaratory judgment that the claims of the Patent are unenforceable because Puffco failed to disclose relevant prior art to the Patent Office, including the public use and disclosure of Puffco Peak itself more than one year before the effective filing date of the claimed invention.

