

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

PADO, INC. and HOMELEC KOREA CO., LTD.,

Plaintiffs,

v.

SG TRADEMARK HOLDING CO LLC, WIEDER
AND FRIEDMAN ENTERPRISES INC, MOSHE
FRIEDMAN A/K/A COY WEST, HERSCHEL
FRIEDMAN, ABC CORPORATIONS 1-10, and
JOHN DOES 1-10,

Defendants.

Case No. 1:19-cv-06614-KAM-RER

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Pado, Inc. and Homelec Korea Co., Ltd. (collectively, “Plaintiffs”), by their attorneys, for their Second Amended Complaint against defendants SG Trademark Holding Co LLC, Wieder and Friedman Enterprises Inc, Moshe Friedman a/k/a Coy West, Herschel Friedman, ABC Corporations 1-10, and John Does 1-10 (collectively, “Defendants”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement, copyright infringement, unfair competition, deceptive trade practices, trademark dilution, and related claims under federal and New York State law arising from Defendants’ production, promotion, distribution, offer for sale, and sale of handheld massagers. On information and belief, when Defendants entered the handheld massager market in 2018, rather than develop their own products, user manuals, and marketing materials, Defendants took the shortcut of copying Plaintiffs’ patented product, Plaintiffs’ copyright-protected user manuals, and using Plaintiffs’ marketing materials and Plaintiffs’ PUREWAVE trademark, thereby passing-off their own copycat massager as a genuine

PUREWAVE massager. Thus, Defendants avoided the cost of developing their own product and marketing materials by copying Plaintiffs' products and marketing materials, and by misappropriating Plaintiffs' PUREWAVE brand, thereby undercutting the sale of Plaintiffs' genuine products in the marketplace.

2. Plaintiffs bring this action under the United States Patent Act, 35 U.S.C. § 1 *et seq.*, the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, United States Trademark Act (Lanham Act of 1946), 15 U.S.C. § 1051 *et seq.*, and New York State statutory and common law to stop the copying of Plaintiffs' patented design, user manuals and marketing materials, to protect the reputation and integrity of their products and trademark, and to ensure that the public is not deceived into buying Defendants' infringing handheld massager products (the "Infringing Products") thinking that those spurious products originate with Plaintiffs. Plaintiffs also seek a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Plaintiffs have not infringed any valid trademark of defendant SG Trademark Holding Co LLC or engaged in any unfair competition or deceptive trade practices in connection with any valid trademark owned by defendant SG Trademark Holding Co LLC. Plaintiffs seek permanent and preliminary injunctive relief and the recovery of actual damages, Defendants' profits, damages, attorney fees, and other relief more fully set forth herein.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, Section 39 of the Lanham Act, 15 U.S.C. § 1121, the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, and 28 U.S.C. §§ 1331, 1332, 1338, 2201 and 2202, and has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

4. On information and belief, Defendants are subject to personal jurisdiction of this Court because they, *inter alia*, reside in this District, promote and sell handheld massager products throughout this District, transact business within this District, contract to supply goods within this District, engage in a persistent course of conduct in New York and its environs, and expect, or should expect, their acts to have legal consequences within New York and this District.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b), in that Defendants reside in this District, and the events and omissions giving rise to Plaintiffs' claims occurred, and continue to occur, in this District as well as elsewhere in the United States.

PARTIES

6. Plaintiff Pado, Inc. ("Pado") is a corporation organized and existing under the laws of California, with a principal place of business at 28340 Avenue Crocker #100, Valencia, California 91355. Pado is the exclusive licensee of United States Patent No. D855,197, owns United States Copyright Registration Nos. TX-8-796-486 and TX-8-796-570, and is the owner of all trademark rights in the PUREWAVE handheld massagers.

7. Plaintiff Homelec Korea Co., Ltd. ("Homelec") is a limited company organized and existing under the laws of the Republic of Korea, with a principal place of business at A-521/522 Tera Tower, 167, Songpa-daero, Songpa-gu, Seoul, Republic of Korea. Homelec is the owner of United States Patent No. D855,197, and designs and manufactures electronic massagers, which are distributed, advertised and sold in the United States by its exclusive licensee Pado.

8. On information and belief, Defendant SG Trademark Holding Co LLC ("SG Trademark") is a New York limited liability company having a place of business at 5421 New

Utrecht Avenue, Brooklyn, New York 11219. On further information and belief, SG Trademark is the owner of the MIGHTY BLISS trademark, is the current record owner of U.S. Trademark Registration No. 4925190 PURWAVE, and manufacturers, imports, promotes, distributes, advertises, offers to sell, and sells Infringing Products in the United States.

9. On information and belief, Defendant Wieder and Friedman Enterprises Inc (“Wieder and Friedman”) is a New York corporation having a principal place of business at 1730 58th Street, Brooklyn, New York 11204. On further information and belief, Wieder and Friedman is the exclusive licensee of the MIGHTY BLISS and PURWAVE trademarks, and promotes, distributes, advertises, offers to sell, and sells Infringing Products in the United States. SG Trademark and Wieder and Friedman are collectively referred to as the “Corporate Defendants.”

10. On information and belief, Defendant Moshe Friedman a/k/a Coy West (“Moshe Friedman”), is an individual and owner of SG Trademark, and resident of the State of New York, with an address of 1651 55th Street, Brooklyn, New York 11204. On further information and belief, Moshe Friedman has personally participated in and has willfully and knowingly directed the wrongful acts of the Corporate Defendants complained of herein, and such wrongful conduct has been for the benefit of the Corporate Defendants and for his own individual benefit and gain.

11. On information and belief, Defendant Herschel Friedman (“Herschel Friedman”), is an individual and an agent of defendant SG Trademark and owner of defendant Wieder and Friedman, and resident of the State of New York, with an address of 1730 58th Street, Brooklyn, New York 11204. On further information and belief, Herschel Friedman has personally participated in and has willfully and knowingly directed the wrongful acts of the

Corporate Defendants complained of herein, and such wrongful conduct has been for the benefit of the Corporate Defendants and for his own individual benefit and gain.

12. Moshe Friedman and Herschel Friedman are collectively referred to herein as the “Individual Defendants.”

13. ABC Corporations 1-10 and John Does 1-10 are corporations and other legal entities and/or individuals whose identities are not presently known to Plaintiffs, and who are also engaged in manufacturing, exporting, promoting, distributing, selling, and/or offering for sale Infringing Products procured from Defendants. The Second Amended Complaint will be amended to include the name or names of these individuals as and when such information becomes available.

Plaintiffs and Their PUREWAVE Handheld Massagers

14. Plaintiff Homelec has been designing and manufacturing, and Pado including its predecessor-in-interest has been promoting and selling in the United States, a line of high-quality handheld massagers under the PUREWAVE trademark since 2015. An image of Plaintiffs’ PUREWAVE handheld massager is shown below and additional images are attached as **Exhibit 1**.



15. Plaintiffs' PUREWAVE handheld massagers are designed and manufactured by Homelec and imported into the United States. Homelec invested substantial resources into designing and developing the PUREWAVE handheld massagers. Rigorous quality control standards are exercised over the production of each product and the materials included in each package bearing the PUREWAVE mark.

16. Homelec filed the application that eventually issued as U.S. Patent No. D855,197 (the "'197 Patent") on March 1, 2018, claiming priority from two applications filed in 2014.

17. The '197 Patent is directed to a handheld massager for massaging, e.g., a user's arms, legs, back, and neck.

18. The '197 Patent claims priority from an International (PCT) application filed April 4, 2014, which in turn claims priority from a Korean national application filed January 8, 2014.

19. The '197 Patent has an effective filing date of January 8, 2014.

20. When performing her examination of the application the United States Patent and Trademark Office ("PTO") Patent Examiner noted Pado's PUREWAVE CM-07 massager available on the online marketplace Amazon.com ("Amazon") as of September 16, 2015, and made that product of record as information that she explicitly considered. The information regarding the PUREWAVE CM-07 Product and its offer for sale on Amazon on September 16, 2015 are listed on the face of the '197 Patent in the "Other Publications" section.

21. Pado's PUREWAVE CM-07 massager displayed on Amazon on September 16, 2015 is not prior art to the '197 Patent because the '197 Patent has an effective filing date in 2014.

22. After considering all of the information available to the Patent Examiner including the 2015 PUREWAVE CM-07 massager for sale on Amazon in 2015 and the application's effective filing date in 2014, the Patent Examiner allowed the patent application.

23. On July 30, 2019, the '197 Patent, entitled "RECHARGEABLE DUAL MASSAGE APPARATUS," was duly and legally issued by the PTO to inventor Geon Woo Park of Homelec. A true copy of the '197 Patent is attached as **Exhibit 2**.

24. The '197 Patent is assigned from Mr. Park to Homelec. Mr. Park is an officer of Homelec. A written assignment from him to Homelec was recorded with the PTO on March 1, 2018 at Reel 045081, Frame 0077. A copy of the patent assignment is attached as **Exhibit 3**.

25. Pado is the exclusive licensee with the right to sue for infringement of the '197 Patent by way of an exclusive license from Homelec recorded with the PTO on October 29, 2019 at Reel 050859, Frame 0706. A copy of that license is attached as **Exhibit 4**.

26. Pado including through its predecessor-in-interest has been offering and selling handheld massage products since 2015 under a number of marks with the dominant term PUREWAVE, in stylization and standard character formats (collectively, the "PUREWAVE Marks").

27. Pado owns nationwide common law trademark rights in the PUREWAVE Marks in connection with handheld massagers by virtue of its use of the PUREWAVE Marks throughout the United States. Pado established common law rights in the PUREWAVE Marks prior to any date of first use or priority upon which Defendants can rely in relation to its use of a mark bearing the terms PURE WAVE.

28. Pado has undertaken very successful efforts to build goodwill and brand recognition for the PUREWAVE products. Pado invested millions of dollars in ongoing efforts strategically to market, advertise, and promote the PUREWAVE Marks in the United States and elsewhere.

29. Pado advertises, promotes, markets, offers for sale and sells its PUREWAVE products through the online marketplace Amazon.com and Pado's website at www.padousa.com. Attached as **Exhibit 5** are screenshots from Amazon.com and Pado's website showing advertisements developed by Pado for its PUREWAVE handheld massagers.

30. Pado's social media advertisements have had over 2.4 billion advertising impressions (times that the advertisement has been onscreen for Pado's target audience), and reached over 187 million people (the number of people who viewed the advertisement at least once).

31. Pado's promotional efforts have paid off. It has sold hundreds of thousands of products bearing the PUREWAVE Marks, resulting in over \$70 million in sales.

32. Pado hosts social media accounts on Facebook, Instagram, Twitter, and YouTube, which have hundreds of thousands of followers. Attached as **Exhibit 6** are screenshots of Pado's social media pages showing over 477,000 Facebook followers, 32,000 Instagram followers, and over 2,000 YouTube subscribers and over 3,200,00 customer views.

33. Pado has invested heavily in customer service, addressing product and service issues that customers may have.

34. As a result of the investments by Pado, consumers have come to recognize the name PUREWAVE as signifying high-quality, reliable massage products backed by exceptional customer service

Plaintiffs' Copyright-Protected User Manuals

35. AT Battery Company, Inc. (“AT Battery”), the predecessor of Pado, developed and published a first version of a user manual for the PUREWAVE CM-07 massager (the “2015 User Manual.”). The 2015 User Manual contains original text, artwork, and photographs. A copy of the 2015 User Manual is attached as **Exhibit 7**.

36. In 2016, AT Battery developed and published an updated user manual for the PUREWAVE CM-07 massager (the “2016 User Manual.”). The 2015 User Manual and the 2016 User Manual are collectively referred to as the “User Manuals.” The 2016 User Manual contains text and artwork, including some of the text and artwork from the 2015 User Manual, plus new text and artwork. A copy of the 2016 User Manual is attached as **Exhibit 8**.

37. AT Battery registered the copyright in its User Manuals with the U.S. Copyright Office, Reg. No. TX-8-796-486 and Reg. No. TX-8-796-570, registered Nov. 5, 2019.

38. AT Battery assigned the United States Copyright Registration Nos. TX-8-796-570 and TX-8-796-486 to Pado. Attached as **Exhibit 9** is a copy of the notarized assignment, dated November 21, 2019, which constitutes prima facie evidence of the assignment of the copyright registrations for the User Manuals.

Defendants Patent Infringing Conduct



39. On information and belief, Defendants import, market, advertise, distribute, offer for sale, and sell the Infringing Products throughout the United States.

40. The Infringing Products are copies of Plaintiffs' PUREWAVE massagers. An image showing an Infringing Product is shown below and additional images are attached as **Exhibit 10**.



41. The Infringing Products infringe the '197 Patent. Images showing the Infringing Products next to the patent drawings are presented below.

Design Patent D855, 197	Infringing Products

Design Patent D855, 197	Infringing Products
	

42. Examples of competing handheld massagers in the marketplace which do not infringe the '197 Patent, and which demonstrate that Defendants had many design alternatives available to them for competing without copying Plaintiffs' patented product includes the following:



43. All Defendants became aware of the '197 Patent, and the infringement complained of herein, at least by November 26, 2019 when the summons and original complaint were served on Defendants. Thereafter, the Defendants continued to offer to sell and to sell the Infringing Products.

44. As of the filing of the original Complaint in this action, Defendants' website at www.mightybliss.com redirected consumers to the online marketplace Amazon.com in order to purchase the Infringing Products.

45. On or about December 2, 2019, Plaintiffs submitted a complaint to Amazon.com alleging that the Infringing Products infringe the '197 Patent.

46. On or about December 6, 2019, after reviewing Plaintiffs' complaint Amazon.com took down Defendants' offers for sale of the Infringing Products.

47. Defendants then changed their website www.mightybliss.com to sell the Infringing Products directly to consumers without going through Amazon.com.

48. As of at least November 26, 2019, all Defendants had actual knowledge of the '197 Patent.

49. As of at least November 26, 2019, all Defendants had actual knowledge that the MIGHTY BLISS massager infringes the '197 Patent, and/or intentionally avoided knowledge of whether the MIGHTY BLISS massager infringes the '197 Patent.

50. As of at least November 26, 2019, on information and belief, the Individual Defendants encouraged and induced the Corporate Defendants to continue to sell the MIGHTY BLISS massager despite being aware of the '197 Patent.

51. Defendants' infringements were willful at least as of November 26, 2019.

Unlawful Conduct of Moshe Friedman and Hershel Friedman

52. On information and belief, defendant Moshe Friedman is the sole owner of defendant SG Trademark, is personally responsible for product development, product design, marketing, and sales at the Corporate Defendants, and is essential to the operations of the Corporate Defendants.

53. On information and belief, defendant Moshe Friedman co-designed and developed the Infringing Products for the Corporate Defendants.

54. Defendant Moshe Friedman is a named co-inventor of U.S. Design Patent No. D872,295, entitled “CORDLESS MASSAGER” (the “’295 Patent”), which depicts a massager and six (6) attachments. Defendant SG Trademark owns the ’295 Patent.

55. The ‘295 Patent issued on January 7, 2020, which was long after Defendants became aware of Pado’s PUREWAVE products and had copied Pado’s User Manuals and promotional materials.

56. The massager and attachments depicted in the ’295 Patent are highly similar in appearance to Pado’s CM-07 PUREWAVE massager and attachments.

57. Pado’s PUREWAVE CM-07 Massager and its attachments are prior art to the ’295 Patent.

58. Despite having actual knowledge of the ’197 Patent and the Plaintiffs’ PUREWAVE massagers, Defendants failed to disclose to the PTO within an Information Disclosure Statement any of Pado’s PUREWAVE products including the PUREWAVE CM-07 massager and its attachments which are prior art to the ’295 Patent.

59. On information and belief, defendant Moshe Friedman developed the Infringing Products that are manufactured and imported by defendant SG Trademark and promoted, distributed, and sold by the Corporate Defendants.

60. Moshe Friedman communicates with Defendants’ customers under the alias “Coy West.”

61. On information and belief, Defendants send a letter from Coy West, “owner of Mighty Bliss,” to all customers who purchase Infringing Products (the “Product Review Letter”), asking customers for a “huge favor,” that is, to write “a nice review” on Amazon.com

and, if the Infringing Products “don’t deserve a nice review” to contact Defendants directly. A copy of the Product Review Letter is attached as **Exhibit 11**.

62. On information and belief, defendants Moshe Friedman and Hershel Friedman personally created and sent the letter for the Corporate Defendants.

63. According to the New York Department of State online database, SG Trademark’s business address is 5421 New Utrecht Avenue, Brooklyn, New York 11291, which is the same as Hershel Friedman’s business address.

64. According to the New York Department of State online database, Hershel Friedman accepts service for defendant SG Trademark.

65. On information and belief, defendant Hershel Friedman is the owner of defendant Wieder and Friedman, is personally responsible for product development, product design, marketing, and sales at the Corporate Defendants, and is essential to the operations of the Corporate Defendants.

66. On information and belief, defendant Hershel Friedman’s home address is the same address as defendant Wieder and Friedman’s business address.

Defendants Copied Pado’s User Manual and Marketing Materials

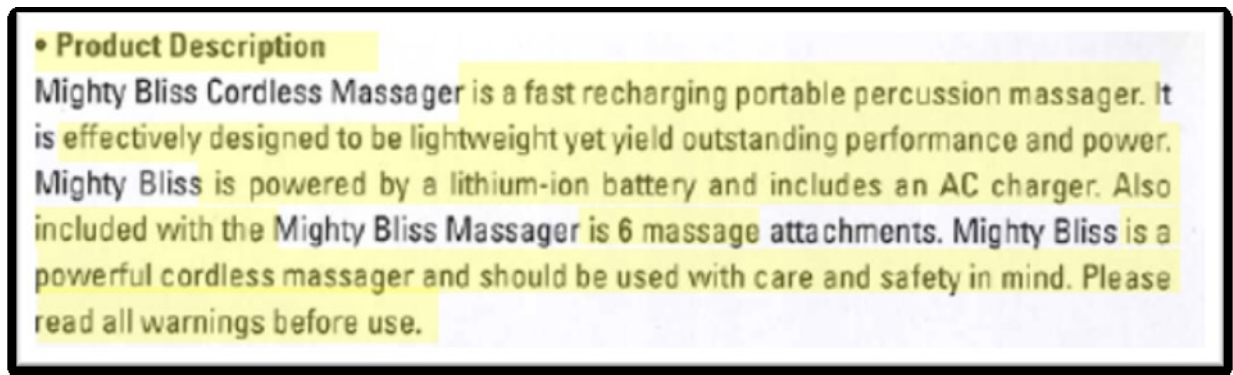
67. The user manuals for Defendants’ Infringing Products (“Defendants’ User Manuals”) is a virtual copy of Pado’s 2016 User Manual, which is the subject of Copyright Registration No. TX-8-796-570. A copy of Defendants’ Infringing Product user manual is attached as **Exhibit 12**.

68. Defendants’ User Manual is identical and or strikingly similar to Pado’s User Manual in at least the following ways:

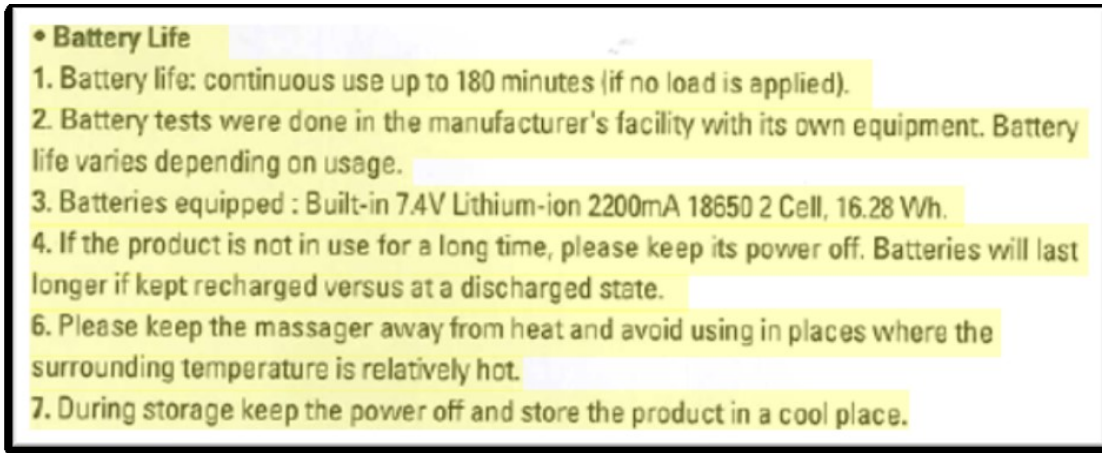
69. Defendants’ User Manual and Pado’s 2016 User Manual follow the same Tables of Contents, namely: Contents and Product Description; Charging and Battery Life;

Using [the] Massager; Warnings, Safety, and Contraindications; Product Care and Maintenance; Specifications; Troubleshooting; and Warranty.

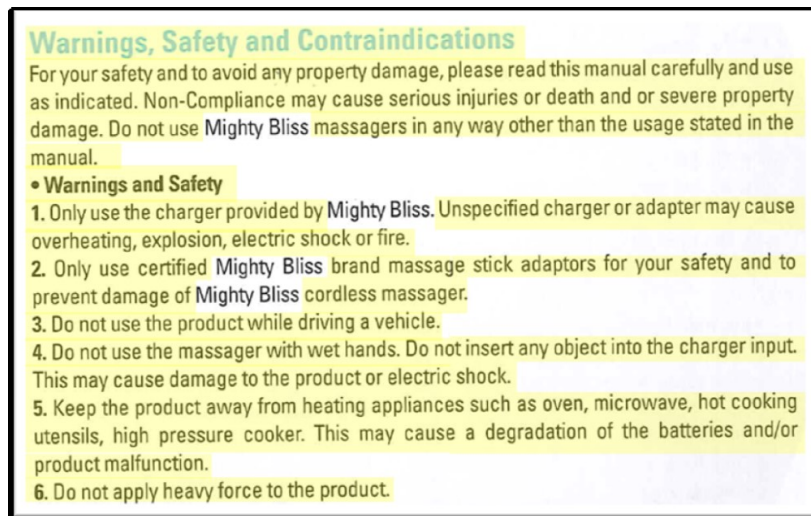
70. As an example of Defendants' blatant copying, both Defendants' User Manual and Pado's 2016 User Manual begin with substantially the same "Product Description" section. The image below shows the "Product Description" paragraph of Defendants' User Manual with the sections that Defendants copied from Pado's 2016 User Manual (**Exhibit 8**) highlighted in yellow.



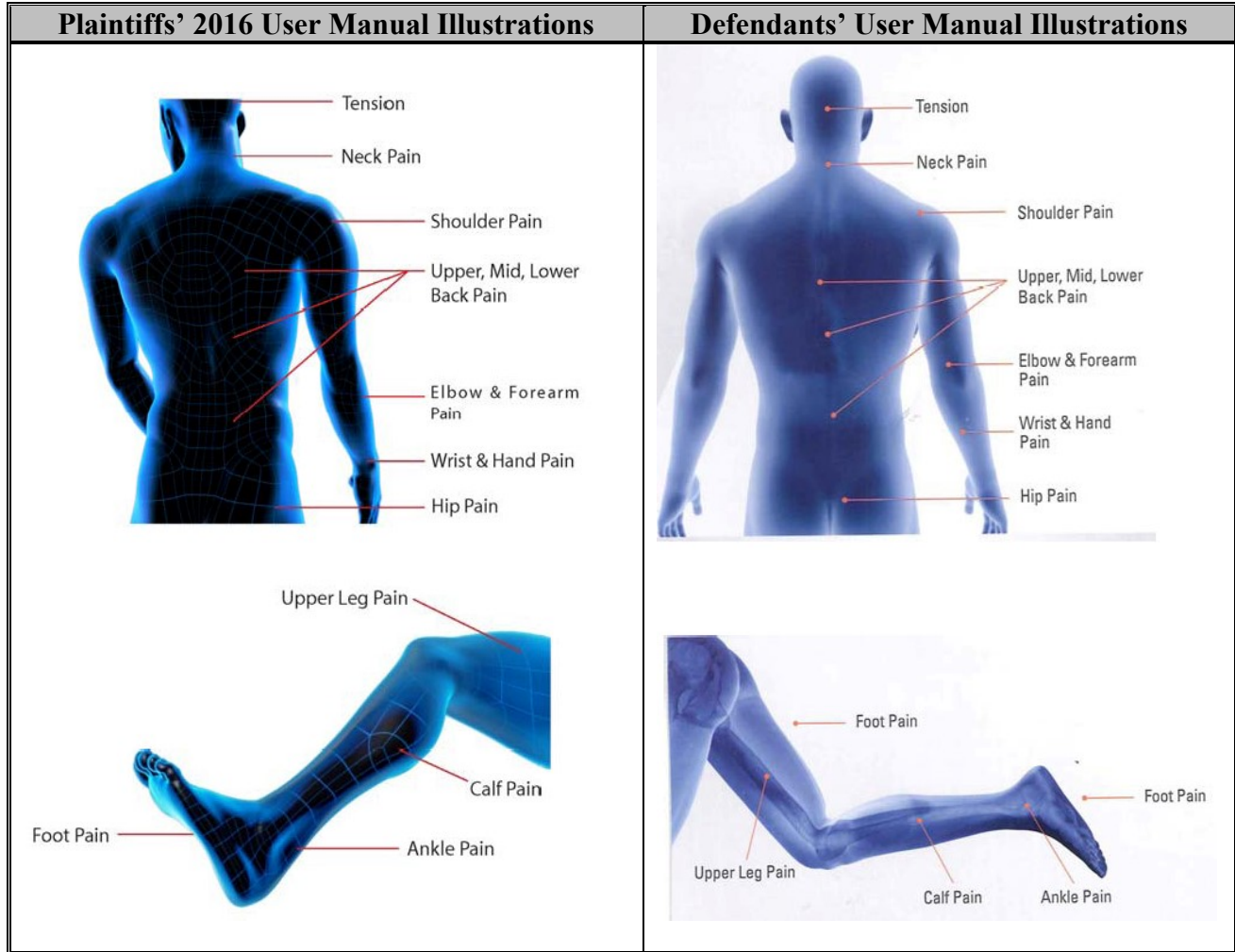
71. The "Battery Life" sections of the parties respective user manuals are word-for-word identical, except that No. 3 in Pado's manual notes that the batteries are replaceable for a fee. In both manuals, No. 5 is missing; that is, Defendants so slavishly and unthinkingly copied Pado's 2016 User Manual that they even copied the omission of No. 5. The image below shows the "Battery Life" paragraph of Defendants' User Manual with the sections that Defendants copied from Pado's 2016 User Manual (**Exhibit 8**) highlighted in yellow.



72. Defendants also copied the entire “Warnings, Safety and Contraindications” sections, including Nos. 1 through 6 under “Warnings and Safety,” which are word-for-word identical, except that Defendants substituted “Mighty Bliss” for “Pure Wave.” The image below shows the “Warning, Safety and Contraindications” introduction paragraph and Nos. 1 through 6 of the “Warnings and Safety” section of Defendants’ User Manual with the sections that Defendants copied from Pado’s 2016 User Manual (**Exhibit 8**) highlighted in yellow. The image highlighted in yellow below shows an excerpt of the “Warning, Safety and Contraindications” introduction paragraph and Nos. 1 through 6 of the “Warnings and Safety” section of Defendants’ user manual that copies Pado’s 2016 User Manual.



73. The parties respective user manuals contain the nearly identical graphics:



74. The foregoing instances of copying are just a representative example of the striking similarities between the parties' respective user manuals.

75. Defendants' User Manuals are also strikingly similar to portions of, and hence constitutes a copy of, Pado's 2015 User Manual (**Exhibit 7**), which is registered as Copyright Registration TX-8-796-486.

76. On information and belief, defendants Moshe Friedman and Hershel Friedman personally directed the Corporate Defendants to copy Pado's User Manuals.

Defendants' Copying of Pado's Marketing Materials

77. Defendants copied Pado's promotional text on Amazon.com, and placed that promotional text on their own website describing the Infringing Products. Attached as **Exhibit 12** is a printout of the product description posted by Defendants on their website at www.mightybliss.com, as of October 31, 2019, showing the use of the mark PURE WAVE. The exhibit is partially reproduced below with the copied marketing language highlighted in yellow. The highlighted language was taken word-for-word from Pado's promotional text (**Exhibit 5**), utilizing Pado's PUREWAVE trademark, which is highlighted in red.

MIGHTY BLISS is powerful. If you are use to a gentle massage or are sensitive to aggressive massage therapy you may be surprised with MIGHTY BLISS strength. You may also be pleasantly surprised with the results after a few days of percussion therapy. When using Pure Wave for the first time, we recommend you start with the soft air-cushion attachment at lower speeds until you are comfortable with the strength of this massager. Read owner's manual prior to use. If you experience any bouncing try increasing the speed to reduce bouncing impact. You may also try holding the massager at a different position on the handle.

THE POWER OF PERCUSSION: Most muscle pain occurs deep in the tissue, where vibrating massagers can't reach. But Pure Wave percussion massagers use short, powerful strokes to penetrate deep. Gently stretching muscles and tendons. Breaking down adhesions and knots. Restoring circulation and flexibility. Professionals use Mighty Bliss for therapeutic massage. Now you can, too.

78. On information and belief, Defendants also advertise the Infringing Products on third-party online marketplaces, such as GraceLife MediMart, Keug Reviews, and Vitamin

Notes. Attached as **Exhibit 13** are screenshots showing Defendants' advertisements using the PURE WAVE mark in connection with Infringing Products on the GraceLife MediMart, Keug Reviews, and Vitamin Notes websites.

79. On information and belief, Defendants' copying of Pado's User Manual and promotional text was deliberate and willful, and constituted willful copyright infringement, and was done with an intent by Defendants to unlawfully obtain the benefits of Plaintiffs' industry and efforts, and to harm Plaintiffs.

80. On information and belief, defendants Moshe Friedman and Hershel Friedman personally directed the Corporate Defendants to copy Pado's marketing materials.

Defendants' Passing Off / Trademark Infringement

81. Defendants have falsely promoted their Infringing Products as being Plaintiffs' "Pure Wave" massager, thus infringing Pado's PUREWAVE trademark and passing off their product as Plaintiffs'.

82. Defendants' use of the term "Pure Wave" has been without Plaintiffs' consent, and is likely to cause confusion and mistake in the minds of the purchasing public and, in particular, creates the false impression that the goods sold by Defendants are authorized, sponsored, or approved by Plaintiffs when, in fact, they are not.

83. On information and belief, Defendants' infringement was perpetrated under the direction of the Individual Defendants, and was deliberate and willful, and done with intent by Defendants to unlawfully obtain the benefits of Plaintiffs' industry and efforts, and to harm Plaintiffs, and to pass off the Infringing Products as being Plaintiffs' PUREWAVE massagers.

Defendants Undercut Plaintiffs

84. Having avoided the normal costs and expenses associated with developing their own product and marketing materials, Defendants proceeded to undercut Plaintiffs on price.

Plaintiffs' PUREWAVE CM-07 most recently sold on Amazon for \$124.94. By contrast, Defendants sell their Infringing Products on Amazon.com for \$108.17, thereby deliberately undercutting Plaintiffs.

85. On information and belief, Defendants are continuing to infringe the '197 patent, and/or induce others including the Corporate Defendants to infringe the '197 Patent by importing and/or making, using, offering for sale, and selling, products that infringe the '197 Patent including the Infringing Products.

86. On information and belief, Defendants are continuing to infringe Plaintiffs' copyrights by printing, distributing, and/or otherwise reproducing and benefiting from a user manual and promotional text and graphics that constitute copies of Plaintiffs' copyright-protected materials, including, without limitation, distributing Infringing Products together with Defendants' User Manuals that constitute copies of, and thus copyright infringements of, Pado's User Manuals.

87. On information and belief, Defendants are continuing to infringe Plaintiffs' PUREWAVE trademark and passing off their own Infringing Products as being Plaintiffs' PUREWAVE massager, by using Plaintiffs' trademark PUREWAVE and colorable imitations thereof within their advertising and promotional materials.

88. On information and belief, Defendants, as a result of the foregoing acts, intentionally, willfully, and knowingly adopted a design that is virtually identical to the '197 Patent, copied Plaintiffs' promotional materials, and used a trademark that is identical to the PUREWAVE Marks, both in, *inter alia*, an effort to trade on Plaintiffs' goodwill and fame and to undercut the sales of genuine products.

Pado's Amazon Marketplace

89. On information and belief, Amazon is the world's largest online retailer.

90. Amazon's online e-commerce platform allows for third parties, like Pado, to sell products on its e-commerce platform.

91. The privilege of selling on Amazon is highly advantageous, as Amazon provides third parties with exposure to the world marketplace on a scale that no other online retailer can currently provide.

92. Since at least as early as 2015, Pado, and its predecessor-in-interest, have had a contractual and business relationship with Amazon, such that Pado was permitted to sell products on Amazon's e-commerce platform.

93. Sellers, like Pado, create an online storefront on Amazon. When a customer buys a product on Amazon, the customer can see the online store from which the customer is purchasing a product. Thus, Pado has the online equivalent of a brick-and-mortar store.

94. Pado sells products through various channels, including through an Amazon storefront named "PADO."

95. A significant portion of Pado's business is derived from the sale of products through its Amazon storefront.

96. Pado has invested significant time and money into developing a successful and reputable Amazon storefront.

97. Any harm that comes to the relationship between Pado and Amazon creates the potential for serious and irreparable injury to Pado.

Pado's PUREWAVE Application is Blocked by Sigma Instruments' Registration

98. Pado owns United States Trademark Application Serial No. 88470482 PUREWAVE, covering "Hand-held electric massage apparatus for therapeutic non-cosmetic purposes, namely, hand-held electric massagers for massaging the back, neck, feet, arms, and legs" in International Class 10 (the "PUREWAVE Application").

99. On November 26, 2019, the PTO made final the refusal to register the PUREWAVE Application, based on a likelihood of confusion with United States Trademark Registration No. 4925190 PURWAVE, covering “device for non-surgical cosmetic treatments, namely, an electric massage apparatus,” which at the time was owned by Sigma Instruments, Inc. (“Sigma Instruments”).

100. On information and belief, Sigma Instruments had not sold any products under the PURWAVE mark for more than 3 years and had no intention of resuming use of the PURWAVE mark.

101. On information and belief, Sigma Instruments had not used its PURWAVE mark in commerce for a period of more than 3 years, creating a *prima facie* case of abandonment under 15 U.S.C. § 1127.

102. Sigma Instruments knew of Pado’s use of the PUREWAVE trademark in connection with electronic massagers at least as early as March 2017.

103. Despite having actual knowledge of Pado’s use of the PUREWAVE mark, Sigma Instruments took no action against Pado or otherwise enforced its mark.

104. On information and belief, Sigma Instruments never demanded that Pado stop using the PUREWAVE mark because Sigma Instruments had stopped using the PURWAVE mark and decided not to resume using the mark.

105. On November 27, 2019, Pado wrote Sigma Instruments to inquire whether it was interested in an amicable resolution to registering Pado’s PUREWAVE mark, and noted that “it appears that Sigma Instruments has not sold the PURWAVE product for several years.”

Defendants Acquire the Abandoned PURWAVE Registration

106. A little over a month after Pado filed this action and before defendants SG Trademark, Moshe Friedman and Hershel Friedman responded to Pado’s complaint, on

December 30, 2019, SG Trademark obtained Sigma Instruments' U.S. Registration No. 4925190 PURWAVE (the "Registration"). A copy of the assignment for U.S. Registration No. 4925190 (the "Purported Assignment") filed with the PTO is attached as **Exhibit 15**.

107. The Purported Assignment is from Sigma Instruments to a non-existent company, namely, "SG Trademark Holding Co." In contrast, Defendant SG Trademark is "SG Trademark Holding Co LLC."

108. On information and belief, Sigma Instruments was not, at the time of the Purported Assignment, using the PURWAVE mark in connection with "device for non-surgical cosmetic treatments, namely, an electric massage apparatus," and had not used the mark on those products for at least 3 years.

109. On information and belief, Sigma Instruments was not, at the time of the Purported Assignment, using the PURWAVE mark in connection with any goods or services, and had not used the mark on any products or services for at least 3 years.

110. On information and belief, Sigma Instruments abandoned the PURWAVE mark, pursuant to 15 U.S.C. § 1127, prior to December 30, 2019, the date of the Purported Assignment.

111. On information and belief, the Purported Assignment did not include any genuine goodwill or tangible assets of any business associated with the PURWAVE mark.

112. The Purported Assignment is invalid because Sigma Instruments abandoned the PURWAVE trademark prior to December 30, 2019, the date of the Purported Assignment, including both abandonment through failure to use with no intention to resume using, and abandonment through failure to police the mark.

113. The Purported Assignment is an invalid assignment-in-gross.

114. On information and belief, defendants Moshe Friedman and Hershel Friedman directed SG Trademark to acquire the Registration from Sigma Instruments.

115. On information and belief, Defendants knew that Sigma Instruments had abandoned the PURWAVE mark before the Purported Assignment.

116. On information and belief, Defendants never had plans to use the PURWAVE mark in commerce.

117. On information and belief, Defendants do not currently have plans to use the PURWAVE mark in commerce.

118. On information and belief, Defendants did not care that Sigma Instruments had abandoned the PURWAVE mark because they acquired the Registration in bad faith to multiply these proceedings, to disrupt the sale of Plaintiffs' genuine products, and to frustrate Plaintiffs' attempts to stop Defendants' infringing conduct.

119. On January 9, 2020, soon after it learned of the Purported Assignment, Pado petitioned to cancel the Registration with the Trademark Trial and Appeal Board on the grounds that the mark is abandoned and the assignment to defendant SG Trademark was invalid (the "Cancellation"). The Cancellation is captioned as *Pado, Inc. v. SG Trademark Holding Co*, Cancellation No. 92073255.

Defendants File Fraudulent Takedown Notices Against Pado's Genuine Products

120. On or about January 16, 2019, despite knowing that Sigma Instruments abandoned the PURWAVE mark and that the assignment was invalid, Defendants' counsel Tuvia Rotberg submitted a complaint with Amazon claiming that Pado's genuine PUREWAVE products infringe the Registration (the "Amazon Complaint"). A copy of the emails received by Pado from Amazon concerning the Amazon Complaint are attached collectively as **Exhibit 16**.

121. In response to the Amazon Complaint, Amazon removed the product listing for Pado's genuine PUREWAVE product from Pado's online store.

122. On information and belief, Defendants knew that the Amazon Complaint was baseless.

123. To date, Amazon has refused to re-list Pado's removed product listings and has rebuffed Pado's attempts to restore the listings.

124. On information and belief, on or about January 16, 2019, Defendants submitted complaints to remove Pado's PUREWAVE social media accounts, including Instagram, Twitter and Facebook, claiming that Pado's genuine PUREWAVE products infringe the Registration (the "Social Media Complaints").

125. In response to the complaints, Instagram, and Twitter removed Pado's PUREWAVE social media accounts.

126. Facebook is considering whether to remove Pado's PUREWAVE social media account.

127. On information and belief, Defendants knew that the Social Media Complaints were baseless.

128. On information and belief, defendants Moshe Friedman and Hershel Friedman directed Mr. Rotberg to file the Amazon Complaint and the Social Media Complaints.

129. On information and belief, the Corporate Defendants directed Mr. Rotberg to file the Amazon Complaint and the Social Media Complaints.

130. On information and belief, Defendants submitted the Amazon Complaint and the Social Media Complaints to disrupt the sale of Plaintiffs' genuine products and to damage Plaintiffs' reputation and goodwill.

131. Defendants alleged in the now-moot Counterclaims that “it is well-known among brand owners that Amazon has a policy of acting on virtually any notice of intellectual property infringement, whether legitimate or not.” (Dkt. No. 22 at ¶ 107).

132. Defendants further quoted an “Amazon expert” that:

In order to meet a minimum liability standard, Amazon will act upon properly submitted and completed notice claims of infringement. They will notify specified marketplace sellers which party reported them, on what listing, and how to reach that would-be rights owner via email. The rest though, is up to you. And, unless you (and possibly your legal team) can prove that the Notice claim is false, Amazon considers it valid and actionable.

Unfortunately, word is out among potential Notice claim abusers that anyone can submit a form. Amazon [is] not worried about additional vetting or verification processes. Investigators merely check the form for completed content in all the right spaces, kill the listings and send off the notifications.

They don’t independently verify that any of the information is actually correct, or valid. The rights owner makes a legally-binding declaration in the form, and signs it.

(*Id.* at ¶ 107) (citing Chris McCabe, *False Infringement Claims are Rife on Amazon*, WebRetailer (Apr. 11, 2018), available at <https://www.webretailer.com/lean-commerce/false-infringement-claims-amazon/> (emphasis in original)).

133. Defendants further alleged in their now-moot Counterclaims that “[i]t is well-known that complaints to Amazon put Amazon sellers in jeopardy of a full selling suspension,” Dkt. No. 22 at ¶ 116. Defendants were therefore aware that any complaint to Amazon may affect Pado’s ability to sell products on Amazon.

134. Accordingly, Defendants were, at all times, aware of the foregoing Amazon policy with regard to reports of intellectual property infringement.

135. Defendants were, at all relevant times, aware that Amazon will act on reports that a product is infringing a trademark, regardless of the truth of the report.

136. Defendants filed the Amazon Complaint and the Social Media Complaints alleging Pado's genuine products infringe the abandoned PURWAVE mark, even though they knew, or should have known, that such allegations were false.

137. Defendants filed the Amazon Complaint and the Social Media Complaints alleging Pado's genuine products infringe the abandoned PURWAVE mark, even though they knew, or should have known, that the Purported Assignment of the PURWAVE mark and Registration was to a non-existent entity, namely, "SG Trademark Holding Co".

138. The Amazon Complaint and the Social Media Complaints are signed under penalty of perjury by an employee or agent of SG Trademark.

139. On information and belief, Defendants' allegations that Pado's genuine PUREWAVE products infringe the Registration was knowingly false and made in bad faith.

140. Pado's PUREWAVE product listings and advertising materials have been taken down in response to Defendants' Amazon and Social Media Complaints, resulting in immediate loss of revenue and goodwill.

141. Defendants filed the Amazon and Social Media Complaints even though they knew, or should have known, that the PURWAVE mark was abandoned and that the Purported Assignment was invalid.

142. Defendants therefore knowingly made multiple false intellectual property rights complaints against Pado.

143. On information and belief, Defendants submitted the Amazon Complaints and the Social Media Complaints to disrupt Pado's business, to ensure that Amazon and the social media websites permanently suspended Pado's accounts and to obtain an unfair advantage

in this lawsuit, thereby essentially obtaining injunctive relieve without showing any proof, even though they know that they are not entitled to such relief.

144. As a result of Defendants' Amazon Complaints and the Social Media Complaints, Pado's goodwill and online product rankings and other metrics have been, and continue to be, irreparable damaged.

145. As a result of Defendants' Amazon Complaints and the Social Media Complaints, Pado has lost, and continues to lose, significant revenue and marketplace standing.

COUNT I

Patent Infringement (35 U.S.C. § 271)

146. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

147. In violation of 35 U.S.C. § 271(a), the Corporate Defendants have infringed and are continuing to infringe, literally or under the doctrine of equivalents, the '197 Patent by practicing the '197 Patent in their manufacture, use, offering for sale, sale and/or importation of massagers that incorporate the '197 Patent

148. In violation of 35 U.S.C. § 271(b), the Individual Defendants, after having actual knowledge of the '197 Patent, induced others including the Corporate Defendants to infringe the '197 Patent,

149. On information and belief, Defendants' conduct was and is willful and intentional, and the Individual Defendants personally directed and authorized the manufacture, use, offering for sale, sale and/or importation of the Infringing Products, including by personally directing and supervising the construction and maintenance of websites and online stores from

which the Infringing Products are sold, and by personally directing and supervising the preparing of advertising and marketing material used to sell the Infringing Products.

150. Defendants' wrongful acts will continue unless enjoined by this Court.

151. Plaintiffs have no adequate remedy at law and are suffering irreparable harm and damage as a result of the aforesaid acts of Defendants in an amount thus far not determined.

152. On information and belief, Plaintiffs have lost profits and Defendants have obtained gains, profits and advantages as a result of their wrongful acts in an amount thus far not determined.

COUNT II

Copyright Infringement (17 U.S.C. § 501)

153. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

154. Defendants' conduct as alleged herein constitutes copyright infringement in violation of 17 U.S.C. § 501.

155. On information and belief, Defendants' conduct was and is willful and intentional and that the Individual Defendants personally directed and authorized the creation and distribution of the infringing advertising and promotional material.

156. In addition to being directly liable, on information and belief, the Individual Defendants are vicariously liable because they had the right and ability to supervise the infringing conduct and had a direct financial interest in the exploitation of the copyrighted materials.

157. In addition to being directly liable, on information and belief, the Individual Defendants are vicariously liable because they authorized the infringing activity.

158. In additional to being directly liable, on information and belief, the Individual Defendants are vicariously liable because they were dominant influences in the Corporate Defendants and determined the policies which resulted in the infringements.

159. Defendants' wrongful acts will continue unless enjoined by this Court.

160. Plaintiffs have no adequate remedy at law and are suffering irreparable harm and damage as a result of the aforesaid acts of Defendants in an amount thus far not determined.

161. On information and belief, Defendants have obtained gains, profits and advantages as a result of their wrongful acts in an amount thus far not determined.

COUNT III

False Designation of Origin and Unfair Competition (15 U.S.C. § 1125(a))

162. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

163. As alleged herein, the PUREWAVE trademark acquired secondary meaning prior to Defendants' misappropriation of that term to designate their Infringing Products and pass them off as being genuine PUREWAVE massagers. Moreover, Defendants' intentional use of the "Pure Wave" name, in concert with pricing below that of PUREWAVE massagers and thereby "passing off" of Defendants' goods as though they were Plaintiffs', is *prima facie* evidence of the secondary meaning of the PUREWAVE trademark.

164. Defendants' conduct as alleged herein constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

165. On information and belief, Defendants' conduct was and is willful and intentional, and that the Individual Defendants personally directed and authorized the creation and distribution of the infringing advertising and promotional material.

166. Defendants' wrongful acts will continue unless enjoined by this Court.

167. Plaintiffs have no adequate remedy at law and are suffering irreparable harm and damage as a result of the aforesaid acts of Defendants in an amount thus far not determined.

168. On information and belief, Defendants have obtained gains, profits and advantages as a result of their wrongful acts in an amount thus far not determined.

COUNT IV

Trademark Infringement Under New York Common Law

169. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

170. Pado owns all right, title, and interest in and to the PUREWAVE Marks, including all common law rights in such marks.

171. The aforesaid acts of Defendants constitute trademark infringement in violation of the common law of the State of New York.

172. On information and belief, by their acts, Defendants have made and will make substantial profits and gains to which they are not in law or equity entitled.

173. On information and belief, Defendants' conduct was and is willful and intentional and that the Individual Defendants personally directed and authorized the creation, distribution, and use of the infringing materials including the "Pure Wave" Mark.

174. On information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court.

175. Defendants' acts have damaged and will continue to damage Plaintiffs, and Plaintiffs have no adequate remedy under law.

COUNT V

Unfair Competition Under New York Common Law

176. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

177. With knowledge of the fame and distinctiveness of Plaintiffs' PUREWAVE Marks, Defendants intend to and did trade on the goodwill associated with the PUREWAVE Marks by importing, producing, promoting, distributing, offering for sale, and selling products that are identical to the products sold under the PUREWAVE Marks.

178. On information and belief, Defendants' conduct was and is willful and intentional and that the Individual Defendants personally directed and authorized the creation, distribution, and use of the PURE WAVE mark.

179. Defendants' acts as alleged herein are likely to cause confusion, mistake, and deception to consumers as to the affiliation, connection, or association of Defendants with Plaintiffs, and as to the origin, sponsorship, or approval of the Infringing Products by Plaintiffs all to the detriment and damage of Plaintiffs and the unjust enrichment of Defendants.

180. Plaintiffs have no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiffs will suffer immediate and continuing irreparable harm and injury to their reputation and to the goodwill and distinctiveness in the PUREWAVE Marks.

COUNT VI

**Injury to Business Reputation and Dilution Under New York Law
(New York General Business Law § 360-1)**

181. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

182. The aforesaid acts of Defendants have diluted, and will likely continue to dilute, the unique and distinctive quality of the PUREWAVE Marks and are likely to injure Plaintiffs' business reputation, in violation of New York General Business Law § 360-1.

183. Defendants knew and intended their acts to dilute the PUREWAVE Marks and to injure Plaintiffs' business and reputation.

184. The aforesaid acts of Defendants have caused, and will continue to cause, great and irreparable injury to Plaintiffs, and unless said acts are restrained by this Court, Plaintiffs will continue to suffer great and irreparable injury.

185. Defendants' acts have damaged and will continue to damage Plaintiffs, and Plaintiffs have no adequate remedy under law. Plaintiffs are therefore entitled to injunctive relief.

COUNT VII

Deceptive Trade Practices (New York General Business Law § 349)

186. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

187. Defendants' aforementioned acts constitute misleading and deceptive trade practices under New York General Business Law § 349.

188. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, and profits while Defendants profit at their expense.

189. Plaintiffs have suffered irreparable harm and have no adequate remedy at law from the harm caused by Defendants' acts as alleged herein. Unless Defendants are permanently enjoined by the Court, Plaintiffs will continue to suffer irreparable harm.

COUNT VIII

**Cancellation of U.S. Trademark Registration No. 4925190
(15 U.S.C. § 1064)**

190. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

191. Defendant SG Trademark is the current record owner of the Registration.

192. The Registration was cited against Pado's U.S. Trademark Application Serial No. 88470482 for the mark PUREWAVE.

193. Defendant SG Trademark acquired the Registration from Sigma Instruments by the Purported Assignment, dated December 30, 2019.

194. On information and belief, Sigma Instruments stopped using the PURWAVE trademark in connection with any goods or services in commerce at least 3 years ago and never intended to resume using the mark.

195. On information and belief, by the date of the Purported Assignment, Sigma Instruments had stopped using the PURWAVE trademark in connection with any goods or services and never intended to resume using the mark.

196. Sigma Instruments abandoned the PURWAVE mark, as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127, before defendant SG Trademark acquired the mark.

197. Sigma Instruments abandoned the PURWAVE mark, as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127, before defendant SG Trademark acquired the mark, at least by failure to police the mark.

198. On information and belief, Defendants never had, and currently have no plans to use the PURWAVE mark on any products or services.

199. Pado seeks cancellation of defendant SG Trademark's U.S. Trademark Registration No. 4925190, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

COUNT IX

Tortious Interference with Contractual Relations

200. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

201. Pado has an advantageous business relationship with Amazon, which allows Pado to sell products on Amazon's online marketplace.

202. Pado has a contractual relationship with Amazon.

203. Pado has an advantageous business relationship with various social media websites, including Instagram, Twitter and Facebook, which allow Pado to advertise its products and direct customers to purchase its products.

204. Pado has a contractual relationship with various social media websites, including Instagram, Twitter and Facebook.

205. At all relevant times, Defendants were aware of Pado's relationship with Amazon and the social media websites, as well as the benefits of those relationships.

206. Defendants knowingly and improperly interfered with Pado's advantageous and contractual relationships with Amazon and the social media websites by submitting the Amazon Complaint and the Social Media Complaints.

207. Defendants conduct disrupted Pado's relationship and contract with Amazon and the social media websites.

208. Defendants intended to cause Amazon to suspend Pado's ability to sell its genuine PUREWAVE products on Amazon and therefore interfere with Pado's business relationship with Amazon.

209. Defendants intended to cause social media websites to suspend Pado's ability to advertise its genuine PUREWAVE products on social media websites and therefore interfere with Pado's business relationship with those social media websites.

210. Defendants had actual knowledge that their actions would cause Amazon to suspend Pado's ability to sell the PUREWAVE products on Amazon's online marketplace.

211. Defendants had actual knowledge that their actions would cause the social media websites to remove Pado's PUREWAVE accounts.

212. Defendants' allegations of infringement made to Amazon and the social media websites were for the improper purpose of suppressing competition.

213. Defendants' allegations of infringement interfered with Pado's business relationship with Amazon and the social media websites and caused the removal of Pado's PUREWAVE product listings and social media accounts.

214. Defendants' representations to Amazon and the social media websites were false and made in bad faith.

215. Defendants' acts complained of herein constitute tortious interference with Pado's agreements with Amazon and the social media companies.

216. Pado has been and continues to be damaged by Defendants' misrepresentations.

217. Pado has suffered, and continues to suffer, injury and unless Defendants are enjoined from such activity, Pado will continue to suffer injury.

COUNT X

**False or Misleading Representation and Unfair Competition
(15 U.S.C. § 1125)**

218. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

219. Pado and Defendants compete for sales of electronic massagers.

220. Pado has a commercial interest in its commercial and business reputation.

221. Pado has established a business reputation as a trusted seller of genuine products on Amazon's marketplace and on social media websites.

222. Defendants knowingly made false, misleading, and defamatory statements in commerce through infringement reporting tools on various website and online marketplaces, including, without limitation, Amazon, Instagram, Twitter, and Facebook, relating to Pado's PUREWAVE products. These statements deceived Amazon, Instagram, Twitter, and Facebook and are likely to deceive users of those websites and marketplaces into believing that Pado's PUREWAVE products infringe the Registration, thereby materially affecting their decision and ability to purchase Pado's products.

223. Defendants' complaints were designed to advance their business interests by removing Pado's genuine PUREWAVE products from online marketplaces and social media accounts, increasing Defendants' market share.

224. Defendants' false and misleading representations constitute advertising and were made to actual and prospective customers by way of the reports to Amazon, Instagram, Twitter, and Facebook.

225. Defendants' false and misleading representation of Pado's alleged infringement has misled, confused, and deceived customers and prospective customers as to

Pado's reputation, and continue to mislead, confuse, and deceive customers and prospective customers as to Pado's reputation.

226. Defendants false and misleading representations had, and continue to have, a material effect on Pado's customers' and prospective customers' decision to do business with Pado.

227. Defendants have made these false and misleading representations in interstate commerce and these false and misleading representations have affected, and continue to affect, interstate commerce.

228. On information and belief, Defendants had actual knowledge that Defendants had no support for the Amazon Complaint and the Social Media Complaint, but submitted the complaints to induce customers to purchase their Infringing Products instead of Pado's genuine products.

229. Defendants' false and misleading representations have directly caused, and continue to cause, Pado to suffer a loss of goodwill, a loss of sales, and damage to its commercial and business reputation.

230. Defendants wrongful acts alleged herein constitute false and misleading representations of fact and unfair competition under 15 U.S.C. § 1125.

231. As a result of Defendants' wrongful acts alleged herein, Pado has suffered, and continues to suffer, irreparable injury, for which Pado has no adequate remedy at law.

232. Defendants will continue their unlawful conduct unless enjoined by this Court.

COUNT XI

**Declaratory Judgment of No Trademark Infringement, False Designation of Origin, and Unfair Competition
(28 U.S.C. § 2201)**

233. Plaintiffs reallege and incorporate here by reference the allegations set forth above.

234. Defendant SG Trademark has accused Plaintiffs of trademark infringement under 25 U.S.C. § 1114 and false designation of origin and unfair competition under 25 U.S.C. § 1125(a), *see* Dkt. No. 22 at ¶¶ 188-203, based on Plaintiffs' use of the mark PUREWAVE in connection with massager products.

235. Defendants have asserted to third parties, including, without limitation, Amazon, Facebook, Twitter and Instagram, that Plaintiffs PUREWAVE products infringe the Registration and the PURWAVE trademark.

236. Plaintiffs deny the allegations of trademark infringement, false designation of origin and unfair competition.

237. Defendant SG Trademark's allegations pose an immediate threat to Plaintiffs' business (including its reputation, relationship and goodwill with customers), and will continue to harm Plaintiffs until such claims are resolved.

238. As a result, there exists an actual case or controversy between the parties regarding their respective rights and legal relations; specifically, whether Plaintiffs have infringed defendant SG Trademark's trademark.

239. Plaintiffs have no adequate remedy at law and therefore request that this Court declare the respective rights and obligations of the parties pursuant to 28 U.S.C. § 2201; specifically, that the final judgment in this action include a declaration by this Court that Plaintiffs have not infringed defendant SG Trademark's asserted trademarks.

240. Plaintiffs also seek any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment against Defendants as follows:

1. Finding that: (i) Defendants have infringed U.S. Patent No. D855,197 in violation of 35 U.S.C. § 271; (ii) Defendants have committed copyright infringement in violation of 17 U.S.C. § 501; (iii) Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iv) Defendants have engaged in unfair competition and false advertising under section 43 of the Lanham Act, 15 U.S.C. § 1125; (v) Defendants have engaged in unfair competition, false designation of origin, and dilution under common law of the State of New York; (vi) Defendants have engaged in trademark infringement and unfair competition under the common law of the State of New York; (vii) Defendants have violated N.Y. Gen. Bus. Law §360-1; (viii) Defendants have violated N.Y. Gen. Bus. Law §360-1; (ix) Defendants have been unjustly enriched in violation of the common law of the State of New York; (x) the PURWAVE mark is abandoned; (xi) Defendants have committed acts of tortious interference of contract and business relations; (xii) Defendants' infringements were willful; and (xiii) Plaintiffs have not infringed defendant SG Trademark's asserted trademark, falsely designated the origin of their, or engaged in unfair competition.

2. Granting an injunction preliminarily and permanently restraining and enjoining Defendants, their officers, agents, employees and attorneys, and all those persons or entities in active concert or participation with them, or any of them anywhere, from:

(a) importing, producing, exporting, advertising, marketing, promoting, supplying, distributing, selling, or offering for sale the Infringing Products;

(b) importing, producing, exporting, advertising, marketing, promoting, supplying, distributing, selling, or offering for sale any products which bear the PUREWAVE Marks, or any other mark substantially or confusingly similar thereto, including, without limitation, the Infringing Products, and engaging in any other activity constituting an infringement of any of Plaintiffs' rights in the PUREWAVE Marks or any other trademark owned by Plaintiffs;

(c) making, copying, distributing, or publishing the Defendants' User Manuals;

(d) passing off, inducing, or enabling others to sell or pass off any product as products produced by Plaintiffs, which are not in fact Plaintiffs' products, or not produced under the control and supervision of Plaintiffs and approved by Plaintiffs for sale under the PUREWAVE Marks;

(e) engaging in any other activity constituting unfair competition with Plaintiffs, or acts and practices that deceive the public and/or the trade, including, without limitation, the use of designations and indicia associated with Plaintiffs;

(f) engaging in any activity that will diminish the unique and distinctive quality of the PUREWAVE Marks and harm the reputation and goodwill in the PUREWAVE Marks;

(g) otherwise competing unfairly with Plaintiffs in any manner;

(h) shipping, delivering, transferring, or otherwise disposing of, in any manner, products or inventory which bear Plaintiffs' PUREWAVE Marks or any mark confusingly similar thereto; and

(i) secreting, destroying, altering, removing, or otherwise making unavailable any document or record pertaining to the Infringing Products, or any books or records which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of the Infringing Products.

3. Cancelling defendant SG Trademark's U.S. Trademark Registration No. 4925190 for the mark PURWAVE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

4. Directing that Defendants shall deliver to Plaintiffs for destruction all infringing user manuals, and all plates, molds, matrices and other means of production of same under 17 U.S.C. § 503.

5. Directing that Defendants remove any simulation, reproduction, counterfeit, copy, or colorable imitation of the PUREWAVE Marks, or any mark confusingly similar thereto, from any and all advertising in any medium and/or websites under their control, including, but not limited to www.mightybliss.com and any relevant third party retailer, advertiser, or marketing affiliate.

6. Directing that Defendants deliver to Plaintiffs' counsel for destruction at Defendants' cost all signs, products, packaging, promotional and advertising material, catalogs, and any other items that bear, contain, or incorporate any simulation, reproduction, counterfeit, copy, or colorable imitation of the PUREWAVE Marks.

7. Directing Defendants to affirmatively withdraw, in writing, any and all complaints made by Defendants or anyone acting under Defendants' control, asserting that Pado's PUREWAVE products infringe U.S. Trademark Registration No. 4925190 or the PURWAVE trademark, including the Amazon Complaint and the Social Media Complaints.

8. Directing other such relief as the Court may deem appropriate to prevent the public from receiving any erroneous impression that any product at issue in this case, that has been produced, exported, advertised, marketed, promoted, supplied, distributed, sold, or offered for sale by Defendants, has been authorized by Plaintiffs, or is related to or associated in any way with Plaintiffs or their products.

9. Directing Defendants to file with the Court and serve upon Plaintiffs, within thirty (30) days after service upon Defendants of this Court's final judgment issued in this action, a statement, signed under oath, setting forth the manner and form in which Defendants has complied with the injunction herein.

10. Awarding damages under 35 U.S.C. § 284, and of the Defendants' totals profits but not less than \$250 under 35 U.S.C. § 289, for their infringements of the '197 Patent, together with pre- and post-judgment interest.

11. Awarding treble damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.

12. Awarding attorney fees pursuant to 35 U.S.C. § 285, 17 U.S.C. § 505, and 15 U.S.C. § 1117.

13. Awarding damages and Defendants' profits under 17 U.S.C. § 504 for Defendants' acts of copyright infringement.

14. Awarding Plaintiffs damages and Defendants' profits pursuant to 15 U.S.C. § 1117.

15. Awarding punitive damages under New York state law.

16. Awarding the costs of this action.

17. Directing that Defendants account to and pay over to Plaintiffs all profits realized by their wrongful acts and directing that such profits be trebled, as provided by law.

18. Awarding Plaintiffs their actual damages in the amount to be proven at trial and punitive damages in an amount to be proven at trial.

19. Awarding Plaintiffs their costs, attorney fees, and investigatory fees and expenses to the full extent provided for by and relief under 15 U.S.C. §§ 1116-1118 and N.Y. Gen. Bus. Law §§ 349 and 360-1.

20. Awarding Plaintiffs pre- and post-judgment interest on any monetary award made part of the judgment against Defendants.

21. Awarding Plaintiffs such additional and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule 38(d), Plaintiffs hereby demand a jury trial on all issues so triable that are raised by this Complaint.

Dated: January 28, 2020

By: /s/ Alan B. Clement

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2020, I filed the foregoing via the Court's CM/ECF system which will automatically send electronic notice of such filing to all registered counsel of record.

/s/Alan B. Clement
Alan B. Clement