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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 THERAGUN, INC, a Delaware
corporation,

12 Plaintiff,

13 v.

14 ACHEDAWAY (SHENZHEN)
15 TECHNOLOGY CO., LTD, a Chinese
limited company; TIM TIAN, an
16 individual; SHANGHAI DOBI TRADE
CO., LTD., a limited company; and
17 4PX EXPRESS USA, a California
corporation,

18 Defendants.
19

Case No. 2:20-cv-01714

**COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT
NO. D849260**

DEMAND FOR JURY TRIAL

1 Plaintiff Theragun, Inc. (“Theragun”) brings this action against Defendants
2 Achedaway (Shenzhen) Technology Co., Ltd., Tim Tian, Shanghai Dobi Trade Co.,
3 Ltd., and 4PX Express USA.

4 **THE PARTIES**

5 1. Theragun is, and at all times relevant hereto was, a corporation duly
6 organized and existing under the laws of the state of Delaware, with its principal place
7 of business at 9420 Wilshire Blvd., Fourth Floor, Beverly Hills, California 90212.

8 2. Theragun is informed and believes and thereon alleges that defendant
9 AchedAway (Shenzhen) Technology Co., Ltd. (“AchedAway”) is, and at all times
10 relevant hereto was, a limited company duly organized and existing under the laws of
11 China, with offices at Pengxiang Building, Room 605, Longhua District, Shenzhen,
12 China 518109.

13 3. Theragun is informed and believes and thereon alleges that defendant
14 Tim Tian (“Tian”) is, and at all times relevant hereto was, an individual over the age
15 of eighteen residing in China.

16 4. Theragun is informed and believes and thereon alleges that defendant
17 Shanghai Dobi Trade Co., Ltd. (“Shanghai”) is, and at all times relevant hereto was,
18 a limited company, with offices 5620 Grace Place, Commerce, California 90022.

19 5. Theragun is informed and believes and thereon alleges that defendant
20 4PX Express USA (“4PX”) is, and at all times relevant hereto was, a corporation duly
21 organized and existing under the laws of the State of California, with offices at 5600-
22 5650 Grace Place, Commerce, California 90022.

23 6. Defendants AchedAway, Tian, Shanghai, and 4PX shall be referred to
24 herein collectively as “Defendants” and individually as a “Defendant.”

25 7. Theragun is informed and believes and thereon alleges that Defendants
26 conduct business at 5620 Grace Place, Commerce, California 90022, including
27 making, using, selling, offering for sale, or importing the infringing products at or
28 from this facility, which is located in this judicial district.

8. Theragun is informed and believes and thereon alleges that each of the Defendants conspired and acted in concert with one another to commit the wrongs against Theragun alleged herein, and in doing so were at all relevant times the agents, servants, employees, principals, joint venturers, alter egos, and/or partners of each other. Theragun is further informed and believes and on that basis avers that, in doing the things alleged in this Complaint, each of the Defendants was acting within the scope of authority conferred upon that Defendant by the consent, approval, and/or ratification of the other Defendants. Theragun is further informed and believes and thereon alleges that Tian is the owner of AchedAway and, as such, Tian controlled and directed, and financially benefited from, all of the unlawful activities alleged herein; had an apparent or actual partnership with the persons or entities that conspired with it to engage in the unlawful acts alleged herein; has induced and continues to induce such persons or entities to engage in such unlawful conduct; has supplied and continues to supply unlawful products and services to such persons or entities with knowledge that they are unlawful; had and has authority to bind such persons or entities in transactions with third parties concerning the subject matter of such unlawful conduct; and exercises direct ownership of, control over, and monitoring of the infringing products and services described herein.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271.

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a)-(b) because it involves substantial claims arising under the patent laws.

11. Theragun is informed and believes and thereon alleges that Defendants conduct business at 5620 Grace Place, Commerce, California 90022, including making, using, selling, offering for sale, shipping, or importing the infringing products at or from this facility, which is located in this judicial district. Thus, this

1 Court has personal jurisdiction over Defendants and venue is proper in this court
2 pursuant to 28 U.S.C. § 1400(b) because, among other things, Defendants have a
3 regular and established place of business in this judicial district and Defendants have
4 committed acts of infringement, including the infringing acts complained of herein.

5 **GENERAL ALLEGATIONS**

6 12. On May 21, 2019, the United States Patent and Trademark Office issued
7 United States Patent Number D849260, entitled “Massage Element” (hereinafter “the
8 ‘260 Patent”). A true and correct copy of the ‘260 Patent is attached hereto as Exhibit
9 1.

10 13. Theragun is the owner of the ‘260 Patent.

11 14. The ‘260 Patent pertains to a particular ornamental design for an
12 attachment for percussive massage devices. The attachment head disclosed and
13 claimed in the ‘260 Patent includes several ornamental features, including a circular
14 dome-shaped head that comes to a “flattened” point. The dome-shaped head is placed
15 atop a bottom piece that decreases in radius as it approaches the dome-shaped head.
16 The bottom piece has a circular rounded ridge extending beyond the circumference of
17 the dome-shaped head. The bottom piece nests under the dome-shaped head and,
18 because of its unique shape relative to the dome-shaped head, forms a crevice or slot
19 between the dome-shaped head and the bottom piece. These ornamental features,
20 among others, give the attachment its distinct patented design.

21 15. Theragun is in the business of developing, manufacturing and selling
22 percussive therapy devices. Theragun invests considerable time, effort and money in
23 developing and protecting its intellectual property. Theragun’s patented and patent-
24 pending devices are innovative and have received industry praise and recognition,
25 including the 2019 A’ Design Award in Digital and Electronic Devices Design for its
26 Theragun G3PRO design.

27 16. Theragun is informed and believes and based thereon alleges that
28 Defendants began competing with Theragun in the percussive massage device

1 industry by manufacturing and selling percussive massage devices equipped with a
 2 nearly identical head attachment to the design claimed in the '260 Patent (hereinafter
 3 the "Infringing Attachment"). In early October, 2019, Theragun first saw an online
 4 advertisement for Defendants' Infringing Attachment. Since then, Theragun has seen
 5 Defendants' Infringing Attachment being promoted in a number of locations,
 6 including on Defendants' website at www.achedaway.com (see image below).



17 17. The Infringing Attachment is integral to Defendants' product, as shown
 18 in the screengrab above from the Defendants' website. From this, it is apparent that
 19 Defendants have been actively advertising the Infringing Attachment, touting the
 20 product throughout a variety of markets and to numerous audiences. Theragun is
 21 informed and believes that Defendants sell their Infringing Attachment in the same
 22 marketing channels as Theragun, including online through its website, on Amazon
 23 and through social media advertising.

24 18. On October 16, 2019, Theragun notified Defendants by letter that their
 25 percussive device attachment infringes Theragun's '260 Patent and demanded that
 26 Defendants immediately cease the manufacture, offer for sale, sale, use and
 27 importation of the Infringing Attachment. On November 21, 2019 Defendants
 28 responded to Theragun's letter and but did not state that they would immediately cease

1 their infringing activities.

2 19. Notwithstanding Theragun's demand and in conscious disregard of
3 Theragun's intellectual property rights as set forth herein, Defendants have continued
4 to use the Infringing Attachment in conjunction with their percussive massage devices
5 and in direct competition with Theragun.

6 **FIRST CAUSE OF ACTION**

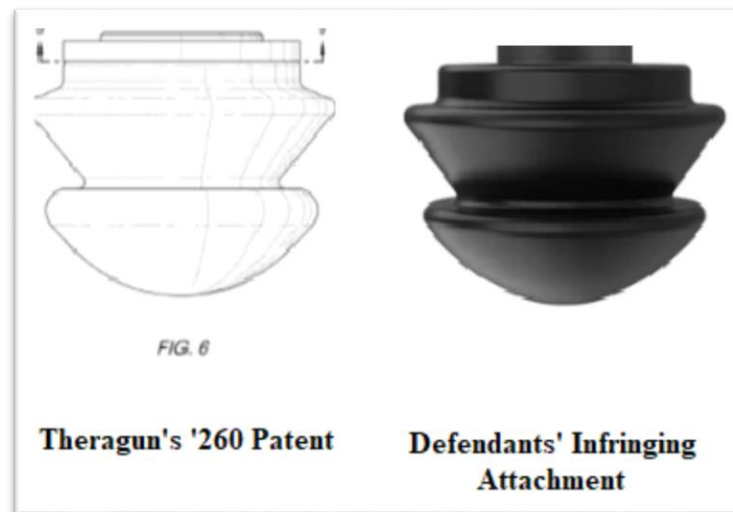
7 **Patent Infringement of the '260 Patent**

8 **(35 U.S.C. §§ 101 et seq.)**

9 20. Theragun realleges and incorporates by reference all paragraphs above
10 as if fully set forth herein.

11 21. At all times herein mentioned the '260 Patent was and is valid and fully
12 enforceable.

13 22. As shown below, a side by side comparison of Theragun's '260 Patent
14 and Defendants' Infringing Attachment quickly reveals that the Infringing
15 Attachment appears substantially the same as Theragun's '260 Patent to an ordinary
16 observer, the resemblance is such as to deceive such an observer, inducing him to
17 purchase one supposing it to be the other:



26 23. Defendants have and continue to directly infringe the '260 Patent by
27 making, using, offering for sale, selling and importing the Infringing Attachment in
28

1 conjunction with percussive massage devices competitive to Theragun.

2 24. Defendants' infringement is based upon literal infringement or
3 infringement under the doctrine of equivalents, or both.

4 25. At no time has Theragun granted Defendants authorization, license, or
5 permission to utilize the design claimed in the '260 Patent.

6 26. Theragun has been damaged by Defendants' acts of infringement of the
7 '260 Patent and Theragun will continue to be damaged by such infringement unless
8 enjoined by this Court. Theragun is entitled to recover damages adequate to
9 compensate for the infringement under 35 U.S.C. § 284.

10 27. Theragun is, and has been, irreparably harmed by Defendants' on-going
11 infringement including the following harm which cannot be quantified or recouped
12 through monetary damages: (1) lost market share that will be difficult, if not
13 impossible, to recoup later as the Infringing Attachment becomes entrenched with
14 retail sellers and trainers who recommend them to their clients, (2) loss of first mover
15 advantage that Theragun enjoyed as the first company to offer its innovative
16 percussive devices and patented attachments, (3) loss of Theragun's investment in
17 building up the market for percussive devices and its patented attachments, (4)
18 negative effect on its reputation as innovator and pioneer, (5) the unquantifiable effect
19 on lost sales of related products, (6) price erosion due to Defendants' Infringing
20 Attachment being sold at a price point lower than Theragun's patented product, (7)
21 diversion of resources to defend against loss of market share caused by sales of the
22 Infringing Attachment, and (8) Defendants' unauthorized sales that are enticing others
23 to offer for sale and sell infringing attachments that leads to additional irreparable
24 harm described above.

25 28. Defendants' acts of infringement have been, and continue to be, willful
26 and deliberate and therefore warrant the award of attorneys' fees pursuant to 35
27 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Theragun prays for judgment as follows:

A. For an order finding that the '260 Patent is valid and enforceable;

B. For an order finding that Defendants have infringed the '260 Patent directly, literally or by equivalents, in violation of 35 U.S.C. § 271;

C. For an order finding that Defendants' infringement is willful;

D. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '260 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

E. For an order directing Defendants to file with the Court, and serve upon Theragun's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which it has complied with the injunction;

F. For an order awarding Theragun damages adequate to compensate Theragun for the infringement by Defendants, including disgorgement of profits or gains of any kind made by Defendants from their infringing acts, lost profits and/or reasonable royalty, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate under 35 U.S.C. § 284;

G. For an order awarding Theragun pre-judgment interest and post-judgment interest at the maximum rate allowed by law;

H. For an order requiring an accounting of the damages to which Theragun is found to be entitled;

I. For an order declaring this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding Theragun its attorneys' fees;

J. For an order awarding Theragun its costs of court; and

1 K. Granting Theragun such other and further relief as the Court may deem
2 just and proper.

3
4 DATED: February 24, 2020

GREGORY S. CORDREY
ROD S. BERMAN
REMI T. SALTER
JEFFER MANGELS BUTLER & MITCHELL LLP

7 By: /s/ Remi T. Salter

8 REMI T. SALTER
9 Attorneys for Plaintiff Theragun, Inc.

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JMBM
Jeffer Mangels
Butler & Mitchell LLP

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

DATED: February 24, 2020

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By: /s/ Remi T. Salter

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