

1 John E. Lord (Bar No. 216111)
jlord@onellp.com
2 **ONE LLP**
9301 Wilshire Blvd.
3 Penthouse Suite
Beverly Hills, CA 90210
4 Telephone: (310) 866-5157
Facsimile: (310) 943-2085

5 Jenny S. Kim (Bar No. 282562)
jkim@onellp.com
6 **ONE LLP**
4000 MacArthur Blvd.
7 East Tower, Suite 500
Newport Beach, CA 92660
8 Telephone: (949) 502-2870
9 Facsimile: (949) 258-5081

10 Attorneys for Plaintiff
11 Ad-N-Art Inc.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15
16 AD-N-ART INC., a Canadian
corporation,

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18 Plaintiff,

19 v.

20 AMAZON.COM, INC., a Delaware
21 corporation,

22 Defendant.
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Case No. 2:20-cv-02233

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Ad-N-Art Inc. (“Ad-N-Art” or “Plaintiff”) hereby complains and
2 alleges against Defendant Amazon.com, Inc. (“Amazon” or “Defendant”) as
3 follows:

4 **PARTIES**

5 1. Plaintiff Ad-N-Art is a Canadian corporation with its principal offices
6 located at 5760 Andover, Montreal, QC H4T 1H4, Canada.

7 2. Ad-N-Art is informed and believes that Defendant Amazon.com, Inc.
8 (“Amazon”) is a Delaware corporation with its principal place of business in
9 Seattle, Washington. Amazon has a regular and established places of business in
10 this judicial district, including but not limited to the distribution center at 6400
11 Valley View St, Buena Park, CA 90620; the Amazon Hub Locker at 239 N
12 Crescent Dr, Beverly Hills, CA 90210; and the Amazon Locker at 1451 S La
13 Cienega Blvd, Los Angeles, CA 90035.

14 **JURISDICTION AND VENUE**

15 3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331
16 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to
17 patents, copyrights, or trademarks).

18 4. This Court has personal jurisdiction over Amazon because Ad-N-Art
19 is informed and believes that Amazon does and has done substantial business in
20 this judicial District, including: (i) committing acts of patent infringement and/or
21 contributing to or inducing acts of patent infringement by others in this judicial
22 District and elsewhere in this State; (ii) regularly conducting business in this State
23 and judicial District; (iii) directing advertising to or soliciting business from
24 persons residing in this State and judicial District; and (iv) engaging in other
25 persistent courses of conduct, and/or deriving substantial revenue from products
26 and/or services provided to persons in this District and State.

1 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b).
2 Amazon has committed acts of patent infringement in this District and has a
3 regular and established place of business in this District.

4 **FACTUAL BACKGROUND**

5 6. Ad-N-Art is a leading innovator and seller in Canada, the United
6 States, and internationally of creative and quality beverageware. Ad-N-Art has
7 developed, manufactured, marketed, and sold exclusively a highly successful line
8 of stainless steel koozies under the world-famous brand ASOBU® Frosty Beer 2
9 Go. Ad-N-Art has sought protection for its innovations, which *inter alia*, has
10 resulted in the issuance of the patent-in-suit.

11 7. As a direct result of its innovative and distinctive design, Ad-N-Art's
12 ASOBU® Frosty Beer 2 Go has been a great success, and its silhouette, aesthetics,
13 colors, and presentation have immediately become uniquely associated with Ad-N-
14 Art as its source.

15 8. Ad-N-Art's ASOBU® Frosty Beer 2 Go, with its branded design, has
16 been extensively advertised throughout the United States to capitalize on the
17 existing distribution channels, including internet marketing and social media. In
18 addition, Ad-N-Art's ASOBU® Frosty Beer 2 Go has received unsolicited
19 comment and attention in print and social media throughout the world.

20 9. The innovative and distinctive design of the Ad-N-Art's ASOBU®
21 Frosty Beer 2 Go has come to represent and symbolize the superb quality of Ad-N-
22 Art's products and enjoys substantial goodwill among consumers.

23 **Plaintiff's Patent Rights and Amazon's Infringement**

24 10. On March 20, 2018, United States Patent No. D812992 (the "D992
25 patent" or the "patent-in-suit"), entitled "Insulating Container for Beverage
26 Container," was duly and legally issued by the United States Patent and Trademark
27 Office, a copy of which is attached hereto as **Exhibit A**. The 'D992 patent names
28 Eric Pisarevsky as the inventor.

1 11. Ad-N-Art Inc. is the exclusive owner by assignment of the 'D992
2 patent.

3 12. The 'D992 patent is a design patent claiming the ornamental design
4 for insulating container for a beverage container, popularly known as a "koozie,"
5 as shown and described.

6 13. Ad-N-Art sells koozies embodying the ornamental design of the
7 'D992 patent, including the ASOBU® Frosty Beer 2 Go. The ornamental design is
8 an important component of the ASOBU® Frosty Beer 2 Go, as the design
9 manifests in the entire product and is inseparable from the product. The ASOBU®
10 Frosty Beer 2 Go has come to be associated only with the specific design of Ad-N-
11 Art and is readily distinguishable over other products in the marketplace through
12 considerable time, effort and money.

13 14. As such, the ornamental design of the 'D992 patent is a hallmark for
14 the high quality and innovative designs of products sold under the Ad-N-Art brand,
15 and a key element to identifying Ad-N-Art's products in the marketplace.

16 15. Ad-N-Art's products are sold in retail marketing channels, including
17 online retailers such as Amazon.com.

18 16. Ad-N-Art is informed and believes that Amazon sells, offers to sell,
19 and advertises such koozies ("Accused Products"), including but not limited to
20 those featured at:

- 21 a. The Amazon product page at [https://www.amazon.com/Maui-
22 Insulator-Stainless-Insulated-
23 Friendly/dp/B07TY1NKK9/ref=pd_bxgy_79_3/132-8505825-
24 0992308?_encoding=UTF8&pd_rd_i=B07TY1NKK9&pd_rd_r=b480
25 044d-c537-48c1-b6ee-
26 e92ad0af4823&pd_rd_w=ajeHI&pd_rd_wg=f6iAx&pf_rd_p=096278
27 63-9889-4290-b90a-](https://www.amazon.com/Maui-Insulator-Stainless-Insulated-Friendly/dp/B07TY1NKK9/ref=pd_bxgy_79_3/132-8505825-0992308?_encoding=UTF8&pd_rd_i=B07TY1NKK9&pd_rd_r=b480044d-c537-48c1-b6ee-e92ad0af4823&pd_rd_w=ajeHI&pd_rd_wg=f6iAx&pf_rd_p=09627863-9889-4290-b90a-)

5e9f86682449&pf_rd_r=J8MED69V4MDYEDWJ2HFH&psc=1&ref
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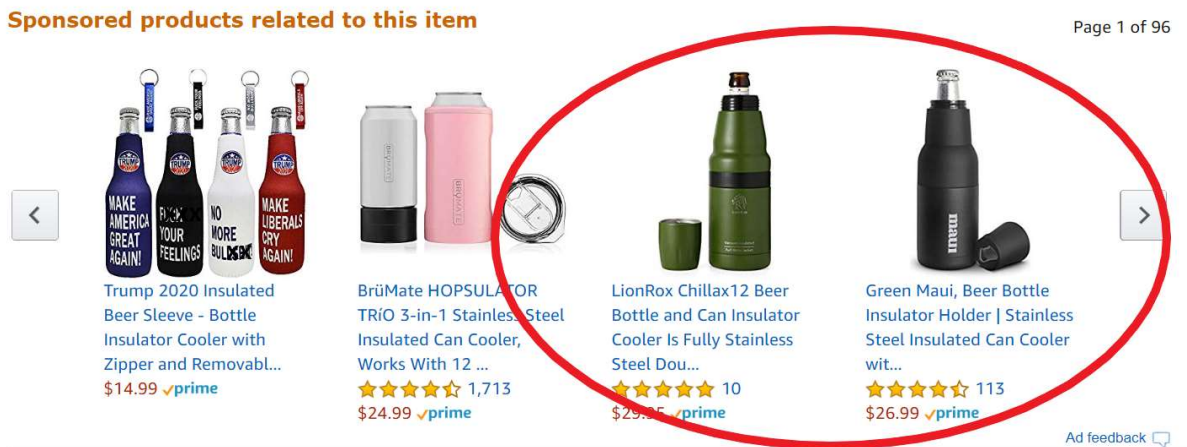
b. The Amazon product page at https://www.amazon.com/Bottl-Beer-bottle-Insulator-Cooler/dp/B0833PFJHF/ref=pd_ybh_a_1?_encoding=UTF8&psc=1&refRID=0FFZH6JA09FTD1WQA1PZ; and

c. The Amazon product page at
https://www.amazon.com/dp/B07Q2HLJGW/ref=sspa_dk_detail_1?psc=1&pd_rd_i=B07Q2HLJGW&pd_rd_w=hFczH&pf_rd_p=45a72588-80f7-4414-9851-786f6c16d42b&pd_rd_wg=0whBD&pf_rd_r=ZDTFDJG94TJ3TN08DMWY&pd_rd_r=0c3c779d-c909-4652-94dd-906a33675bd1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEwVFdMOFpUQVhDUDg4JmVuY3J5cHRlZElkPUEwMDY0NTA2MUVITDFKT1lRWlFZViZlbnNyeXB0ZWZlZElkPUEwMDE4ODg0MlhnKNDEzQTQ1SEZaRCZ3aWRnZXROYW1lPXNwX2RldGFpbCZhY3Rpb249Y2xpY2tSZWRpcmVjdCZkb05vdExvZ0NsaWNrPXRydWU=.

A true and correct copy of these exemplary infringing products, which are referred to as “Green Maui Beer Bottle Insulator Holder,” “Stainless Steel Insulated Can Cooler with Beer Opener,” “Eco Friendly Smart Vacuum Bottle,” “Bottl Beer Bottle Insulator Can Cooler,” and/or “LionRox Chillax12 Beer Bottle and Can Insulator Cooler” are attached as **Exhibit B**.

17. Ad-N-Art is informed and believes that the Accused Products are offered and promoted in the same marketing channels as Ad-N-Art’s products. Specifically, the Accused Products are offered for sale directly from the website Amazon.com, from which a customer may purchase products that Amazon ships to the customer anywhere in the United States. The Accused Products are displayed

on the product-detail page generated by Amazon, which includes information about the price, description of the goods, and quantity, and can be purchased through Amazon.com upon a single click by the potential purchaser. In fact, Amazon **actively encourages** customers searching for Ad-N-Art's ASOBU® Frosty Beer 2 Go to purchase infringing products by advertising the Accused Products as “Sponsored products related to this item” (on page 1 of 96) on the product page for Ad-N-Art's ASOBU® Frosty Beer 2 Go:



A true and correct copy of the Amazon product page for Ad-N-Art's ASOBU® Frosty Beer 2 Go is attached as **Exhibit C**. Thus, Amazon’s website facilitates and profits from the distribution, advertising, promotion, and sale of the Accused Products.

18. A comparison of Ad-N-Art’s claim in the 'D992 patent with the Accused Products below exemplifies Amazon’s infringement of 'D992 patent.

'D992 Patent	Accused Products
 <p>fig. 1</p>	

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'D992 Patent	Accused Products
 <p data-bbox="487 955 552 997">fig.9</p>	

'D992 Patent	Accused Products
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>  <p>fig. 10</p>	   

19. Ad-N-Art has placed the required statutory notice under 35 U.S.C. § 287 on products and on literature describing the 'D992 patent.

20. Amazon is without any authorization, license, or other permission from Ad-N-Art to use Ad-N-Art's patented design in connection with the making, using, offering to sell, selling, or importing of the Accused Products in the United States, including over the Internet.

21. Ad-N-Art is informed and believes that the Amazon sells unauthorized copies of Ad-N-Art's proprietary design to benefit from the goodwill Ad-N-Art has created in the marketplace.

22. As early as October 30, 2019 (and subsequently again on November 19, 2019; November 25, 2019; December 3, 2019; December 6, 2019; January 18, 2020; and February 10, 2020), Ad-N-Art notified Amazon of the infringing products sold on Amazon.com. Amazon responded on January 19, 2020, stating in part that: “We cannot take action on your report” On February 10, 2020, Ad-N-Art sent a second demand letter to Amazon providing a detailed notice of infringement, including by setting forth Ad-N-Art’s infringing contentions in a draft complaint against one of the manufactures of the Accused Products.

FIRST CLAIM FOR RELIEF

(Direct Infringement of the 'D992 Patent – 35 U.S.C. §§ 271 *et seq.*)

23. Ad-N-Art realleges and incorporates by reference the foregoing paragraphs, as though fully set forth herein.

24. Amazon has been and is directly infringing the 'D992 patent by making, using, offering for sale, selling, and/or otherwise distributing the Accused Products, having a design that would appear to an ordinary observer to be substantially similar to the claim of the 'D992 patent, for example the Accused Products as shown above, in violation of 35 U.S.C. § 271.

25. Amazon's infringement has been deliberate, willful, intentional, as Amazon engaged in these wrongful acts with full knowledge of the existence of the 'D992 patent and with full knowledge that its activities were an infringement of the 'D992 patent.

1 26. In particular, as noted above, Ad-N-Art has placed the required
2 statutory notice under 35 U.S.C. § 287 on products and on literature describing the
3 'D992 patent, and Ad-N-Art is informed and believes that Amazon is thus well
4 aware of the 'D992 patent and the rights granted Ad-N-Art thereunder. Moreover,
5 Ad-N-Art provided actual notice of the infringement to Amazon at least as early as
6 October 30, 2019.

7 27. Amazon's infringement has injured or will injure Ad-N-Art, and Ad-
8 N-Art is entitled to recover damages adequate to compensate it for Amazon's
9 infringement, which in no event can be less than a reasonably royalty.

10 28. Because Amazon's infringement has caused or will cause Ad-N-Art
11 substantial damage and irreparable injury by its infringement of the 'D992 patent,
12 Ad-N-Art will continue to suffer damage and irreparable injury unless and until
13 Defendant is enjoined by this Court from continuing their infringement.

14 29. Ad-N-Art is entitled to injunctive relief and compensatory relief,
15 including attorneys' fees and costs, as well as enhanced damages pursuant to 35
16 U.S.C. §§ 271, 281, and 283 to 285, and 289.

17 **SECOND CLAIM FOR RELIEF**

18 **(Induced Infringement of the 'D992 Patent – 35 U.S.C. §§ 271 *et seq.*)**

19 30. Ad-N-Art realleges and incorporates by reference the foregoing
20 paragraphs, as though fully set forth herein.

21 31. Defendant Amazon has been and is actively inducing others to
22 infringe the 'D992 patent, by among other things, directly or through
23 intermediaries, using, offering for sale, selling, and/or otherwise distributing the
24 Accused Products, having a design that would appear to an ordinary observer to be
25 substantially similar to the claim of the 'D992 patent, for example Amazon's
26 Accused Products as shown above, in violation of 35 U.S.C. § 271(b).

1 32. As shown above, Amazon's sellers have engaged in and currently
2 engage in activities that constitute direct infringement of the 'D992 patent.

3 Amazon's affirmative acts of

- 4 a. selling and/or offering for sale the Accused Products through its
5 website;
- 6 b. advertising the benefits of its marketplace to sellers and potential
7 sellers;
- 8 c. providing sellers with the platform to reach customers and the online
9 tools to offer the Accused Products for sale, i.e., advertising and
10 promoting the Accused Products;
- 11 d. interacting with purchasers of the Accused Products so as to enable
12 sellers to complete transactions with Amazon as an intermediary, and
13 without communicating directly with the purchasers; and
- 14 e. benefitting financially from the sales of the Accused Products through
15 Amazon.com,

16 have induced and continue to induce Amazon's sellers to sell the Accused Products
17 in their normal and customary form to infringe the 'D922 patent.

18 33. Through its advertising, selling, and/or offering for sale the Accused
19 Products, Amazon specifically intends that its sellers directly infringe the 'D922
20 patent. Defendant Amazon has had knowledge of the 'D992 patent since at least
21 February 10, 2020, and actually induces others to directly infringe by selling,
22 supplying, and or distributing the Accused Products within the United States.

23 34. Accordingly, Defendant Amazon has performed and continues to
24 perform acts that constitute indirect infringement, and would induce actual
25 infringement, with the knowledge of the 'D992 patent and with the knowledge or
26 willful blindness to the fact that the induced acts constitute infringement.

27 35. Amazon's infringement has been deliberate, willful, intentional, as
28 Amazon engaged in these wrongful acts with full knowledge of the existence of the

1 'D992 patent and with full knowledge that its activities were an infringement of the
2 'D992 patent.

3 36. In particular, as noted above, Ad-N-Art has placed the required
4 statutory notice under 35 U.S.C. § 287 on products and on literature describing the
5 'D992 patent, and Ad-N-Art is informed and believes that Amazon is thus well
6 aware of the 'D992 patent and the rights granted Ad-N-Art thereunder. Moreover,
7 Ad-N-Art provided actual notice of the infringement Amazon at least as early as
8 December 19, 2019, and to Amazon at least as early as October 30, 2019.

9 37. Defendant Amazon's induced infringement has injured or will injure
10 Ad-N-Art, and Ad-N-Art is entitled to recover damages adequate to compensate it
11 for the infringement, which in no event can be less than a reasonable royalty.

12 38. Because Defendant Amazon's induced infringement has caused or
13 will cause Ad-N-Art substantial damage and irreparable injury by its infringement
14 of the 'D992 patent, Ad-N-Art will continue to suffer damage and irreparable
15 injury unless and until Amazon is enjoined by this Court from continuing its
16 induced infringement.

17 39. Ad-N-Art is entitled to injunctive relief and compensatory relief,
18 including attorneys' fees and costs, as well as enhanced damages pursuant to 35
19 U.S.C. §§ 271, 281, and 283 to 285, and 289.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff asks this Court to enter judgment in its favor and
22 against Amazon and grant the following relief:

23 A. Enter judgment that Amazon has infringed and is infringing the 'D992
24 patent;

25 B. Enter judgment that the aforementioned infringement by Amazon has
26 been and is willful;

27 C. Enter an order permanently enjoining Amazon and its officers, agents,
28 employees, and all others in active concert or participation with Amazon or any of

1 them from further infringing, whether directly or indirectly, the 'D992 patent; or
2 alternatively, a judicial decree that Amazon pay an ongoing royalty in an amount
3 to be determined for continued infringement after the date of judgment;

4 D. Enter a judgment and order requiring Amazon to recall from any
5 distributors and retailers and to deliver to Ad-N-Art for destruction or other
6 disposition all remaining inventory of all Accused Products and related items,
7 including all advertisements, promotional and marketing materials therefore, as
8 well as means of making same;

9 E. Enter a judgment and order requiring Amazon to file with this Court
10 and serve on Ad-N-Art within thirty (30) days after entry of the injunction a report
11 in writing, under oath setting forth in detail the manner and form in which Amazon
12 have complied with the injunction;

13 F. Award Plaintiff its damages in an amount sufficient to compensate
14 Plaintiff for Amazon's infringement of the 'D992 patent, pursuant to 35 U.S.C. §§
15 284 and 289;

16 G. Award enhanced damages to Plaintiff in an amount not less than three
17 times the compensatory damages awarded by this Court for Amazon's willful
18 infringement of the 'D992 patent, pursuant to 35 U.S.C. §§ 284 and 289;

19 H. Declare this case to be "exceptional" under 35 U.S.C. § 285, and
20 award Plaintiff its attorneys' fees, expenses, and costs incurred in this action;

21 I. Award an assessment and award of pre- and post-judgment interest on
22 all damages awarded; and

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1 J. Any further relief that this Court deems just and proper.

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3 Dated: March 6, 2020

ONE LLP

4
5 By: /s/ John E. Lord

6 John E. Lord

7 Jenny S. Kim

8 Attorneys for Plaintiff

9 Ad-N-Art Inc.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all claims and all issues properly triable thereby.

Dated: March 6, 2020

ONE LLP

By: /s/ John E. Lord

John E. Lord

Jenny S. Kim

Attorneys for Plaintiff

Ad-N-Art Inc.