

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Civil Action No.

THERAGUN, INC., a Delaware corporation,

Plaintiff,

v.

GOLOVAN LTD., d/b/a GETKRAFT, an
Israel limited company; DEZHOU CREATE
FITNESS EQUIPMENT CO., LTD, a
Chinese limited company; and DOES 1
through 10, inclusive,

Defendants.

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT
OF U.S. PATENT NO. D877,351 AND
VIOLATION OF THE FLORIDA UNFAIR AND
DECEPTIVE TRADE PRACTICES ACT**

Plaintiff Theragun, Inc. (“Theragun”) files this complaint against Defendants, Golovan Ltd. d/b/a GetKraft (“Golovan”), Dezhou Create Fitness Equipment Co., Ltd. (“Dezhou”) and Does 1-10, inclusive (Golovan, Dezhou and Does 1-10 shall hereinafter be sometime, collectively, “Defendants”).

THE PARTIES

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

2. Theragun is informed and believes and, based thereon, alleges that Defendant Golovan is an Israel limited company, with offices at 198 Dizengoff, Tel Aviv, Israel. Golovan is further informed and believes that Golovan is doing business in the United States under the name GetKraft and that it has offices at 15429 NE 21st Avenue, North Miami Beach, Florida 33162 and 705 Pleasant Street, Lee, Massachusetts 01238.

3. Theragun is informed and believes and, based thereon, alleges that Defendant Dezhou is a Chinese limited company, with offices at No. 1368, Daxue East Road, Economic Development Zone of Dezhou City, Shandong Province, China.

4. Theragun is ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names and capacities. Theragun will amend this Complaint to allege their true names and capacities when ascertained, along with the appropriate charging allegations.

5. Theragun is informed and believes and thereon alleges that Defendants are manufacturing, using, selling, or offering for sale within the United States, or importing into the United States the infringing massage gun products described below.

6. Theragun is informed and believes and thereon alleges that each of the Defendants conspired and acted in concert with one or more other Defendants 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 alleges 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 one or more of the other Defendants.

JURISDICTION AND VENUE

7. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, et seq., and for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Sta., § 501.201 et seq.

8. This Court has subject matter jurisdiction over the patent claims in this action pursuant to 28 U.S.C. § 1338. This Court has supplemental jurisdiction over the state law claim under 28 U.S.C. §§ 1338 and 1367, because the claim is so related to Theragun's claim under federal law that it derives from a common nucleus of operative fact and forms part of the same case or controversy.

9. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c) and § 1400(b). Theragun is informed and believes and, based thereon, alleges that, all Defendants have offices in this judicial district and/or distribute, promote, market, use, sell, offer for sale, import, and/or advertise their infringing products in or to this District and/or to businesses and individuals in this District. Theragun is further informed and believes and, based thereon, alleges that Defendants derive substantial revenue from the distribution, promotion, marketing, manufacture, use, sale, offer for sale, or import of infringing products in or to this District.

GENERAL ALLEGATIONS

10. Theragun is in the business of developing, manufacturing, and selling high-quality, innovative percussive therapy devices and attachments therefor. Theragun invests considerable time, effort and money in developing and protecting its intellectual property, including the unique and novel design and trade dress of its products.

11. Theragun is the owner of United States Patent Number D877,351, entitled “Therapeutic Device” (hereinafter the “‘351 Patent”), issued on March 3, 2020, a true and correct copy of which is attached hereto as Exhibit A. The ‘351 Patent pertains to a particular ornamental design for a therapeutic percussive massage device, including as depicted in Fig. 1 below. The ‘351 Patent is presumed to be valid and is *prima facie* proof that the design shown in the ‘351 Patent is novel and non-obvious.

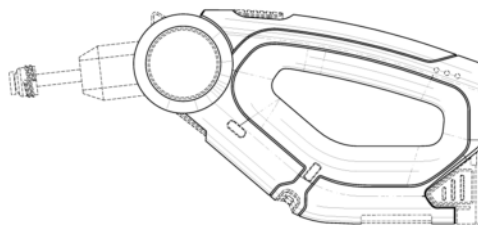


Fig. 1

12. Defendants are manufacturing, marketing, promoting, advertising, using, selling, offering to sell, and/or importing the infringing device, the “KRAFTGUN,” identified in Fig. 2, below (the “Infringing Device”).



Fig. 2

13. The online records of the United States Patent and Trademark Office identified Golovan as the owner of U.S. Trademark Application Nos. 88709856 and 88709857 for KRAFTGUN and KRAFTGUN (stylized), respectively. Further, the specimens of use filed in support of each of those applications shows the infringing KRAFTGUN product and the website at kraftgun.com (the “KRAFTGUN Website”), through which infringing products are sold. The third result in a Google® search for “Golovan Ltd.” is the website at getkraft.co, which redirects to kraftgun.com. Through the KRAFTGUN website, Golovan advertises business locations in Lee, Massachusetts and North Miami Beach, Florida.

14. On its brand page on Alibaba (dzcreate.en.alibaba.com), Dezhou states that it “is a professional manufacturer engaged in research, development, production, sale and service of muscle massage products...” that its “products are selling well in North America.” Thereagun is informed and believes and, based thereon, alleges that Dezhou manufactures the KRAFTGUN that infringes the ‘351 Patent.

15. Dezhou sells its infringing products under the brand name CRIFIT. Theragun is informed and believes and, based thereon, alleges that Dezhou sells or manufactures infringing products to or for distributors or resellers in the United States including, without limitation, the other Defendants herein who, in turn, import, sell, and/or offer to sell the infringing Dezhou

products. In fact, Dezhou advertises that it can place alternative brand names on its products and packaging and provide sample products within three days.

FIRST CAUSE OF ACTION

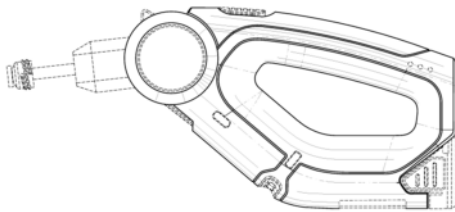
Patent Infringement, 35 U.S.C. §§ 101 *et seq.*

(Against All Defendants)

16. Theragun realleges and incorporates by reference paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. At all times herein mentioned the '351 Patent was and is valid and fully enforceable.

18. Defendants are offering percussive massage devices that infringe the '351 Patent, including at least the KRAFTGUN product shown in Fig. 1, above. As shown below, a side by side comparison of Theragun's '351 Patent and Defendants' Infringing Devices quickly reveals that the Infringing Devices appear substantially the same as Theragun's '351 Patent to an ordinary observer; the resemblance is such as to deceive such an observer, inducing him or her to purchase one supposing it to be the other:



19. By the acts complained of herein, Defendants have been and are presently infringing the '351 Patent by actively and knowingly: (i) importing, making, using, selling and/or offering to sell products incorporating the design of the '351 Patent, including the above-identified devices; (ii) inducing others to infringe the '351 Patent by inducing others to import, sell, offer for sale, and/or use products incorporating the design of the '351 Patent, including the above-identified devices; and/or (iii) contributing to the infringement of the '351 Patent.

20. Defendants infringe literally or under the doctrine of equivalents, or both.

21. At no time has Theragun granted Defendants authorization, license, or permission to utilize the design claimed in the '351 Patent.

22. Theragun has been damaged by Defendants' acts of infringement of the '351 Patent and Theragun will continue to be damaged by such infringement unless enjoined by this Court. Theragun is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

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

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

SECOND CAUSE OF ACTION

Violation of the Florida Unfair and Deceptive Trade Practices Act,

Fla. Stat. § 501.201, *et seq.*

(Against All Defendants)

25. Theragun realleges and incorporates by reference paragraphs 1 through 15 of this

Complaint as if fully set forth herein.

26. This is an action for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat., § 501.201 *et seq.*

27. Defendants have willfully, deliberately and intentionally sold and/or offered for sale percussive massage devices that infringe the '351 Patent, including at least the KRAFTGUN shown in Fig. 1 of this Complaint, thereby deceiving the consuming public into believing that Defendants' products are in some way affiliated with Plaintiffs, when they are not.

28. Defendants' acts described above constitute materially false representations of fact that have caused confusion, mistake, or deception as to the source, origin, sponsorship, and affiliation of Defendants' goods in violation of Florida Statute, § 501.204.

29. Defendants continue to willfully offer for sale and sell products that infringe the '351 Patent, thereby misleading the consuming public in order to improperly benefit from Theragun's '351 Patent.

30. Defendants' acts as described above have been without right, license or permission from Theragun.

31. Defendants' conduct as described above has caused Theragun irreparable harm and actual damages in an amount to be determined at trial.

32. On information and belief, Defendants intend to continue their deceptive and unfair trade practices described herein.

33. Theragun has no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Theragun. Accordingly, Theragun is entitled to preliminary and/or permanent injunctive relief pursuant to Florida Statute, § 501.211.

34. Because of Defendants' willful, deliberate and intentional conduct, Theragun is entitled to recover, among other things, its actual damages, reasonable attorneys' fees, and costs under Fla. Stat., §§ 501.211 and 501.2105.

PRAYER FOR RELIEF

WHEREFORE, Theragun prays for judgment as follows:

- A. For an order finding that the '351 Patent is valid and enforceable;
- B. For an order finding that Defendants have infringed the '351 Patent directly, contributorily, and/or by inducement, literally or by equivalents, in violation of 35 U.S.C. § 271;
- C. 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 '351 Patent directly, contributorily and/or by inducement, or otherwise engaging in acts of unfair competition;
- D. For a judgment directing that any products in the possession, custody or control of Defendants which infringe the '351 Patent be delivered up and destroyed within 30 days of entry of judgment;
- E. For a judgment directing Defendants to recall all such infringing products and any other materials sold, distributed, advertised or marketed which infringe the '351 Patent;
- F. 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 each of them has complied with the injunction;
- G. For an order finding that Defendants' conduct alleged herein was willful and intentional and in conscious disregard of Theragun's rights;
- H. For an order finding that Defendants' conduct alleged herein violates the Florida Deceptive and Unfair Trade Practices Act;
- I. For compensatory damages in an amount to be proven at trial, 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 general, statutory, enhanced, exemplary, treble, and/or punitive damages, as appropriate;

- J. For an order finding that this is an exceptional case, and awarding Plaintiff's reasonable attorney's fees according to proof;
- K. For an order awarding Theragun its costs of court; and
- L. For such other and further relief as the Court may deem just and proper.

Dated: June 4, 2020

/s/ Elio F. Martinez, Jr.

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