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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14  
15 ACORN BAY,  
16 Plaintiff,  
17 vs.  
18 CAMELBAK PRODUCTS LLC and VISTA  
OUTDOOR INC.,  
19 Defendants.  
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CASE NO. 3:20-cv-05214  
**COMPLAINT FOR (1) VIOLATION OF  
DEFENSE OF TRADE SECRET ACT;  
(2) BREACH OF CONTRACT; (3)  
BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING; (4) PATENT  
INFRINGEMENT; AND (5)  
VIOLATION OF CAL. BUS. & PROF.  
CODE SECTION 17200**

**JURY TRIAL DEMANDED**

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1 Plaintiff Acorn Bay files this Complaint against defendants CamelBak Products LLC  
2 (“CamelBak”) and Vista Outdoor Inc. (“Vista Outdoor”) and alleges as follows:

3 **I. INTRODUCTION**

4 1. This is an action for trade secret misappropriation, patent infringement, breach of  
5 contract and unfair competition relating to Acorn Bay’s innovative bite-to-drink valve designs.

6 2. Acorn Bay is a partnership focused on product design and invention, primarily in  
7 the field of drink valves. The three individuals involved in this partnership are named as  
8 inventors, either together or individually, on over twenty-five US patents, including six patents  
9 related to drink valves. Scott Stillinger invented the Koosh Ball and founded OddzOn Products, a  
10 successful toy company. Don Panec helped develop the Koosh Ball and Vortex Football into a  
11 household name as the Vice President of Marketing at OddzOn Products, and later went on to  
12 found Treasure Bay, an innovative children’s book publisher. Kelsey Stillinger has also been  
13 inventing and licensing in numerous fields for two decades.

14 3. After years of developing its innovative drink valve designs for disposable and  
15 non-disposable containers, Acorn Bay reached out to CamelBak, a leading seller of non-  
16 disposable sports bottles with drink valves, in order to discuss licensing Acorn Bay’s drink valve  
17 technologies.

18 4. CamelBak met with Acorn Bay, signed an NDA, and immediately expressed  
19 interest in Acorn Bay’s designs, which were completely different from anything else CamelBak  
20 had previously seen or developed. CamelBak ultimately licensed Acorn Bay’s valve technology  
21 but then abruptly terminated that license after less than six months, with no reasonable  
22 explanation given.

23 5. Unbeknownst to Acorn Bay, CamelBak and its parent company, Vista Outdoor,  
24 continued to exploit Acorn Bay’s technology by developing and commercializing a new product  
25 which they took to market in January 2019.

26 6. Not only did CamelBak breach its contracts with Acorn Bay, misappropriate  
27 Acorn Bay’s trade secrets, and willfully infringe Acorn Bay’s patent, but it is also now attempting  
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1 to profit further from Acorn Bay's technology by filing patents for that technology in its own  
2 name.

3 7. In light of Defendants' behavior, Acorn Bay brings this Complaint to prevent any  
4 further misuse of its proprietary information and to obtain compensation for its damages and for  
5 Defendants' unjust enrichment resulting from their unlawful conduct.

6 **II. PARTIES**

7 8. Plaintiff Acorn Bay is a general partnership organized and existing under the laws  
8 of California, with a current principal place of business at 5 Ash Court, Novato, California 94949  
9 and, as of August 1, 2020, an expected principal place of business at 15360 Robin Anne Lane,  
10 Monte Sereno, CA 95030.

11 9. Defendant CamelBak is a Delaware corporation with its principal place of business  
12 located at 2000 S. McDowell Blvd., Suite 200, Petaluma, California 94954. CamelBak is a  
13 wholly owned subsidiary of Vista Outdoor.

14 10. Defendant Vista Outdoor is a Delaware corporation with its principal place of  
15 business at 1 Vista Way, Anoka, Minnesota 55303.

16 **III. JURISDICTION AND VENUE**

17 11. The patent infringement claims arise under the patent laws of the United States,  
18 Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction over  
19 Acorn Bay's claims for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a). The  
20 Court has subject matter jurisdiction over Acorn Bay's federal trade secret claim pursuant to 18  
21 U.S.C. § 1836-39 *et seq.* and 28 U.S.C. §§ 1331 and 1338. The Court has supplemental  
22 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

23 12. As set forth above, CamelBak resides in this judicial district. Further, a substantial  
24 part of the events or omissions giving rise to these claims occurred in this district. For the patent  
25 infringement claim, CamelBak has committed acts of infringement at least by selling and offering  
26 for sale the Accused Products in this District. Vista Outdoor has a regular and established place  
27 of business in this District. Vista Outdoors' website lists CamelBak's Petaluma address and an  
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1 additional address at 5550 Scotts Valley Drive, Scotts Valley, CA 95066 as two of its “Locations”  
2 on its website. (<https://vistaoutdoor.com/locations/>) For the patent infringement claim, Vista  
3 Outdoor has committed acts of infringement at least by selling and offering for sale the Accused  
4 Products in this District, including at least through its wholly-owned subsidiary, CamelBak.  
5 Therefore, venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) and pursuant  
6 to § 1400(b) for the patent infringement claim.

7 13. This Court has personal jurisdiction over CamelBak. CamelBak resides in this  
8 District. Further, CamelBak, directly and through its agents transacts business in this District and  
9 elsewhere in California. Those acts have caused injury to Acorn Bay, including within this  
10 District.

11 14. This Court has personal jurisdiction over Vista Outdoor. Vista Outdoor is  
12 registered to do business in California (Registration No. C3746812) and has locations in this  
13 District as discussed above. Further, Vista Outdoor directly and through its subsidiaries  
14 (including CamelBak) and its agents transacts business in this District and elsewhere in  
15 California. Those acts have caused injury to Acorn Bay, including within this District.

16 15. Intradistrict assignment: For purposes of intradistrict assignment under Civil  
17 Local Rules 3-2(c) and 3-5(b), this Intellectual Property Action will be assigned on a districtwide  
18 basis.

1 **IV. FACTUAL ALLEGATIONS**

2 **A. CamelBak's Initial Interest in Acorn Bay's Technology**

3 16. Acorn Bay has done substantial design work in both the disposable and non-  
4 disposable drink valve fields and has optioned and licensed its drink valve designs to several large  
5 companies.

6 17. In 2011, Acorn Bay developed innovative valve designs for non-disposable  
7 products. Acorn Bay reached out to CamelBak in early 2012 to set up a meeting to discuss a  
8 potential licensing deal.

9 18. CamelBak, a leading producer of valves in water bottles and hydration packs, was  
10 interested in learning more about the valve technology developed by Acorn Bay.

11 19. In or around March 8, 2012, Acorn Bay's three founders, Mr. Stillinger, Mr.  
12 Panec, and Ms. Stillinger, first met with CamelBak at CamelBak's offices in Petaluma.

13 20. Prior to any substantive discussions, Acorn Bay and CamelBak entered into a  
14 Mutual Non-Disclosure Agreement ("NDA"), dated March 8, 2012 (attached to this Complaint as  
15 Exhibit A). Acorn Bay did not provide CamelBak with any specific information about its designs  
16 before the NDA was signed.

17 21. The parties met for approximately 1.5 hours at their initial meeting, during which  
18 Acorn Bay provided CamelBak with substantial information about its unique, trade secret bite-to-  
19 drink and push-to-drink valve designs.

20 22. There were several CamelBak employees present at the meeting, including Jeremy  
21 Galten, Vice President of Product, and Mike Mathe, Designer.

22 23. During the meeting, Acorn Bay extensively described new valve technologies that  
23 it had developed, gave a Powerpoint presentation, and also showed CamelBak approximately a  
24 dozen prototype valves to examine.

25 24. CamelBak's valve design at the time opened outward when bite forces were  
26 applied to the walls. The valve halves were quite thick, and the silicone was quite hard, in order  
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1 to prevent leakage when the pressure in the bottle increased. This increased the bite force  
2 required to open the valve and also shrank the opening for the fluid to pass through.

3 25. In contrast, Acorn Bay's valve design opens inward when bite forces are applied.  
4 It is conical-shaped, and seals tighter with increased pressure in the bottle. The forces required to  
5 open the valve are considerably less because the round shape easily contracts up and down and  
6 expands side to side, and the valve elements can be thinner and softer because the configuration  
7 seals tighter with pressure. In sum, the Acorn Bay valve opens wider and faster with less  
8 force, thus allowing for faster water flow with less effort for easier drinking.

9 26. During the meeting, the CamelBak employees expressed surprise at the novel  
10 designs that Acorn Bay presented. At least one CamelBak employee left the room to bring in  
11 other employees to look at the designs.

12 27. Not only did CamelBak view the Acorn Bay designs as innovative, but they  
13 immediately saw the advantages of Acorn Bay's designs over CamelBak's valve.

14 28. CamelBak was very impressed, and wanted to continue to meet with Acorn Bay, to  
15 potentially license Acorn Bay's valve technology.

16 **B. NDA Between Acorn Bay and CamelBak**

17 29. The NDA that Acorn Bay and CamelBak entered into was "for the limited purpose  
18 of considering a business relationship between the parties (the 'Transaction')." Ex. A.

19 30. Under the terms of the NDA, "Proprietary Information" was defined as "all  
20 information (including analyses, reports, forecasts, studies, memoranda, financial statements and  
21 documents, whether oral or contained on written or other tangible medium) relating to the  
22 products, business, technologies and intellectual property of the Disclosing Party furnished by the  
23 Disclosing Party to the Receiving Party whether before, on or after the date hereof in connection  
24 with the Transaction." Ex. A, ¶ 1.

25 31. CamelBak agreed to "utilize the Proprietary Information solely for the purpose of  
26 considering the Transaction." Ex. A, ¶ 2.

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1           32. CamelBak further agreed to keep all Proprietary Information confidential and (a)  
2 not disclose Proprietary Information to any third party without the prior written consent of Acorn  
3 Bay; (b) copy Proprietary Information only to the extent needed in order to consider the  
4 Transaction; and (c) limit dissemination of Proprietary Information to only those employees and  
5 consultants of CamelBak with a need to know of it for purposes of considering the Transaction.  
6 Ex. A, ¶ 2.

7           33. CamelBak also committed to ensuring its consultants and employees would  
8 observe the terms of the agreement, and it is responsible for any breach of the NDA by any of its  
9 employees or consultants. Ex. A, ¶ 2.

10           34. The only exceptions to the confidentiality provisions of the NDA are if the  
11 Proprietary Information (a) is within the knowledge of the Receiving Party prior to the date of the  
12 NDA or enters the public domain through no fault of the Receiving Party; (b) is rightfully  
13 disclosed to the Receiving Party by a third party without obligation of confidentiality; or (c) has  
14 been independently acquired or developed by the Receiving Party without violation of the NDA.

15           35. The NDA has no termination date and is still in effect today.

16           **C. Option Agreement Between Acorn Bay and CamelBak**

17           36. Impressed with Acorn Bay's technology and interested in using the technology in  
18 its own products, CamelBak and Acorn Bay entered into an Option Agreement (attached to this  
19 Complaint as Exhibit B).

20           37. In the Option Agreement, with an effective date of April 17, 2012, Acorn Bay  
21 granted CamelBak an option to license its bite-to-drink and push-to-drink valve and closure  
22 technologies for sales of non-disposable bottles, non-disposable bottle closures, hydration packs,  
23 and hydration pack drink valves. Ex. B, ¶ 1.

24           38. In exchange, CamelBak agreed to pay Acorn Bay \$5,000, whether or not  
25 CamelBak elected to proceed to license the technologies. Ex. B, ¶ 3.

26           39. The option period was set to expire on August 17, 2012. Ex. B, ¶ 2

1           40.     During the option period, CamelBak agreed to explore the viability of the Acorn  
2 Bay technologies for use in CamelBak’s products, “including working on product design, making  
3 sample tools and doing consumer research.” All consumers participating in consumer research  
4 were required to sign a confidentiality agreement. Ex. B, ¶ 3.

5           41.     Acorn Bay agreed to provide assistance to CamelBak, including assisting in design  
6 work. Acorn Bay also agreed not to show its technologies to any other company during the  
7 option period. Ex. B, ¶ 3.

8           42.     If CamelBak determined that it was interested in proceeding to license the  
9 technologies for its products, the parties agreed to negotiate in good faith an appropriate license  
10 agreement. Ex. B, ¶ 4.

11           **D.     Continued Development and Negotiations Between Acorn Bay and CamelBak**

12           43.     After the Option Agreement was signed in April 2012, Acorn Bay and CamelBak  
13 worked closely together to optimize Acorn Bay’s trade secret technology for use with  
14 CamelBak’s water bottles and hydration packs.

15           44.     Acorn Bay sent design iterations and solutions to CamelBak continuously during  
16 that period, communicating with CamelBak employees multiple times per week.

17           45.     Acorn Bay worked closely with Mr. Galten, Mr. Mathe, and Kevin Ostrom, a  
18 technician, during this time period.

19           46.     In February 2013, Derek Campbell, Director of Design at CamelBak, took over  
20 management of the project.

21           47.     Many people at CamelBak were aware of and participated in testing the product,  
22 including CamelBak’s CFO Jason Frame, its CEO Sally McCoy, and its Director of Operations  
23 and Strategic Sourcing, Eric Selya.

24           48.     Acorn Bay informed CamelBak about which characteristics were necessary for the  
25 valve design, which elements optimized different aspects of use, and where there was some room  
26 to make changes for aesthetic reasons. Acorn Bay also solved several design problems for  
27 CamelBak.

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1           49. By November 2013, CamelBak still had not made a decision about whether to  
2 license the product. Acorn Bay insisted on a decision by February 1, 2014.

3           50. On February 1, 2014, CamelBak committed to negotiating a license agreement and  
4 moving forward on the project.

5           51. CamelBak was very slow to negotiate the license, often not responding to  
6 comments or sending a new draft for long periods of time.

7           52. Nonetheless, having been promised a licensing deal with CamelBak, whose  
8 relevant products at the time were selling a substantial number of units per year, Acorn Bay  
9 continued to provide its insight and know-how to CamelBak.

10           **E. CamelBak Signs a Technology License Agreement with Acorn Bay**

11           53. CamelBak finally signed a technology license agreement with Acorn Bay that was  
12 effective January 12, 2015 (“License Agreement”) (attached to this Complaint as Exhibit C).

13           54. In the License Agreement, Acorn Bay granted CamelBak an exclusive, worldwide  
14 license to Acorn Valve Technology. Ex. C, ¶ 1.1.

15           55. Acorn Valve Technology was defined in the agreement to include “designs,  
16 technologies, and know-how relating to push-to-drink and bite-to-drink valves for use on Non-  
17 Disposable products including bottles and hydration reservoirs and related valves.” In addition,  
18 the license included a license to any patent obtained by Acorn Bay with claims directed to the  
19 Acorn Valve Technology. Ex. C.

20           56. The license allowed CamelBak to make, have made, use, offer to sell, sell, and  
21 import Non-Disposable hydration products that incorporate *or are derived from* Acorn Valve  
22 Technology. Ex. C, ¶ 1.1 (emphasis added).

23           57. CamelBak represented and warranted that it would use commercially reasonable  
24 efforts to develop and commence sales of Licensed Products during, if not before, calendar year  
25 2018, with a target for initial sales of January 2018. Ex. C, ¶ 2.2(b).



1           65.     Just a few weeks later, on August 3, 2015, CamelBak was officially purchased by  
2 Vista Outdoor for \$412.5 million.

3           66.     On information and belief, CamelBak terminated the License Agreement in order  
4 to eliminate a substantial monetary commitment and make its business appear more profitable.

5           **G. CamelBak Continues to Use Acorn Bay's Technology**

6           67.     Despite terminating the License Agreement and continuing to be subject to an  
7 NDA with Acorn Bay, on information and belief CamelBak continued to use Acorn Bay's  
8 technology in breach of those agreements and as a blatant misappropriation of trade secrets.

9           68.     Upon termination of the License Agreement, the license to CamelBak of the Acorn  
10 Valve Technology immediately terminated, and CamelBak was required to immediately cease  
11 using Acorn Valve Technology. Ex. C, ¶ 6.6.

12           69.     However, on information and belief, CamelBak never ceased using Acorn Valve  
13 Technology and Defendants continued to use Acorn Bay's technology and know-how to develop  
14 new products, unbeknownst to Acorn Bay.

15           70.     In approximately January 2019, Defendants began selling valves called Eddy+  
16 separately and on water bottles under the CamelBak brand. Those valves use Acorn Valve  
17 Technology.

18           71.     Prior to the CamelBak Eddy+ products entering the market in January 2019, Acorn  
19 Bay had no knowledge that CamelBak was continuing to use Acorn Bay's proprietary  
20 information in order to develop CamelBak products, nor was it possible to have gained such  
21 knowledge.

22           72.     After the termination of the License Agreement in July 2015, Acorn Bay no longer  
23 had any information about the products that CamelBak was developing, nor its plans for  
24 commercialization. Until January 2019, Acorn Bay had no reason not to take CamelBak's  
25 License Agreement termination at face value and had no reason not to believe that CamelBak was  
26 complying with the terms of the NDA and the surviving terms of the License Agreement.  
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1           82.     Inventors Donald J. Panec, Kathryn Kelsey Anne Stillinger, and Scott H. Stillinger  
2 determined that the claimed elements, including, for example, the concave gate assembly and the  
3 reduced cross-section hinges, significantly improved bite valve function.

4           **I.     Defendants’ Infringing Activities**

5           83.     CamelBak’s Eddy+ valves not only use Acorn Valve Technology but also infringe  
6 Acorn Bay’s ‘969 patent.

7           84.     On information and belief, prior to their use of the inventions patented in the ‘969  
8 patent, Defendants’ bite valves used inferior valve designs that had significant performance  
9 problems. One such problem was the restricted water flow that resulted from the inferior designs.  
10 Another exemplary problem was weeping (i.e., leaking) that would occur when the inferior bite  
11 valves were not in use.

12           85.     As discussed above, Derek Campbell, a senior product developer at CamelBak,  
13 served as the primary contact for Defendants beginning in February 2013.

14           86.     Initially, Mr. Campbell and CamelBak worked with Acorn Bay to adapt Acorn  
15 Bay’s valve designs to fit with CamelBak’s products. But, as discussed above, CamelBak  
16 abruptly terminated the work.

17           87.     Defendants began making, using, selling, offering for sale, and importing  
18 infringing bite valves at least as early as January 2019. Defendants did so after terminating the  
19 License Agreement with Acorn Bay and without securing a patent license from Acorn Bay.

20           88.     Mr. Campbell’s and Defendants’ own patent activity confirms that Defendants had  
21 notice of the ‘969 patent at least as early as December 6, 2018 when CamelBak submitted an IDS  
22 that disclosed the ‘969 patent as prior art during the prosecution of its own, later design patent  
23 (U.S. Patent No. D871836) that discloses and purportedly claims elements of Acorn Bay’s  
24 patented technology (attached to this Complaint as Exhibits E; F). Mr. Campbell is listed as one  
25 of two inventors on that patent. *Id.* By that time, Vista Outdoors had acquired CamelBak.

26           89.     CamelBak has also filed a utility patent application (U.S. Patent Application No.  
27 16/425,740) that discloses and purportedly seeks to claim elements of Acorn Bay’s patented  
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1 technology (attached to this Complaint as Exhibit G). On May 29, 2019, CamelBak again  
2 submitted an IDS identifying the '969 patent as prior art, this time during the prosecution of the  
3 utility patent application (attached to this Complaint as Exhibit H). Mr. Campbell is listed as an  
4 inventor on that patent application, as well. Ex. G.

5 90. Despite having knowledge of the '969 patent and that the Accused Products  
6 implement the patented inventions, Defendants have not sought or paid for a license to practice  
7 the '969 patent.

8 **FIRST CAUSE OF ACTION**  
9 **(VIOLATION OF DEFENSE OF TRADE SECRETS ACT)**  
10 **(Against All Defendants)**

11 91. Acorn Bay incorporates the above paragraphs as if fully set forth herein.

12 92. Acorn Bay owns and possesses certain confidential, proprietary and trade secret  
13 information, as alleged above. Acorn Bay's trade secret information includes the most effective  
14 combinations of design elements to allow for increased water flow with lower forces for bite-to-  
15 drink valves. Those design elements include the size, shape, and thickness of the barrel, valve,  
16 and slit.

17 93. Acorn Bay's confidential, proprietary, and trade secret information relates to  
18 products and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped  
19 and/or ordered in, interstate or foreign commerce.

20 94. Acorn Bay takes reasonable measures to keep such information secret and  
21 confidential.

22 95. Acorn Bay requires all consultants, potential commercial partners, and others to  
23 sign confidentiality agreements before any confidential or proprietary trade secret information is  
24 disclosed to them.

25 96. Through Acorn Bay's security measures, its confidential and proprietary trade  
26 secret information is not available for others to use through any legitimate means. While some of  
27 the trade secret information was made publicly available upon publication (and issuance) of the  
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1 patent on April 4, 2017, the remainder is still not available for others to use through any  
2 legitimate means.

3 97. Acorn Bay's confidential, proprietary, and trade secret information derived  
4 independent economic value from not being generally known to, and not being readily  
5 ascertainable through proper means by, another person who could obtain economic value from  
6 the disclosure or use of the information.

7 98. In violation of Acorn Bay's rights, Defendants misappropriated Acorn Bay's  
8 confidential, proprietary, and trade secret information in the improper and unlawful manner as  
9 alleged herein. Defendants' misappropriation of Acorn Bay's confidential, proprietary, and trade  
10 secret information was intentional, knowing, willful, malicious, fraudulent, and oppressive.  
11 Defendants have attempted and continue to attempt to conceal their misappropriation.

12 99. As a direct and proximate result of Defendants' conduct, Defendants have been  
13 unjustly enriched and Acorn Bay has sustained damages in an amount to be proven at trial.

14 100. Acorn Bay has been damaged by all of the foregoing and is entitled to an award of  
15 exemplary damages and attorneys' fees.

16 **SECOND CAUSE OF ACTION**  
17 **(BREACH OF CONTRACT)**  
18 **(Against CamelBak)**

19 101. Acorn Bay incorporates the above paragraphs as if fully set forth herein.

20 102. On March 8, 2012, CamelBak and Acorn Bay entered into a Mutual  
21 Nondisclosure Agreement. Ex. A.

22 103. Acorn Bay performed its obligations under that agreement.

23 104. While CamelBak's obligations under the NDA were in full force and effect,  
24 CamelBak breached the NDA by using Acorn Bay's confidential and proprietary information to  
25 create products to sell under its own brand and with no compensation to Acorn Bay.

26 105. On January 12, 2015, CamelBak and Acorn Bay entered into a License  
27 Agreement. Ex. C.

1 106. Acorn Bay performed its obligations under the contract.

2 107. CamelBak terminated the contract on July 10, 2015.

3 108. Upon termination, CamelBak was required to immediately cease using Acorn  
4 Bay's technology. Ex. C, ¶ 6.6. Section 6 of the License Agreement, which governs CamelBak's  
5 obligation to cease use of Acorn Bay's technology, survived termination of the License  
6 Agreement. Ex. C, ¶ 14.8.

7 109. As described above, CamelBak breached the License Agreement by continuing to  
8 use Acorn Valve Technology after termination of the agreement.

9 110. As a result of CamelBak's breaches of the NDA and License Agreement, Acorn  
10 Bay has been damaged in an amount to be determined at trial.

11 **THIRD CAUSE OF ACTION**  
12 **(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**  
13 **(Against CamelBak)**

14 111. Acorn Bay incorporates by reference and realleges all of the above paragraphs as if  
15 fully set forth herein.

16 112. Acorn Bay and CamelBak entered into a License Agreement whereby CamelBak  
17 was required to use commercially reasonable efforts to develop and commence sales of a product  
18 using Acorn Bay's valve design during, if not before, calendar year 2018. CamelBak was further  
19 required to compensate Acorn Bay for each sale of those products.

20 113. Acorn Bay performed its obligations under that agreement.

21 114. CamelBak breached the covenant of good faith and fair dealing governing every  
22 contract by not undertaking genuine efforts to commercialize a product for the benefit of Acorn  
23 Bay.

24 115. In bad faith, rather than spending the time and effort required to commercialize a  
25 product for Acorn Bay's benefit, CamelBak instead terminated the License Agreement under  
26 false pretenses after only six months.

27 116. Acorn Bay has been harmed by CamelBak's breach, because it has not received  
28 the licensing revenue that it should have received for the commercialization of products using its



1 technology as contemplated by the License Agreement. Acorn Bay has been damaged in an  
 2 amount to be determined at trial.

3 **FOURTH CAUSE OF ACTION**  
 4 **(INFRINGEMENT OF U.S. PATENT NO. 9,609,969)**  
 5 **(Against All Defendants)**

6 117. Acorn Bay incorporates by reference and realleges all of the above paragraphs as if  
 7 fully set forth herein.

8 118. Defendants have infringed, and continue to infringe, literally and/or through the  
 9 doctrine of equivalents, one or more claims of the '969 patent, including but not limited to Claim  
 10 1, pursuant to 35 U.S.C. § 271, by advertising, distributing, making, using, selling, offering to  
 11 sell, and/or importing within the United States, without authority, at least the CamelBak Eddy+  
 12 valves and related products, including, for example, bottles equipped with Eddy+ valves and  
 13 products otherwise including an Eddy+ valve (collectively, the "Accused Products").

14 119. Defendants' Accused Products generally relate to bite-actuated mouthpieces for  
 15 drink vessels. *See, e.g.,* [https://www.camelbak.com/en/bottles/R02059--Eddy\\_6L\\_2019](https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019); *see also*  
 16 U.S. Patent Publication No. 2019/0367224 (Ex. G); U.S. Patent No. D871836 (Ex. F).

17 120. The Accused Products make use of the invention claimed in the '969 patent,  
 18 including, for example, by incorporating the concave orientation of the Accused Products' gate  
 19 elements and the reduced cross-section hinge. As a result of the infringement, the Accused  
 20 Products have benefited from the increased flow, improved usability, and decreased leakage  
 21 improvements resulting from practicing the '969 patent inventions.

22 121. As an example of one theory of infringement and with reference to Claim 1 of the  
 23 '969 Patent:

<b>Claim 1</b>	<b>CamelBak's Eddy+ Products</b>
[1] A deformable elastomeric bite valve, comprising:	<p>To the extent the preamble is limiting, the Accused Products include a deformable elastomeric bite valve.</p> <p>The Accused Products each include a bite-actuated mouthpiece formed from a resilient material, such as silicone, that is suitable for use to contact and deliver potable liquids to a user's mouth.</p>

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<b>Claim 1</b>	<b>CamelBak's Eddy+ Products</b>
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*See [https://www.camelbak.com/en/bottles/R02059--Eddy\\_6L\\_2019](https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019); see also U.S. Patent Publication No. 2019/0367224 (Figs. 6, 7, 9, 12, 16) Ex. G; U.S. Patent No. D871836 (Figs. 1, 8) Ex. F (for clarity, the Accused Products themselves demonstrate infringement; citations to CamelBak's patents and patent applications that relate to the accused valve design are included as confirming what is manifest in the Accused Products).*

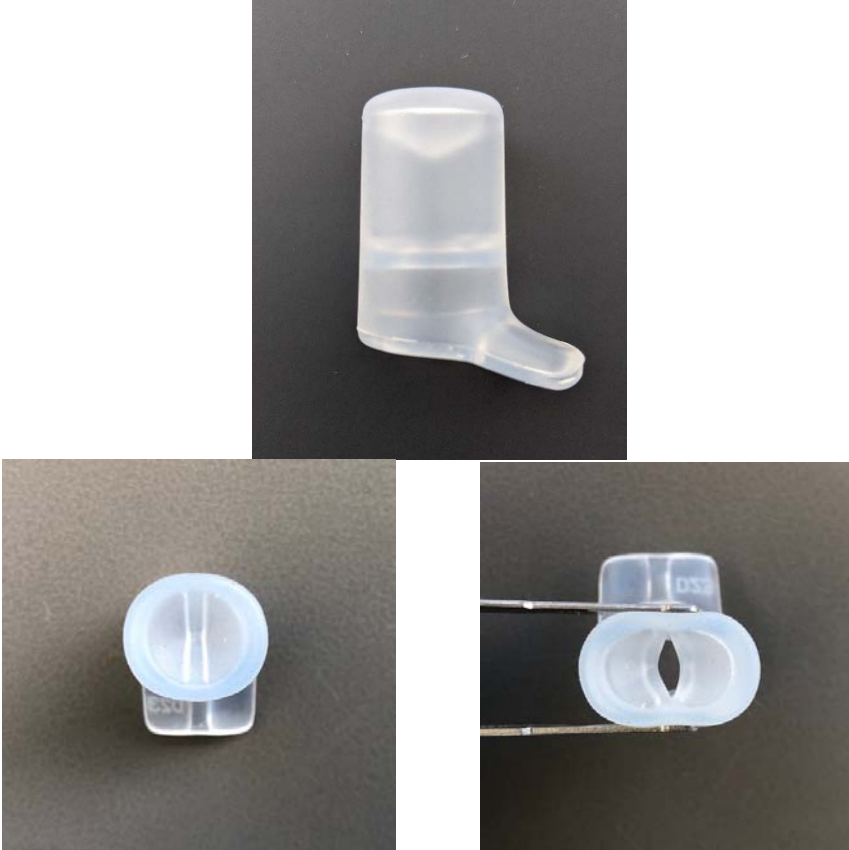
**[1a]** a barrel having one or more walls defining a fluid pathway, the barrel deformable between a non-deformed state and a deformed state; and

The Accused Products include a barrel having one or more walls defining a fluid pathway, the barrel deformable between a non-deformed state and a deformed state.

The Accused Products each include a bite-actuated mouthpiece which includes side walls and a dispensing wall. The side walls define a barrel section extending around an internal volume for liquid flow. The dispensing wall includes a self-sealing exit having a closed configuration and an open configuration. The self-sealing exit is biased toward the closed configuration.

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Claim 1	CamelBak's Eddy+ Products
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See also [https://www.camelbak.com/en/bottles/R02059--Eddy\\_6L](https://www.camelbak.com/en/bottles/R02059--Eddy_6L) 2019.

See also U.S. Patent Publication No. 2019/0367224 (Figs. 6, 7, 9, 12, 16) Ex. G; U.S. Patent No. D871836 (Figs. 1, 8) Ex. F.

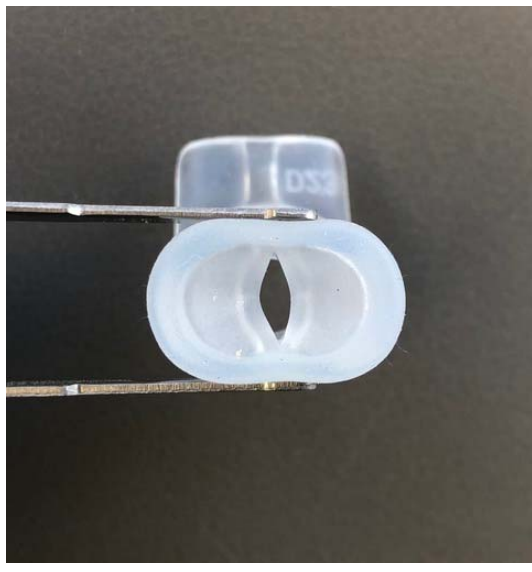
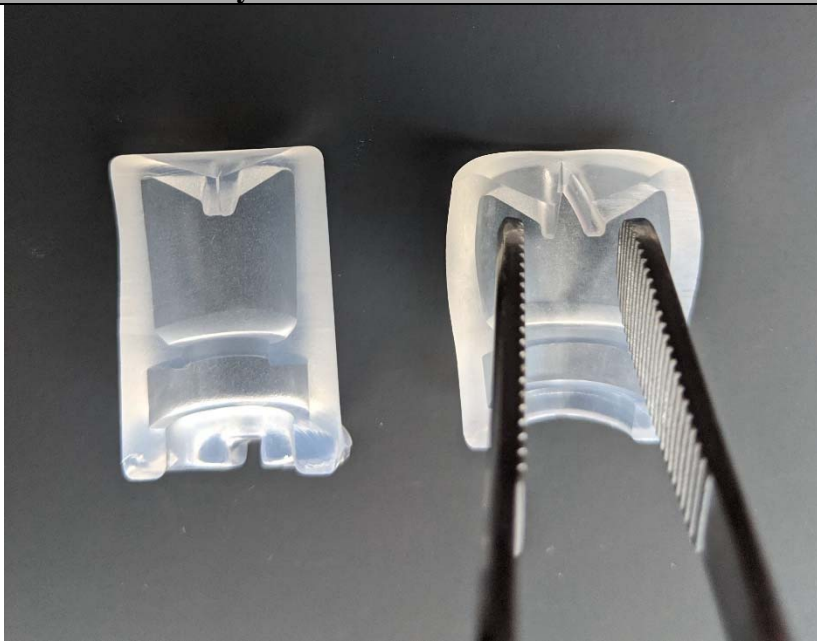
**[1b]** a gate assembly having two or more gate elements forming a tapering volume that projects into the fluid pathway from the one or more walls of the barrel, the tapering volume of the gate assembly being concave relative to a terminal end of the valve,

The Accused Products include a gate assembly having two or more gate elements forming a tapering volume that projects into the fluid pathway from the one or more walls of the barrel and is concave relative to a terminal end of the valve.

The Accused Products each include a dispensing face having a concave configuration such that a portion of the dispensing face that lies along the longitudinal axis of the mouthpiece is closer to the inlet of the mouthpiece than is a portion of the dispensing face that intersects, or is joined with, the sidewalls of the mouthpiece.

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Claim 1	CamelBak's Eddy+ Products
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See [https://www.camelbak.com/en/bottles/R02059--Eddy\\_6L\\_2019](https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019).

See also U.S. Patent Publication No. 2019/0367224 (Figs. 6, 7, 9, 12, 16) Ex. G; U.S. Patent No. D871836 (Figs. 1, 8) Ex. F.

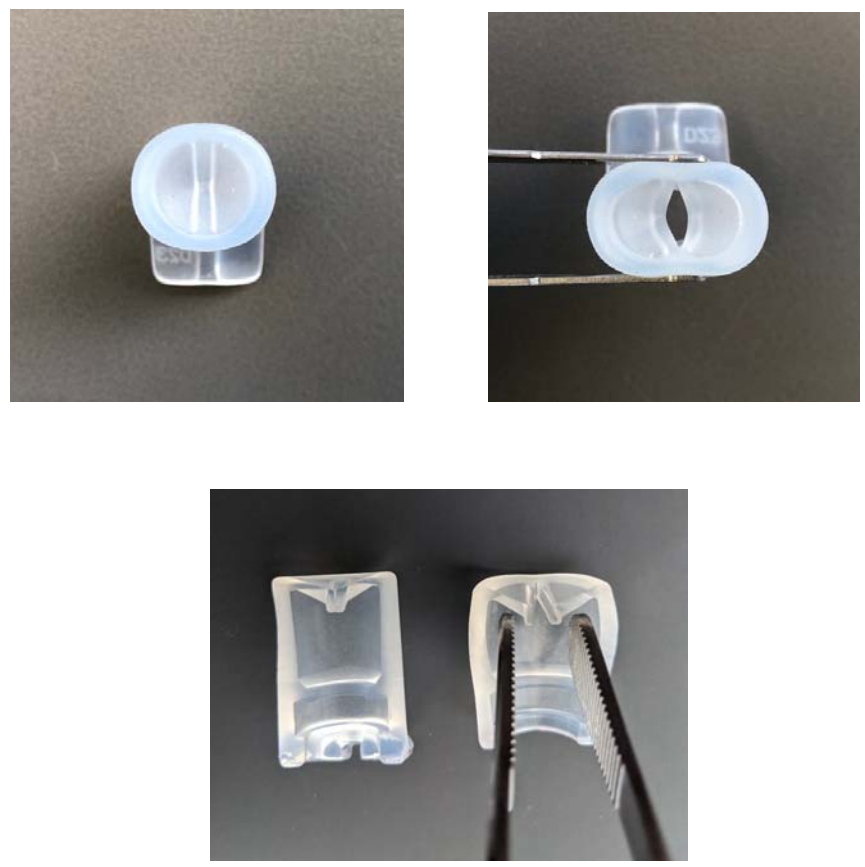
<p><b>[1c]</b> the two or more gate elements interfacing with each other along one or more gate boundaries to collectively block the</p>	<p>The Accused Products include gate elements which interface with each other along one or more gate boundaries to collectively block the fluid pathway in the non-deformed state and separating from each other along the one or more gate boundaries and away from the terminal end of the valve in the deformed state to permit fluid flow through the gate assembly.</p>
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Claim 1	CamelBak's Eddy+ Products
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fluid pathway in the non-deformed state and separating from each other along the one or more gate boundaries and away from the terminal end of the valve in the deformed state to permit fluid flow through the gate assembly, and

The Accused Products each include a dispensing wall with a self-sealing exit defined by a slit extending through the dispensing wall. The self-sealing exit has a closed configuration and an open configuration. When the self-sealing exit is in the closed configuration, opposing faces of the dispensing wall defined by the slit engage together to restrict liquid flow through the self-sealing exit. When the self-sealing exit is in the open configuration, the opposing faces of the dispensing wall defined by the slit are separated to permit liquid flow through the self-sealing exit.



See also [https://www.camelbak.com/en/bottles/R02059--Eddy\\_6L\\_2019](https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019).

See also U.S. Patent Publication No. 2019/0367224 (Figs. 6, 7) Ex. G.

[1d] each gate element of the two or more gate elements having a ratio

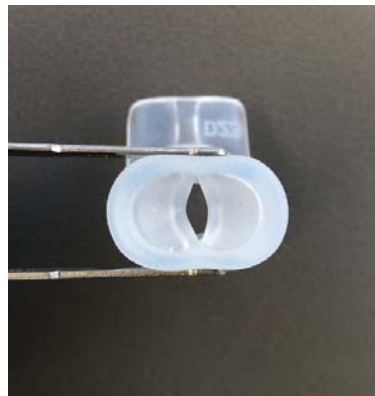
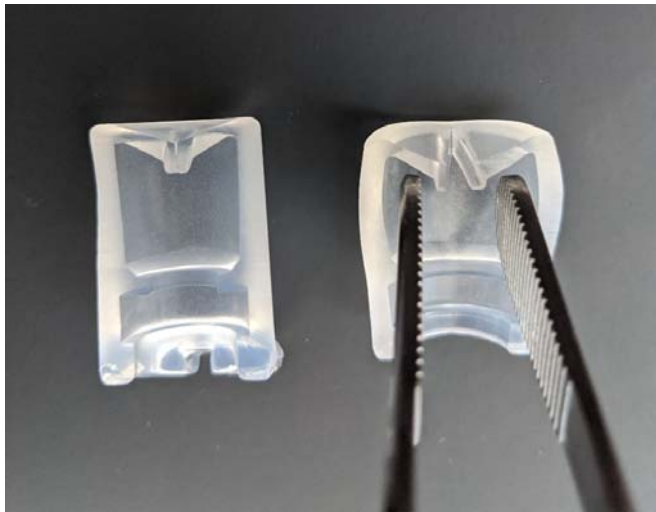
The Accused Products include gate elements that, when the depth dimension is measured along an axial direction parallel to an axis of the fluid pathway and the radial dimension is measured along a radial

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Claim 1	CamelBak's Eddy+ Products
<p>of a depth dimension to a radial dimension of 0.20 or greater in the non-deformed state, the depth dimension measured along an axial direction parallel to an axis of the fluid pathway and the radial dimension measured along a radial direction orthogonal to the axis of the fluid pathway,</p>	<p>direction orthogonal to the axis of the fluid pathway, have a ratio of depth dimension to radial dimension of 0.20 or greater when in a non-deformed state.</p> <p>The Accused Products' dispensing face's concave configuration has a depth-to-radial dimension ratio of substantially more than the 0.20 claimed ratio.</p> <div data-bbox="906 506 1214 1186" data-label="Image"> </div> <p><i>See also</i> <a href="https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019">https://www.camelbak.com/en/bottles/R02059--Eddy_6L_2019</a>.</p>
<p><b>[1e]</b> each gate element of the two or more gate elements joining the barrel at a reduced cross-section that forms a hinge of that gate element in which each hinge has an arc shape as viewed along an axis of the fluid pathway.</p>	<p>The Accused Products include two or more gate elements which each join the barrel at a reduced cross-section that forms a hinge of that gate element in which each hinge has an arc shape as viewed along an axis of the fluid pathway.</p> <p>The Accused Products' sidewalls intersect at a thinned section (i.e., hinge) with the dispensing face which flexes toward the internal volume as user-applied compressive forces increase. The dispensing wall and sidewalls each have an increased thickness relative to one or more points at which they intersect at the hinge. The hinges have an arc shape when viewed along the fluid pathway.</p>

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**Claim 1** **CamelBak's Eddy+ Products**



Claim 1	CamelBak's Eddy+ Products
	<p data-bbox="609 289 1339 359"><i>See also</i> <a href="https://www.camelbak.com/en/bottles/R02059--Eddy_6L">https://www.camelbak.com/en/bottles/R02059--Eddy_6L</a> 2019.</p> <p data-bbox="609 401 1482 470"><i>See also</i> U.S. Patent Publication No. 2019/0367224 (Fig. 12) Ex. G; U.S. Patent No. D871836 (Figs. 1, 6-8) Ex. F.</p>

122. As the direct and proximate result of Defendants' conduct, Acorn Bay has suffered and, if Defendants' conduct is not stopped, will continue to suffer, competitive harm, irreparable injury, and significant damages in an amount to be proven at trial. Because Acorn Bay's remedy at law is inadequate, Acorn Bay seeks, in addition to damages, permanent injunctive relief.

123. Defendants' infringement of the '969 patent has been willful and deliberate because Defendants knew or should have known about the '969 patent at least as early December 6, 2018 but acted despite an objectively high likelihood that its acts would infringe the patent.

124. Defendants had presuit knowledge of the '969 patent at least as early as December 6, 2018, when CamelBak submitted an IDS during the prosecution of one its own patents (U.S. Patent No. D871836) that listed the '969 patent as prior art. Ex. E. A May 29, 2019 IDS submitted by CamelBak for its related utility patent application (U.S. Patent Application No. 16/425,740) similarly lists the '969 patent. Ex. H. Notably, Derek Campbell, who served as Acorn Bay's main point of contact with Defendants, is an alleged inventor on the CamelBak design patent and pending utility application.

125. On information and belief, the above-identified CamelBak patent and a related pending utility application relate at least in part to the CamelBak Eddy+ bite valve design—the infringing valve.

126. On information and belief, Defendants also had presuit knowledge that the Accused Products infringed the '969 patent due to their work with Acorn Bay. As previously discussed, Derek Campbell, a senior product developer at CamelBak, learned the details of the design claimed in the '969 patent while working with Acorn Bay under the above-described



1 NDA. While the provisional application to which the '969 patent claims priority was pending,  
2 Derek Campbell abruptly terminated his and Defendants' relationship with Acorn Bay. Then, in  
3 January 2019, Defendants went to market with the Accused Products.

4 127. Defendants' willful conduct is also evidenced through their own patent activity.  
5 Defendants sought their own later patents on the design—including the previously discussed  
6 design patent (U.S. Patent No. D871836) and pending utility patent application (U.S. Patent  
7 Application No. 16/425,740). Derek Campbell—the CamelBak senior product developer  
8 working closely with Acorn Bay at the time Acorn Bay developed the patented design—claims to  
9 be an inventor of CamelBak's patent and patent application.

10 128. Defendants knowingly took and used the inventions claimed in the '969 patent.  
11 Defendants' behavior was, at a minimum, egregious. As a result, Defendants' presuit  
12 infringement was willful. Defendants' continued infringement is also willful for at least the same  
13 reasons. Accordingly, Acorn Bay is entitled to a finding of willful infringement and enhanced  
14 damages.

15 **FIFTH CAUSE OF ACTION**  
16 **(VIOLATION OF CALIFORNIA BUS. & PROF. CODE § 17200)**  
17 **(Against All Defendants)**

18 129. Acorn Bay incorporates the above paragraphs as if fully set forth herein.

19 130. Defendants engaged in unlawful, unfair, and fraudulent business acts and  
20 practices. Such acts and practices include, but are not limited to, misappropriating Acorn Bay's  
21 confidential and proprietary information.

22 131. Defendants' business acts and practices were unlawful as described above.

23 132. Defendants' business acts and practices were fraudulent in that a reasonable person  
24 would likely be deceived by their material misrepresentations and omissions. Defendants have  
25 acquired and used Acorn Bay's confidential and proprietary trade secret information through  
26 material misrepresentation and omissions.



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DATED: July 29, 2020

BAKER BOTTS L.L.P.

By: /s/ Cheryl A. Cauley

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