

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SUNDESA, LLC, a Utah limited liability  
company,

Plaintiff,

v.

CASE NO. 8:19-cv-01809-CEH-AAS

JH STUDIOS, INC., a Florida corporation,

Defendant.

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**FIRST AMENDED COMPLAINT FOR PATENT AND TRADEMARK  
INFRINGEMENT, DEMAND FOR JURY TRIAL AND INJUNCTIVE RELIEF**

Plaintiff Sundesa, LLC (“Sundesa”), by and through its undersigned counsel, Akerman LLP and Maschoff Brennan, hereby complains against defendant JH Studios, Inc. (“JH Studios”), and in support thereof, states as follows:

**THE PARTIES**

1. Sundesa is a limited liability company duly organized and existing under the laws of the State of Utah, with its principal place of business located at 250 South 850 East, Lehi, Utah 84043.
2. Upon information and belief, JH Studios is a corporation organized and existing under the laws of the State of Florida with its principal place of business located at 1819 Rudder Drive, Valrico, Florida 33594.

3. According to information publicly available through the State of Florida Division of Corporations, JH Studios' registered agent for service of process is Mirtha Holland, 1819 Rudder Drive, Valrico, Florida 33594.

### **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. § 271.

5. This is a civil action for trademark infringement arising under the federal Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, including 15 U.S.C. § 1114(1).

6. This court has original jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338.

7. This court has personal jurisdiction over JH Studios because JH Studios maintains its headquarters in the State of Florida, and within this judicial district. Per Rule 4(k), Fed. R. Civ. P., serving a summons or filing a waiver of service establishes personal jurisdiction over JH Studios because JH Studios is subject to the jurisdiction of a court of general jurisdiction in the State of Florida, where this district court is located.

8. Venue is proper in this judicial district under at least 28 U.S.C. §§ 1391(b) and 1400(b).

### **FACTUAL BACKGROUND**

9. Sundesa was founded in 2000 and has done business for the past several years under the name BlenderBottle Company. (*See www.blenderbottle.com.*) Sundesa's first innovation was the development of its original and distinctive BlenderBall® wire whisk. The company proceeded from there to develop a distinctive container and lid, and the Blender

Bottle® supplement mixing system went on to become the gold standard around the world, officially licensed by the likes of Marvel, Disney, and the NCAA. Sundesa owns or is the exclusive licensee of a variety of intellectual property rights associated with its products, including common law trademark and trade dress rights, as well as rights formalized with patents and trademark registrations issued by the United States Patent and Trademark Office and other such offices and agencies around the world.

10. Sundesa is the exclusive licensee of the following United States patents at issue in this case: U.S. Patent No. 6,379,032 (the “’032 patent”), a true and correct copy of which is attached hereto as **Exhibit A** and is incorporated herein by reference; U.S. Design Patent No. D510,235 (the “’235 design patent”), a true and correct copy of which is attached hereto as **Exhibit B** and is incorporated herein by reference; U.S. Patent No. 8,695,830 (the “’830 patent”), a true and correct copy of which is attached hereto as **Exhibit C** and is incorporated herein by reference; and U.S. Design Patent No. D644,065 (the “’065 design patent”), a true and correct copy of which is attached hereto as **Exhibit D** and is incorporated herein by reference.

11. Sundesa is the exclusive licensee of the following United States trademarks at issue in this case: U.S. Trademark Registration No. 3,471,977 (the “’977 trademark”) of the mark “BLENDER BOTTLE” in International Class 021 for “[c]ontainers, namely, bottles with internal agitators for mixing ingredients and shaker cups,” a true and correct copy of which is attached hereto as **Exhibit E** and is incorporated herein by reference; and U.S. Trademark Registration No. 4,633,169 (the “’169 trademark”) of the mark which “consists of a spiral ball” in International Class 021 for “[c]ontainers for household or kitchen use, namely, bottles with

internal agitators for mixing ingredients and shaker cups, sold empty; . . . [c]ontainers for household or kitchen use, namely, plastic or glass or stainless steel containers for use with beverages, liquid foods, dry and powdered foods, sold empty; . . . ,” a true and correct copy of which is attached hereto as **Exhibit F** and is incorporated herein by reference (collectively, the “Sundesa Trademarks”).

12. Sundesa’s ’977 trademark is an incontestable mark under 15 U.S.C. § 1065 because it is a registered mark and has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce.

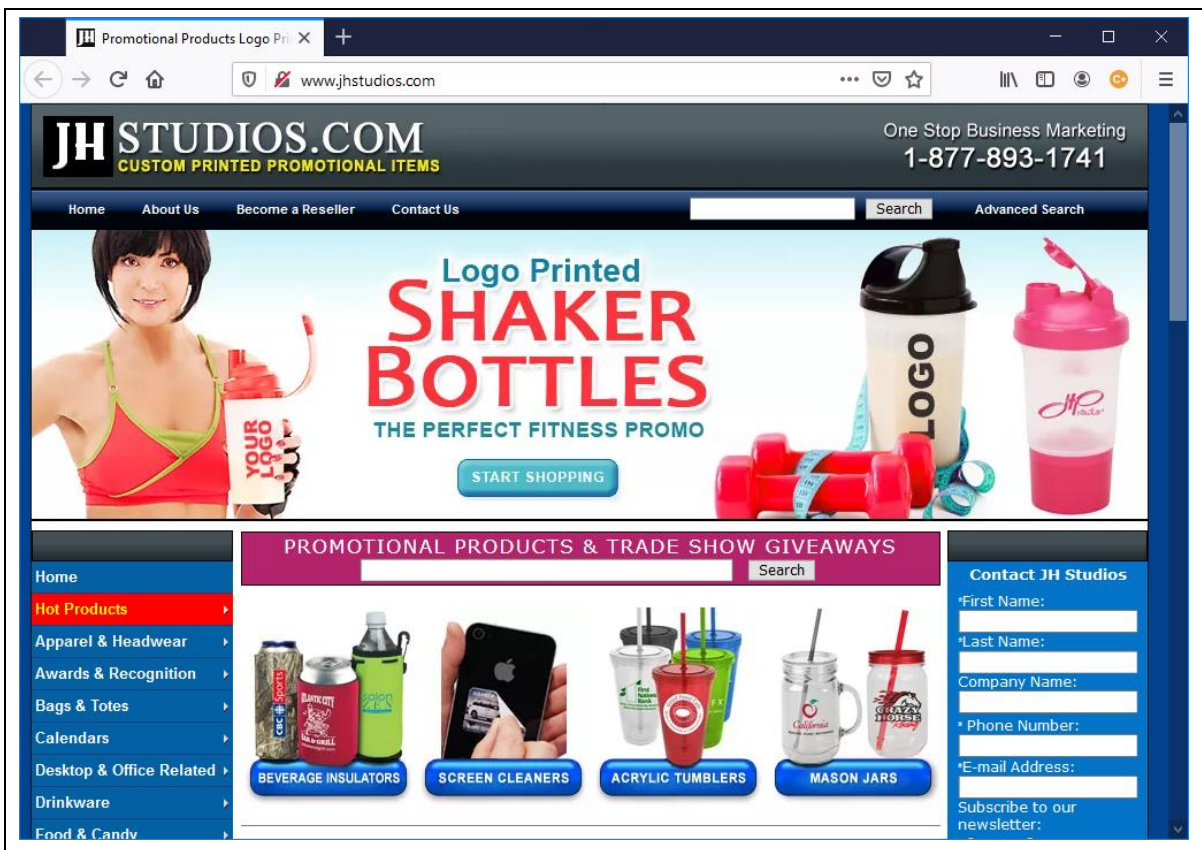
13. Sundesa’s products have been marketed and sold with the Sundesa Trademarks for many years. As a result, Sundesa has developed recognition and goodwill for the products sold under the Sundesa Trademarks, among both Sundesa’s immediate customers and the consuming public, generally.

14. As a result of, inter alia, Sundesa’s substantial investment in Sundesa Trademarks and the products marketed under the Sundesa Trademarks, the consuming public recognizes the Sundesa Trademarks and associates products one or both of those marks with a single source, namely Sundesa.

15. Sundesa began marking its products with its patent numbers in 2010. In 2014, Sundesa changed its marking practice and began marking as allowed under 35 U.S.C. § 287(a) with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented articles with the numbers of the applicable patents. Sundesa products have thus been marked since 2014 with the “blenderbottle.com/ip” Internet address, along with the statement “Protected by U.S. & foreign patents.”

16. Sundesa has also marked its products with the Sundesa Trademarks since, at the latest, 2014, along the statement “BlenderBottle®, BlenderBall®, the BlenderBottle logo and ball icon are registered trademarks of BlenderBottle Company.”

17. JH Studios is in the business of manufacturing and selling custom printed promotional items, including fitness products and accessories, through its website, *www.jhstudios.com*. Among the products JH Studios features on its commercial website and strongly promotes to consumers are shaker cups for blending supplements, as shown below:



18. Below is one example of a shaker cup and whisk type ball combination that JH Studios began selling at least as early as September 29, 2014 (the “Accused Product No. 1”):



19. On September 29, 2014, Sundesa's attorneys sent JH Studios a letter identifying Accused Product No. 1 as infringing the '032 patent and the '235 design patent, and demanding JH Studios cease and desist from further infringement. The letter included copies of both the '032 patent and the '235 design patent. A true and correct copy of the September 29, 2014 letter (without attachments) is attached hereto as **Exhibit G** and is incorporated herein by reference.



20. JH Studios ignored Sundesa's letter and continued to sell and offer for sale Accused Product No. 1, despite having been alerted that such conduct amounted to infringement of the '032 patent and the '235 design patent.

21. Sundesa's counsel sent JH Studios a second letter on April 9, 2019, which also went ignored. A true and correct copy of the April 9, 2019 letter (without attachments) is attached hereto as **Exhibit H** and is incorporated herein by reference.

22. Sundesa commenced the present action on July 24, 2019. (ECF No. 1.) This first amended complaint is filed pursuant to the court's order of July 15, 2020, granting Sundesa leave to do so. (ECF No. 27.)

23. Below are several examples of shaker cups that JH Studios was selling as of July 17, 2020 (the “Accused Product No. 2,” the “Accused Product No. 3,” the “Accused Product No. 4,” the “Accused Product No. 5,” the “Accused Product No. 6,” the “Accused Product No. 7,” the “Accused Product No. 8,” respectively):

Accused Product No. 2	Accused Product No. 3	Accused Product No. 4	Accused Product No. 5
Item No. ZOWKI-NMBPV	Item No. TOWKH-NMBPU	Item No. WIULK-NUJHF	Item No. TPXQB-MYXYM
			

Accused Product No. 6	Accused Product No. 7	Accused Product No. 8
Item No. DNYNB-NURFU	Item No. APXJG-KKYBZ	Item No. BQSQK-KBTBX
		


**FIRST CLAIM FOR RELIEF  
(Infringement of the '032 patent)**

24. The allegations presented in ¶¶ 1–10, 15, and 17–21, above, are incorporated by reference as though fully set forth herein.



25. Sundesa is the exclusive licensee of the '032 patent and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '032 patent.

26. JH Studios has directly infringed at least one claim of the '032 patent in violation of 35 U.S.C. § 271(a) by, at least, selling and offering for sale Accused Product No. 1 within the United States during the term of the '032 patent.

27. Accused Product No. 1 meets all the limitations of at least claim 15 of the '032 patent, as illustrated by the chart provided below:

Claim 15	Accused Product No. 1
15. A mixer for mixing a composition of ingredients comprising:	
a hand-held, shakeable container for holding a liquid/powder mixture;	



Claim 15	Accused Product No. 1
<p>a lid removably coupled to said hand-held shakeable container, wherein said lid serves to allow said mixer to form a completely enclosed mixing area when said lid is coupled to said hand-held, shakeable container; and</p>	
<p>a physically independent agitator object removably placed within said hand-held, shakeable container, said physically independent agitator object being free from any structural connection to said hand-held, shakeable container and having narrow rod-like elements defining a shape with interstitial spaces between said elements and a hollow interior space within said shape,</p>	
<p>wherein liquids, powders, and various other said compositions of ingredients may be mixed by flowing into and out of said hollow interior space of said physically independent agitator object as said physically independent agitator is allowed to move freely to every location within said enclosed mixing area, restricted only by the boundaries making up said enclosed mixing area.</p>	

28. The final element of claim 15 is satisfied because, upon information and belief, if the shaker cup, lid, and wire whisk type ball of Accused Product No. 1 are assembled with a liquid and a powder contained therein, the liquid and powder may be mixed by flowing into and out of the hollow interior space of the wire whisk type ball, and the wire whisk type ball will be allowed to move freely to every location within said enclosed mixing area, restricted

only by the boundaries making up said enclosed mixing area, namely the shaker cup and the lid of Accused Product No. 1.

29. JH Studios offered for sale and, upon information and belief, did in fact sell Accused Product No. 1 during the term of the '032 patent, including at least on or before September 29, 2014. (Ex. G.)

30. Based on the demand letter from Sundesa's counsel dated September 29, 2014, JH Studios has had actual notice since that date or shortly thereafter that selling or offering for sale Accused Product No. 1 amounted to direct infringement of at least one claim of the '032 patent. (Ex. G.)

31. Upon information and belief, JH Studios continued to sell and offer for sale Accused Product No. 1 after receiving Sundesa's September 29, 2014 demand letter, despite knowing that such conduct directly infringed the '032 patent. (Ex. H.) In so doing, JH Studios intentionally or at least knowingly infringed the '032 patent.

32. Sundesa is entitled under 35 U.S.C. § 284 to recover damages from JH Studios in an amount adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of Accused Product No. 1 by JH Studios, together with interest and costs as fixed by the court.

33. The court may increase the damages under 35 U.S.C. § 284 up to three times the amount found or assessed, and Sundesa is entitled to such an enhancement, because JH Studios' infringement of the '032 patent has been willful, intentional, and/or knowing since at least September 29, 2014, or shortly thereafter.

34. JH Studios' refusal to cease and desist from continuing to infringe the '032 patent despite actual notice of such infringement renders this case exceptional, and Sundesa is entitled to an award of reasonable attorney fees as a result, pursuant to 35 U.S.C. § 285.

**PRAYER FOR RELIEF UNDER FIRST CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its First Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of one or more claims of the '032 patent;
- B. a judgment awarding damages adequate to compensate Sundesa for JH Studios' infringement of the '032 patent, pursuant to 35 U.S.C. § 284;
- C. a judgment finding that JH Studios' infringement of the '032 patent was willful and, pursuant to 35 U.S.C. § 284, increasing the damages up to three times the amount found or assessed because of, at least, JH Studios' willful conduct;
- D. a judgment finding this case to be exceptional under 35 U.S.C. § 285 and awarding Sundesa its reasonable attorney fees accordingly;
- E. a judgment awarding Sundesa pre-judgment and post-judgment interest;
- F. a judgment taxing Sundesa's costs to JH Studios; and
- G. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

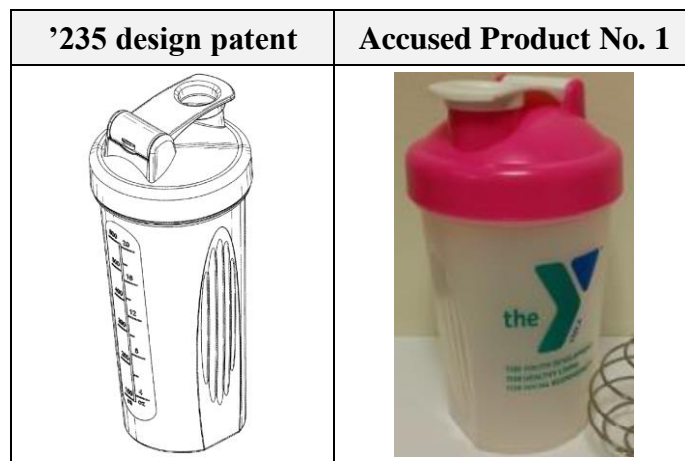
**SECOND CLAIM FOR RELIEF  
(Infringement of the '235 design patent)**

35. The allegations presented in ¶¶ 1–10, 15, and 17–21, above, are incorporated by reference as though fully set forth herein.

36. Sundesa is the exclusive licensee of the '235 design patent and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '235 design patent.

37. JH Studios has directly infringed the '235 design patent in violation of 35 U.S.C. §§ 271(a) and 289 by, at least, selling and offering for sale Accused Product No. 1 within the United States during the term of the '235 design patent.

38. Accused Product No. 1 infringes the '235 design patent because in the eye of an ordinary observer, giving such attention as a purchaser usually gives, its design is substantially the same as the design claimed in the '235 design patent, as illustrated by the chart provided below:



39. The resemblance between the two designs shown above is such as to deceive an ordinary observer and would induce that person to purchase one supposing it to be the other.

40. JH Studios offered for sale and, upon information and belief, did in fact sell Accused Product No. 1 during the term of the '235 design patent, including at least on or before September 29, 2014. (Ex. G.)

41. Based on the demand letter from Sundesa's counsel dated September 29, 2014, JH Studios has had actual notice since that date or shortly thereafter that selling or offering for sale Accused Product No. 1 amounted to direct infringement of the '235 design patent. (Ex. G.)

42. Upon information and belief, JH Studios continued to sell and offer for sale Accused Product No. 1 after receiving Sundesa's September 29, 2014 demand letter, despite knowing that such conduct directly infringed the '235 design patent. (Ex. H.) In so doing, JH Studios intentionally or at least knowingly infringed the '235 design patent.

43. Sundesa is entitled under 35 U.S.C. § 284 to recover damages from JH Studios in amount adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of Accused Product No. 1 by JH Studios, together with interest and costs as fixed by the court.

44. The court may increase the damages under 35 U.S.C. § 284 up to three times the amount found or assessed, and Sundesa is entitled to such an enhancement because JH Studios' infringement of the '235 design patent has been willful, intentional, and/or knowing since at least September 29, 2014, or shortly thereafter.

45. In the alternative to damages recovery under 35 U.S.C. § 284, Sundesa is entitled under 35 U.S.C. § 289 to recover JH Studios' total profits from its sale of Accused Product No. 1 in violation of the '235 design patent.

46. JH Studios' refusal to cease and desist from continuing to infringe the '235 design patent despite actual notice of such infringement renders this case exceptional, and Sundesa is entitled to an award of reasonable attorney fees as a result, pursuant to 35 U.S.C. § 285.

**PRAYER FOR RELIEF UNDER SECOND CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its Second Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of the claims of the '235 design patent;
- B. a judgment awarding damages adequate to compensate Sundesa for JH Studios' infringement of the '235 design patent, pursuant to 35 U.S.C. § 284;
- C. alternatively, a judgment awarding damages in an amount equal to JH Studios' total profits from sales of products that infringe the '235 design patent, pursuant to 35 U.S.C. § 289.
- D. a judgment finding that JH Studios' infringement of the '235 design patent was willful and, pursuant to 35 U.S.C. § 284, increasing the damages up to three times the amount found or assessed because of, at least, JH Studios' willful conduct;
- E. a judgment finding this case to be exceptional under 35 U.S.C. § 285 and awarding Sundesa its reasonable attorney fees accordingly;
- F. a judgment awarding Sundesa pre-judgment and post-judgment interest;

G. a judgment taxing Sundesa's costs to JH Studios; and

H. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

**THIRD CLAIM FOR RELIEF**  
**(Infringement of the '830 patent)**



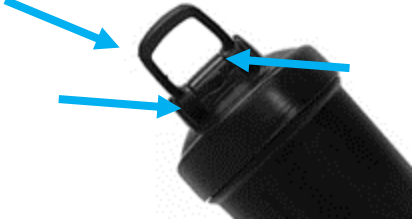


47. The allegations presented in ¶¶ 1–10, 15, 17, and 23, above, are incorporated by reference as though fully set forth herein.

48. Sundesa is the exclusive licensee of the '830 patent and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '830 patent.






49. JH Studios has directly infringed at least one claim of the '830 patent in violation of 35 U.S.C. § 271(a) by, at least, selling and offering for sale Accused Product Nos. 2–4 within the United States during the term of the '830 patent.

50. Upon information and belief, based upon the images and product descriptions provided by JH Studios at its website, *www.jhstudios.com*, Accused Product Nos. 2–4 meet all the limitations of at least claim 12 of the '830 patent.

51. The chart below shows direct infringement of claim 12 of the '830 patent by Accused Product No. 4, and is representative of direct infringement of the same claim by Accused Product Nos. 2–3, which are essentially identical to each other and to Accused Product No. 4 with regard to the design and operation of the patented features. As illustrated below, Accused Product No. 4 meets all the limitations of at least claim 12 of the '830 patent:

Claim 12	Accused Product No. 4
A container comprising:	
a bottle; and	
a lid for sealing an opening of the bottle, the lid comprising:	
a lid base having an opening for dispensing contents of the bottle;	
a handle comprising a first end with a first handle pivot and a second end with a second handle pivot; and	
a flip top for sealing the opening in the lid base, the flip top including a flip top pivot comprising:	
a first protrusion that is disposed in a first receiving portion of the first end of the handle;	



Claim 12	Accused Product No. 4
<p>a second protrusion that is disposed in a second receiving portion of the second end of the handle, wherein the first and second protrusions extend from the flip top pivot away from each other; and</p>	
<p>a mount connecting the handle and the flip top to the lid base, the mount comprising:</p>	
<p>a first post including a first receiving portion, the first handle pivot disposed in the first receiving portion of the first post; and</p>	
<p>a second post including a second receiving portion, the second handle pivot disposed in the second receiving portion of the second post;</p>	
<p>wherein the handle and the flip top are each independently pivotable within the mount.</p>	

52. Upon information and belief, JH Studios offered for sale, did in fact sell, continues to offer for sale, and continues to sell Accused Product Nos. 2–4 during the term of the '830 patent.

53. Due to JH Studios' actions, constituting infringement of the '830 patent, Sundesa has suffered irreparable injury, for which Sundesa has no adequate remedy at law.

54. JH Studios will continue to infringe the '830 patent to the irreparable injury of Sundesa, unless and until JH Studios is enjoined by this Court.

55. Sundesa is entitled under 35 U.S.C. § 283 to injunctive relief against JH Studios.

56. Sundesa is entitled under 35 U.S.C. § 284 to recover damages from JH Studios in amount adequate to compensate for the infringement of the '830 patent, but in no event less than a reasonable royalty for the use made of Accused Product Nos. 2–4 by JH Studios, together with interest and costs as fixed by the court.

### **PRAYER FOR RELIEF UNDER THIRD CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its Third Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of one or more claims of the '830 patent;
- B. a judgment awarding damages adequate to compensate Sundesa for JH Studios' infringement of the '830 patent, pursuant to 35 U.S.C. § 284;
- C. a judgment increasing the damages up to three times the amount found or assessed, pursuant to 35 U.S.C. § 284;

- D. an order pursuant to 35 U.S.C. § 283 preliminarily and permanently enjoining JH Studios, its attorneys, agents, successors, assigns, officers, directors, shareholders, employees, and all persons or entities in active concert or participation with them from making, using, selling, offering for sale, or importing into the United States products that infringe one or more claims of the '830 patent;
- E. a judgment finding this case to be exceptional under 35 U.S.C. § 285 and awarding Sundesa its reasonable attorney fees accordingly;
- F. a judgment awarding Sundesa pre-judgment and post-judgment interest;
- G. a judgment taxing Sundesa's costs to JH Studios; and
- H. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

**FOURTH CLAIM FOR RELIEF  
(Infringement of the '065 design patent)**

57. The allegations presented in ¶¶ 1–10, 15, 17, and 23, above, are incorporated by reference as though fully set forth herein.

58. Sundesa is the exclusive licensee of the '065 design patent and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '065 design patent.

59. JH Studios has directly infringed the '065 design patent in violation of 35 U.S.C. §§ 271(a) and 289 by, at least, selling and offering for sale Accused Product Nos. 1 and 5–8 within the United States during the term of the '065 design patent.

60. Accused Product Nos. 1 and 5–8 infringe the '065 design patent because in the eye of an ordinary observer, giving such attention as a purchaser usually gives, their design is substantially the same as the design claimed in the '065 design patent, as illustrated by the chart provided below:

'065 design patent	Accused Product No. 1	Accused Product No. 5	Accused Product No. 6	Accused Product No. 7	Accused Product No. 8
					

61. The resemblance between the design claimed in the '065 design patent and Accused Product Nos. 1 and 5–8 shown above is such as to deceive an ordinary observer and would induce that person to purchase one supposing it to be the other.

62. Upon information and belief, JH Studios offered for sale, did in fact sell, continues to offer for sale, and continues to sell Accused Product Nos. 1 and 5–8 during the term of the '065 design patent.

63. JH Studios' infringement of the '065 design patent will continue to damage Sundesa's business, causing irreparable harm, for which there is no adequate remedy at law.

64. Sundesa is entitled under 35 U.S.C. § 283 to injunctive relief against JH Studios.

65. Sundesa is entitled under 35 U.S.C. § 284 to recover damages from JH Studios in amount adequate to compensate for the infringement of the '065 design patent, but in no event less than a reasonable royalty for the use made of Accused Product Nos. 1 and 5–8 by JH Studios, together with interest and costs as fixed by the court.

66. In the alternative to damages recovery under 35 U.S.C. § 284, Sundesa is entitled under 35 U.S.C. § 289 to recover JH Studios' total profits from its sale of Accused Product Nos. 1 and 5–8 in violation of the '065 design patent.

#### **PRAYER FOR RELIEF UNDER FOURTH CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its Fourth Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of the claims of the '065 design patent;
- B. a judgment awarding damages adequate to compensate Sundesa for JH Studios' infringement of the '065 design patent, pursuant to 35 U.S.C. § 284;
- C. alternatively, a judgment awarding damages in an amount equal to JH Studios' total profits from sales of products that infringe the '065 design patent, pursuant to 35 U.S.C. § 289.
- D. a judgment increasing the damages up to three times the amount found or assessed, pursuant to 35 U.S.C. § 284;
- E. an order pursuant to 35 U.S.C. § 283 preliminarily and permanently enjoining JH Studios, its attorneys, agents, successors, assigns, officers,

directors, shareholders, employees, and all persons or entities in active concert or participation with them from making, using, selling, offering for sale, or importing into the United States products that infringe the claims of the '065 design patent;


- F. a judgment finding this case to be exceptional under 35 U.S.C. § 285 and awarding Sundesa its reasonable attorney fees accordingly;
- G. a judgment awarding Sundesa pre-judgment and post-judgment interest;
- H. a judgment taxing Sundesa's costs to JH Studios; and
- I. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

**FIFTH CLAIM FOR RELIEF  
(Infringement of the '977 trademark)**

67. The allegations presented in ¶¶ 1–9, 11–14, 16–17, and 23, above, are incorporated by reference as though fully set forth herein.

68. Sundesa is the exclusive licensee of the '977 trademark and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '977 trademark.

69. JH Studios' use of the '977 trademark is likely to cause consumer confusion, mistake, or deception as to the source, origin, affiliation, connection, or association of JH Studios' products with Sundesa, or as to the approval of JH Studios' products by Sundesa, and thus constitutes infringement of Sundesa's '977 trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, as illustrated by the chart provided below showing the BLENDER BOTTLE mark inscribed upon Accused Product No. 6:

'977 trademark	Accused Product No. 6
<p style="text-align: center;">“BLENDER BOTTLE”</p>	

70. In addition, JH Studios uses Sundesa’s BLENDER BOTTLE ’977 trademark as the name for at least Accused Product Nos. 2 and 3 in connection with efforts to sell those products. The table below reproduces the relevant text from the pages of JH Studios’ website where it offers Accused Product Nos. 2 and 3 for sale:

Accused Product No. 2	Accused Product No. 3
<p style="text-align: center;">ZOWKI-NMBPV 20 OZ <b>Blender Bottle</b></p> <p>Composed of PP&amp;PE. BPA and phthalate-free, dishwasher safe. The wide mouth makes it easy to add mix scoops and liquids. The 20 OZ <b>Blender Bottle</b> is compliant with CPSIA.</p>	<p style="text-align: center;">TOWKH-NMBPU 13 OZ <b>Blender Bottle</b></p> <p>Manufactured of PP&amp;PE. BPA and phthalate-free, dishwasher safe. The wide mouth makes it easy to add mix scoops and liquids. The 13 OZ <b>Blender Bottle</b> is compliant with CPSIA.</p>

71. Upon information and belief, based at least upon Sundesa’s long-term use of the BLENDER BOTTLE ’977 trademark in commerce with the ® symbol, JH Studios adopted and is using the ’977 trademark with the willful intent to trade on Sundesa’s reputation and goodwill established in the ’977 trademark.

72. Upon information and belief, JH Studios has had actual knowledge of Sundesa's exclusive rights in the '977 trademark, and willfully and deliberately infringed, and continues to infringe on such rights.

73. Sundesa has no adequate remedy at law because the '977 trademark is unique and represents to the public Sundesa's reputation and goodwill such that damages alone cannot fully compensate Sundesa for JH Studios' misconduct.

74. Unless enjoined by this court, JH Studios will continue its infringing actions resulting in irreparable harm to Sundesa and its extensive business and goodwill.

75. Pursuant to 15 U.S.C. § 1116, Sundesa is entitled to an order of this court, effective during the pendency of this action and thereafter to be made permanent, enjoining JH Studios, its officers, agents and employees from using '977 trademark or other designations confusingly similar to the '977 trademark.

76. Pursuant to 15 U.S.C. § 1117(a), in addition to injunctive relief, Sundesa is entitled to recover JH Studios' profits, any money damages sustained by Sundesa, and the costs of the action.

77. The case is exceptional, based at least upon JH Studios' brazen use of the BLENDER BOTTLE '977 trademark despite knowing it to be a registered trademark that it is not authorized to use. The court should award Sundesa its reasonable attorney fees accordingly, pursuant to 15 U.S.C. § 1117(a).



**PRAYER FOR RELIEF UNDER FIFTH CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its Fifth Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of the '977 trademark;
- B. an order requiring JH Studios to render an accounting to ascertain the total amount of any and all profits derived by JH Studios as a result of its unlawful and unauthorized use, exploitation and infringement of the '977 trademark;
- C. a judgment awarding recovery pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), of the total amount of any and all profits derived by JH Studios as a result of its unlawful and unauthorized use, exploitation, and infringement of the '977 trademark;
- D. a judgment awarding recovery pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), of the total amount of damages sustained by Sundesa as a result of JH Studios' unlawful and unauthorized use, exploitation, and infringement of the '977 trademark;
- E. an order preliminarily and permanently enjoining and restraining JH Studios, its attorneys, agents, successors, assigns, officers, directors, shareholders, employees, and all persons or entities in active concert or participation with them, pursuant to 15 U.S.C. § 1116, from the following:

- i. Using in any manner the '977 trademark or any other designation that is confusingly similar to or a colorable imitation of the '977 trademark;
  - ii. Using in any manner any trademark, service mark, words, abbreviations, designs, arrangements, or other combinations thereof that would imitate, resemble, or suggest the '977 trademark; and
  - iii. Otherwise infringing the '977 trademark;
- F. an order requiring JH Studios, pursuant to 15 U.S.C. § 1116, to file with the court and serve on Sundesa within thirty (30) days after entry of a preliminary or permanent injunction order, a report in writing under oath setting forth in detail the manner and form in which JH Studios has complied with the injunction;
- G. a judgment finding this case to be exceptional under 15 U.S.C. § 1117(a);
- H. a judgement awarding Sundesa its reasonable attorney fees under 15 U.S.C. § 1117(a) or 15 U.S.C. § 1117(b);
- I. an order requiring JH Studios, pursuant to 15 U.S.C. § 1118, to deliver up for destruction all containers, labels, signs, prints packages, wrappers, receptacles, and advertisements, in the possession, custody or under the control of JH Studios, bearing the '977 trademark or any other designation that is confusingly similar to or a colorable imitation of the '977 trademark;
- J. a judgment awarding Sundesa pre-judgment and post-judgment interest;
- K. a judgment taxing Sundesa's costs to JH Studios; and

L. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

**SIXTH CLAIM FOR RELIEF  
(Infringement of the '169 trademark)**

78. The allegations presented in ¶¶ 1–9, 11–14, 16–17, and 23, above, are incorporated by reference as though fully set forth herein.

79. Sundesa is the exclusive licensee of the '169 trademark and has been granted all substantial rights thereunder, including the right to sue and seek recovery for any and all infringement of the '169 trademark.

80. JH Studios' use of the '169 trademark is likely to cause consumer confusion, mistake, or deception as to the source, origin, affiliation, connection, or association of JH Studios' products with Sundesa, or as to the approval of JH Studios' products by Sundesa, and thus constitutes infringement of Sundesa's '169 trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, as illustrated by the chart provided below:

'169 trademark	Accused Product No. 6
	

81. Upon information and belief, based at least upon Sundesa's long-term use of the '169 trademark in commerce with the ® symbol or other notations indicating its status as a registered trademark, JH Studios adopted and is using the '169 trademark with the willful intent to trade on Sundesa's reputation and goodwill established in the '169 trademark.

82. Upon information and belief, JH Studios has had actual knowledge of Sundesa's exclusive rights in the '169 trademark, and willfully and deliberately infringed, and continues to infringe on such rights.

83. Sundesa has no adequate remedy at law because the '169 trademark is unique and represents to the public Sundesa's reputation and goodwill such that damages alone cannot fully compensate Sundesa for JH Studios' misconduct.

84. Unless enjoined by this court, JH Studios will continue its infringing actions resulting in irreparable harm to Sundesa and its extensive business and goodwill symbolized by the '169 trademark.

85. Pursuant to 15 U.S.C. § 1116, Sundesa is entitled to an order of this court, effective during the pendency of this action and thereafter to be made permanent, enjoining JH Studios, its officers, agents and employees from using the '169 trademark or other designations confusingly similar to the '169 trademark.

86. Pursuant to 15 U.S.C. § 1117(a), in addition to injunctive relief, Sundesa is entitled to recover JH Studios' profits, any money damages sustained by Sundesa, and the costs of the action.

87. The case is exceptional, based at least upon JH Studios' brazen use of the '169 trademark despite knowing it to be a registered trademark that it is not authorized to use. The

court should award Sundesa its reasonable attorney fees accordingly, pursuant to 15 U.S.C. § 1117(a).

**PRAYER FOR RELIEF UNDER SIXTH CLAIM**

WHEREFOR, Sundesa prays for relief in its favor on its Sixth Claim for Relief as follows:

- A. a judgment finding JH Studios liable for infringement of the '169 trademark;
- B. an order requiring JH Studios to render an accounting to ascertain the total amount of any and all profits derived by JH Studios as a result of its unlawful and unauthorized use, exploitation and infringement of the '169 trademark;
- C. a judgment awarding recovery pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), of the total amount of any and all profits derived by JH Studios as a result of its unlawful and unauthorized use, exploitation, and infringement of the '169 trademark;
- D. a judgment awarding recovery pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), of the total amount of damages sustained by Sundesa as a result of JH Studios' unlawful and unauthorized use, exploitation, and infringement of the '169 trademark;
- E. an order preliminarily and permanently enjoining and restraining JH Studios, its attorneys, agents, successors, assigns, officers, directors,

shareholders, employees, and all persons or entities in active concert or participation with them, pursuant to 15 U.S.C. § 1116, from the following:

- iv. Using in any manner the '169 trademark or any other designation that is confusingly similar to or a colorable imitation of the '169 trademark;
  - v. Using in any manner any trademark, service mark, words, abbreviations, designs, arrangements, or other combinations thereof that would imitate, resemble, or suggest the '169 trademark; and
  - vi. Otherwise infringing the '169 trademark;
- F. an order requiring JH Studios, pursuant to 15 U.S.C. § 1116, to file with the court and serve on Sundesa within thirty (30) days after entry of a preliminary or permanent injunction order, a report in writing under oath setting forth in detail the manner and form in which JH Studios has complied with the injunction;
- G. a judgment finding this case to be exceptional under 15 U.S.C. § 1117(a);
- H. a judgement awarding Sundesa its reasonable attorney fees under 15 U.S.C. § 1117(a) or 15 U.S.C. § 1117(b);
- I. an order requiring JH Studios, pursuant to 15 U.S.C. § 1118, to deliver up for destruction all containers, labels, signs, prints packages, wrappers, receptacles, and advertisements, in the possession, custody or under the control of JH Studios, bearing the '169 trademark or any other designation that is confusingly similar to or a colorable imitation of the '169 trademark;

- J. a judgment awarding Sundesa pre-judgment and post-judgment interest;
- K. a judgment taxing Sundesa's costs to JH Studios; and
- L. a judgment awarding Sundesa such other and further relief as the court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Sundesa demands trial by jury on all claims and issues so triable.

DATED: July 29, 2020

/s/ Trevor L. Clark

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which provided notice to all CM/ECF participants in this case, and I also caused a true and correct copy of the foregoing to be delivered via overnight mail to the Defendant, JH Studios, Inc., c/o Registered Agent, Mirtha Holland, 1819 Rudder Drive, Valrico, FL 33594.

*/s/ Trevor L. Clark*