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Attorneys for Plaintiff,
ADDADAY LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Addaday LLC, a California limited liability company, Plaintiff, v. Hyper Ice, Inc., a California corporation, Defendant.	Case No.: 8:20-cv-1459 **VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT OF:** **1) PATENT NONINFRINGEMENT; AND** **2) PATENT INVALIDITY;** **BREACH OF SETTLEMENT AGREEMENT; DEFAMATION; INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS; AND UNFAIR COMPETITION**

Plaintiff, Addaday LLC ("Addaday" or "Plaintiff"), for its Verified Complaint for Declaratory Judgment against Defendant Hyper Ice, Inc. ("Hyper" or "Defendant") alleges as follows.

JURISDICTION AND VENUE

1) This Verified Complaint arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202 *et seq.* and the Patent laws of the United States, Title 35 of the United States Code, 35 U.S.C § 100 *et seq*. This Court has subject matter jurisdiction over this Verified Complaint pursuant to 28 U.S.C. §§1331 & 1338(a).
2) Venue is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the events described herein occurred in this judicial district, and Hyper Ice is subject to personal jurisdiction in this judicial district, *inter alia*, because the effect of its ITC Proceeding No. 337-TA- ("the ITC Proceeding") with respect to its allegations against Addaday of Patent Infringement takes place entirely within this judicial district and Hyper Ice maintains a place of business at 15440 Laguna Canyon Road, Suite 230, Irvine, California 92618, thus subjecting itself to the jurisdiction and venue of this Honorable District Court.
3) This Complaint sets forth two Claims for Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 & 2202 *et seq.*, in which Addaday desires a declaration of rights in the form of a Judgment against Hyper.
4) An actual case and controversy exists between the Parties, in view of the ITC Proceeding, which alleges that Addaday is infringing certain Patent rights allegedly held by Hyper. A true and correct copy of the Complaint filed by Hyper in the ITC Proceeding is attached hereto as Exhibit A.

PARTIES

5) Addaday is a California limited liability company having a principal place of business at 2500 Broadway, F125, Santa Monica, CA 90404.
6) On information and belief, Hyper is a California corporation having a principal place

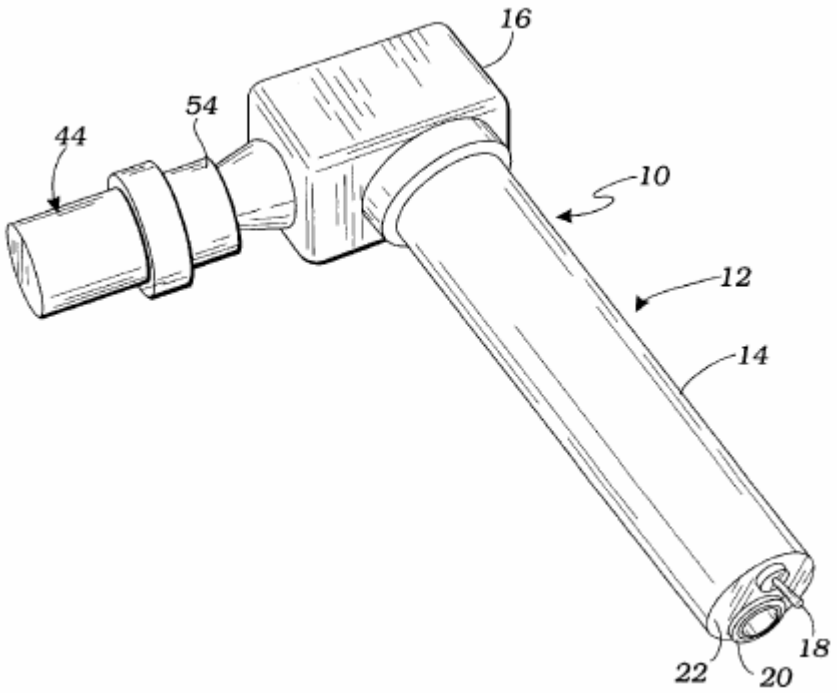
of business at 15440 Laguna Canyon Road, Suite 230, Irvine CA 92618.

FACTUAL BACKGROUND

7) Since 2012, Addaday has provided a number of health and fitness products, many focusing in the field of massage devices.

8) As early as 2003, people began affixing massage implementations to the heads of jigsaw power tools, such that the jigsaw tools with the massage implementations were capable of providing tissue massages.

9) According to the US Patent Office, DMS Deep Muscle Stimulator filed in 1999 would result in US Patent No. 6,682,496, one of the earliest "massage guns".



The Massage Gun Shown in US Patent No. 6,682,496

10) Since then, various entities have created and released their own massage gun type products having replaceable heads. Over the years, various entities adapted this massage gun into their own products, which has become an extremely popular type of product, made and sold under many different brands by many companies.

11) Massage guns generally take the shape of a device having a main body, from which a handle extends downward, and a massaging portion extends forward. Many devices also comprise protrusions extending upward and rearward.

12) In 2018, Addaday introduced its own wired massage gun product, and in 2019 introduced its own wireless massage gun product, which has since been discontinued, at the time known as the Addaday BioZoom Massager ("Discontinued Biozoom").

The Discontinued BioZoom

13) The Discontinued BioZoom follows the same general shape as the numerous massage guns currently available, while incorporating significant structural and design elements that differentiate it from the myriad of available competitors.

14) Hyper sent to Addaday a Letter dated September 13, 2019 alleging that the Discontinued BioZoom infringed U.S. Design Patent No. D855,822 ("the D'822 Patent"). The September 13, 2019 Letter is attached hereto as Exhibit B.

15) On September 16, 2019, Addaday filed and served a Complaint including Claims

for Declaratory Judgement of Noninfringement and Invalidity of the D'822 Patent, Case No. 8:19-CV-01760 ("the Prior Litigation").

16) Addaday and Hyper resolved the Prior Litigation and entered into Settlement Agreement with an effective date October 29, 2019.

17) On November 5, 2019, Addaday Filed a Notice of Dismissal without Prejudice.

18) On July 16, 2020, Addaday stopped offering for sale the Discontinued BioZoom.

19) After that, Addaday began to offer a new product under the name Addaday BioZoom Massager ("the Current BioZoom").

The Current BioZoom

The Settlement Agreement

20) The Settlement Agreement includes a Covenant Not to Sue which states "Hyper Ice covenants not to sue Addaday and/or anyone up or down the chain of supply, now or in the future, for alleged infringement of Hyper Ice's intellectual property that is detailed in the Complaint [which includes the D'822 Patent] by BioZoom's massage gun shown in the Complaint [which is the Discontinued BioZoom],

including any manufacture, use, offer for sale, sale, or importation thereof." The Settlement Agreement is attached hereto as Exhibit C.

Hyper's ITC Proceeding and Alleged Patent Rights

21) On June 16, 2020, Hyper filed its Complaint in the ITC Proceeding ("the ITC Complaint"), which names nineteen (19) different respondents. The ITC Complaint is attached hereto as Exhibit A.

22) The ITC Complaint and alleges that each of the respondents infringe one or more of the D'822 Patent, US Patent No. 10,561,574 ("the '574 Patent"), and US Design Patent No. D886,317 ("the D'317 Patent") (collectively "the ITC Patents"). The Asserted Patents are attached hereto as Exhibits D-F.

23) The D'822 Patent is directed to the following design:

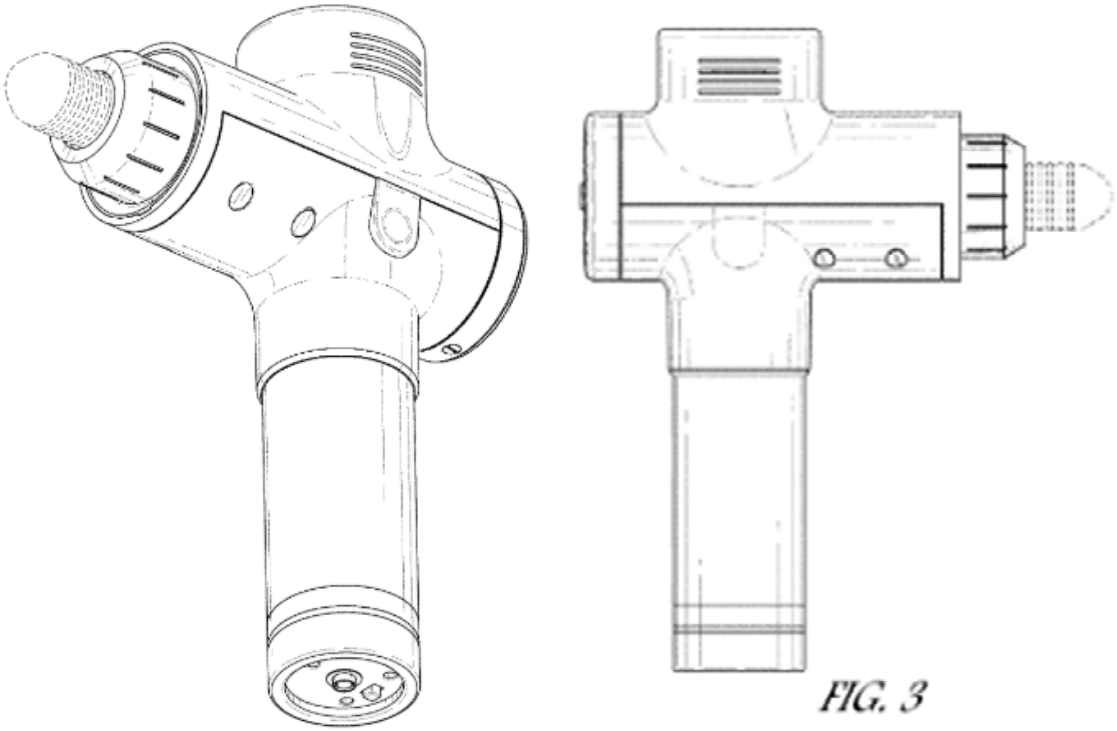


FIG. 3

24) The D'317 Patent is directed to the following design:

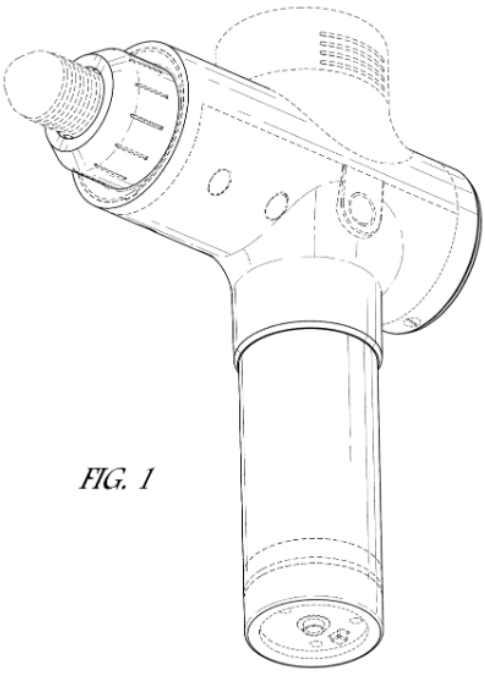


FIG. 1

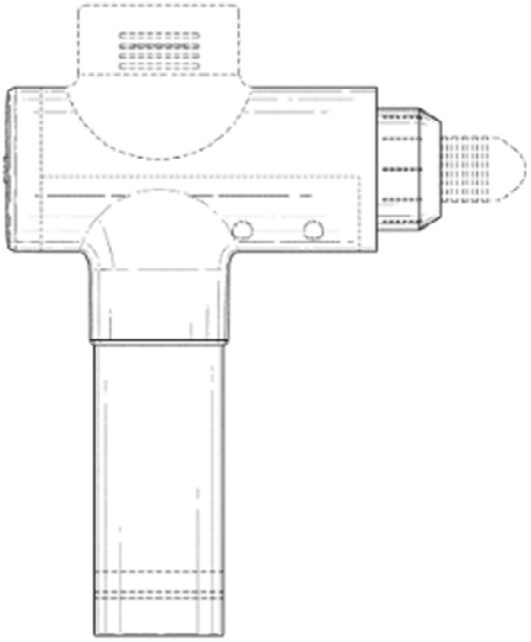


FIG. 3

25) In particular, the ITC Complaint alleges that the Discontinued BioZoom infringes the '574 Patent.

26) The ITC Complaint alleges that the Discontinued BioZoom is available for sale at https://www.addaday.com/products/biozoom.

27) The Discontinued BioZoom is not available at https://www.addaday.com/products/biozoom.

28) The Discontinued BioZoom stopped being available at https://www.addaday.com/products/biozoom no later than July 16, 2020.

29) The Current BioZoom is available at https://www.addaday.com/products/biozoom.

30) The D'822 and D'317 Patents claim "[t]he ornamental design for a "percussive massage device," as shown and described."

31) The only "percussive massage device" that is "shown and described" pursuant to the claim is presented in Figures 1-8 of the D'822 and D'317 Patents. (*see* Exhibits D, F).

32) The D'822 and D'317 Patents include the disclaimer that "[t]he broken lines in the drawings are for the purpose of illustrating portions of the percussive massage

device, which form no part of the claimed design" (*see* Exhibits D, F).

33) "The [D'822 and D'317 Patents] are identical except that certain lines that are solid in the '822 Patent are replaced with broken lines in the '317 Patent. These broken lines form no part of the claimed design." See ITC Complaint, p. 3.

34) In the September 13 Letter, Hyper alleges that it has a Trade Dress in the shape of Hyper's Hypervolt product. A true and correct copy of a representation of the Hypervolt product is attached hereto as Exhibit G.

35) The Hypervolt product practices the D'822 and D'317 Patents.

36) In the September 13 Letter, Hyper alleged that the Addaday BioZoom Massager infringed both the D'822 Patent and Trade Dress owned by Hyper based on the Hypervolt product.

37) Trade Dress is designed to identify the source of origin of goods, to assure consistency of quality on repeat purchases, and to serve as an advertisement by which a manufacturer can bypass individual retailers to reach consumers directly. Additionally, Trade Dress protection may not be granted on a design that is inherently functional. If found to be functional, the Trade Dress is invalid and unenforceable.

38) The purpose of both Trademark and Patent protection is to enrich the consuming public based on different considerations. "[A]ttempting to protect by way of trademark the very same advances that were protected … by patent [is an attempt to] impermissibly … extend the patent grant." *Mech. Plastics Corp. v. Titan Techs.*, Inc., 823 F. Supp. 1137, 1147 (S.D.N.Y. 1993). Put simply, it is improper to protect by Trade Dress that which was previously protected by Patent.

39) The D'822 and D'317 Patents and Hyper Trade Dress protect the same shape.

40) The September 13 Letter demands that Addaday "1. Immediately cease and permanently desist the sale, marketing, advertising, production, manufacturing and/or distribution of any product whatsoever whose configuration resembles, is

confusingly similar to, or infringes Hyperice's intellectual property rights in the HYPERVOLT; 2. Provide Hyperice with all records, financial and otherwise, arising out of or related to your marketing, manufacturing, fabrication, purchasing, sales, shipments of Addaday.com's BioZoom, commencing with the date you first engaged in the same in any market and in any media throughout the world; 3. Reimburse Hyperice for its legal fees and costs in pursuing this matter; and 4. Execute a Settlement Agreement which includes, inter alia, the foregoing and your consent to exclusive jurisdiction, venue, injunctive relief, and a recovery of attorneys' fees for any violation thereof" (*see* Exhibit B).

41) In the September 13 Letter, Hyper stated that "it will file suit absent [Addaday's] written agreement to comply with the foregoing [demands] by the close of business on Monday, September 23, 2019" (*see* Exhibit B).

42) Addaday denies that any of its products infringe any claim of the Asserted Patents, and makes this denial based on Addaday's analysis of the Asserted Patents, the Discontinued BioZoom, and the Current BioZoom.

Hyper's Statements to Third Parties About Addaday

43) Upon information and belief, Hyper has communicated with third parties regarding Addaday, the Discontinued BioZoom, and/or the Current BioZoom.

44) Upon information and belief, Hyper has alleged to third parties that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper.

45) Upon information and belief, Hyper stated to USA Triathlon that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper.

46) Upon information and belief, Hyper was aware of the professional and contractual agreements between Addaday and USA Triathlon at the time Hyper made statements about alleged intellectual property infringement.

47) Upon information and belief, Hyper stated to USA Triathlon that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper in order to disrupt the professional relationship between Addaday and USA Triathlon.

48) Upon information and belief, Hyper stated to USA Triathlon that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper in order to intentionally interfere with contractual relations between Addaday and USA Triathlon.

49) Upon information and belief, Hyper stated to USA Triathlon that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper in order to unfairly compete with interfere with Addaday.

50) Upon information and belief, Hyper stated to USA Ski and Snow that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper.

51) Upon information and belief, Hyper was aware of the professional and contractual agreements between Addaday and USA Ski and Snow at the time Hyper made statements about alleged intellectual property infringement.

52) Upon information and belief, Hyper stated to USA Ski and Snow that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper in order to disrupt the professional relationship between Addaday and USA Ski and Snow.

53) Upon information and belief, Hyper stated to USA Ski and Snow that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual property rights owned by Hyper in order to intentionally interfere with contractual relations between Addaday and USA Ski and Snow.

54) Upon information and belief, Hyper stated to USA Ski and Snow that the Discontinued and/or Current BioZoom infringe one or more alleged intellectual

property rights owned by Hyper in order to unfairly compete with interfere with Addaday.

55) To resolve the legal and factual questions raised by Hyper, and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the Asserted Patents against Addaday, that its products do not infringe any patent allegedly owned by Hyper, and/or that the Asserted Patents are Invalid.

56) Addaday also seeks reimbursement for its reasonable Attorneys' Fees and Taxable Costs that have had to be expended as a result of Hyper's frivolous claims of Patent Infringement of the Hyper Design Patent and Trade Dress Infringement.

57) As a result of Hyper's frivolous claims, Addaday has been forced to expend time and money defending itself, through analysis of the allegations contained in the September 13 Letter, the ITC Complaint, and preparation of this Verified Complaint by its Counsel.

58) Hyper's ITC Proceeding has been brought in subjective bad faith, and is objectively baseless, because there is simply no way that the Discontinued BioZoom infringes the Asserted Patents, and because Hyper granted to Addaday a Covenant Not to Sue relating to the Discontinued BioZoom.

59) Addaday has a reasonable concern that just as Hyper asserted baseless claims against the Discontinued BioZoom, as evidenced by the September 13 Letter, Hyper will make similarly baseless claims against the Current BioZoom and would like to resolve any such issues at this time.

60) Hyper's threat of litigation stands out from others with respect to the substantive strength of Hyper's legal rights and position, because Hyper has no chance of success, yet it attempts to coerce Addaday to comply with Hyper's unreasonable and unwarranted demands and even proceeded to file the ITC Complaint in violation of the Settlement Agreement.

61) Pursuant to 35 U.S.C. §285 and the line of cases starting with *Octane Fitness LLC v. Icon Health & Fitness Inc.*, 572 U.S. ___, 134 S. Ct. 1749 (2014), and its progeny, Addaday is entitled to receive reimbursement of its reasonable Attorneys' Fees and Taxable Costs that have had to be expended and will continue to have to be expended in the future to resolve this litigation, because the present litigation is an exceptional case, given the clear non-infringement and Hyper's blatant attempt to protect the exact same design by mutually exclusive protections of patent and trademark.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of U.S. Design Patent Number D855,822)

62) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

63) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Design Patent No. D855,822.

64) Hyper has alleged that Addaday has committed certain acts that infringe the D'822 Patent, and Addaday denies that any of its products infringe any claim of the Hyper Design Patent, either literally, directly, indirectly, under the doctrine of equivalents, or by any other manner.

65) True and correct photographs of the Discontinued and Current BioZoom mirroring those views provided in the D'822 Patent are attached hereto as Exhibits H and I, respectively.

66) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the Hyper Design Patent against Addaday, that its product, the Addaday BioZoom Massager does not infringe any

patent allegedly owned by Hyper, and/or that the Hyper Design Patent is invalid and/or unenforceable (at least as to Addaday itself).

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of U.S. Design Patent Number D855,822)

67) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

68) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Design Patent No. D855,822.

69) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the D'822 Patent against Addaday, that its products do not infringe any patent allegedly owned by Hyper, and/or that the D'822 Patent is invalid for failing to comply with all of the requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112 and/or the D'822 Patent is unenforceable (at least as to Addaday itself).

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of U.S. Design Patent Number D886,317)

70) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

71) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Design Patent No. D886,317.

72) Hyper has alleged that Addaday has committed certain acts that infringe the D'317 Patent, and Addaday denies that any of its products infringe any claim of the

D'317 Patent, either literally, directly, indirectly, under the doctrine of equivalents, or by any other manner.

73) True and correct photographs of the Discontinued and Current BioZoom mirroring those views provided in the D'317 Patent are attached hereto as Exhibits H and I, respectively.

74) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the D'317 Patent against Addaday, that its product, the Addaday BioZoom Massager does not infringe any patent allegedly owned by Hyper, and/or that the D'317 Patent is invalid and/or unenforceable (at least as to Addaday itself).

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of U.S. Design Patent Number D886,317)

75) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

76) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Design Patent No. D886,317.

77) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the D'317 Patent against Addaday, that its products do not infringe any patent allegedly owned by Hyper, and/or that the D'317 Patent is invalid for failing to comply with all of the requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112 and/or the D'317 Patent is unenforceable (at least as to Addaday itself).

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of U.S. Patent Number 10,561,574)

78) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

79) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Patent No. 10,561,574.

80) Hyper has alleged that Addaday has committed certain acts that infringe the '574 Patent, and Addaday denies that any of its products infringe any claim of the '574 Patent, either literally, directly, indirectly, under the doctrine of equivalents, or by any other manner.

81) The Current BioZoom does not, in any way, infringe the '574 Patent because, *inter alia*, the battery assembly receiving tray is located within a longitudinal cavity of the main enclosure and any corresponding battery electrical contact points of the Current BioZoom necessarily cannot be located within the longitudinal housing as required by each of the Independent Claims of the '574 Patent.

82) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the '574 Patent against Addaday, that its product, the Addaday BioZoom Massager does not infringe any patent allegedly owned by Hyper, and/or that the '574 Patent is invalid and/or unenforceable (at least as to Addaday itself).

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of U.S. Patent Number 10,561,574)

83) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

84) An actual controversy now exists between Addaday and Hyper, as to their respective rights and responsibilities with respect to U.S. Patent No. 10,561,574.

85) To resolve the legal and factual questions raised by Hyper and to afford relief from the uncertainty that has precipitated, Addaday is entitled to a Declaratory Judgment stating that Hyper is barred from asserting the '574 Patent against Addaday, that its products do not infringe any patent allegedly owned by Hyper, and/or that the '574 Patent is invalid for failing to comply with all of the requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112 and/or the '574 Patent is unenforceable (at least as to Addaday itself).

SEVENTH CLAIM FOR RELIEF

(Breach of Settlement Agreement)

86) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

87) On September 16, 2019, the Prior Litigation was pending.

88) In consideration that Addaday would dismiss that action without prejudice, Hyper granted to Addaday a Covenant Not to Sue in the Settlement Agreement.

89) Addaday dismissed the Prior Litigation on November 4, 2019.

90) Hyper filed the ITC Complaint naming Addaday as a Respondent in violation of the Settlement Agreement, alleging that the Discontinued BioZoom infringed the '574 Patent.

91) As a result of Hyper's frivolous claims, Addaday has been forced to expend time and money defending itself, through a series of analyses, correspondence, and preparation of this Complaint by its Counsel.

EIGHTH CLAIM FOR RELIEF

(Defamation)

92) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

93) Hyper made statements that it knew, or should have known, to be false to third parties about the Discontinued and/or Current BioZoom.

94) The third parties understood that the statements were about Addaday's products.

95) The third parties reasonably understood the statements to mean that the Discontinued and/or Current BioZoom were sold in violation of Hyper's alleged patent rights.

NINTH CLAIM FOR RELIEF

(Intentional Interference With Contractual Relations)

96) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

97) There is and was a contract between Addaday and USA Triathlon.

98) There is and was a contract between Addaday and USA Ski and Snow.

99) Hyper knew of these contracts.

100) Hyper's conduct prevented performance or made performance more expensive or difficult.

101) Hyper knew that disruption of performance was certain or substantially certain to occur.

102) As a result of Hyper's conduct, Addaday was harmed.

103) Hyper's conduct was a substantial factor in causing Addaday's harm.

TENTH CLAIM FOR RELIEF

(Intentional Interference With Prospective Economic Relations)

104) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

105) There is and was an economic relationship between Addaday and USA Triathlon.

106) There is and was an economic relationship Addaday and USA Ski and Snow.

107) Hyper knew of these economic relationships.

108) Hyper made communications to the third parties that implied that if the third

parties did business with Addaday, that the third parties may become embroiled in a legal dispute, even though Hyper knew that any legal dispute it could maintain against Addaday would be frivolous at best.

109) By engaging in its conduct, Hyper knew that disruption of the economic relationship disruption was certain or substantially certain to occur.

110) As a result of Hyper's conduct, the relationships between Addaday and the third parties were harmed.

111) As a result of Hyper's conduct, Addaday was harmed.

112) Hyper's conduct was a substantial factor in causing Addaday's harm.

ELEVENTH CLAIM FOR RELIEF

(Unfair Business Practices and Unfair competition in Violation of California Business and Professions Code § 17200, *et. Seq* and California Common Law, respectively)

113) Addaday incorporates by reference each and every allegation set forth in the above paragraphs as if fully set forth herein.

114) Hyper, who competed directly with Addaday, has engaged in a pattern of unlawful, unfair, deceptive, and fraudulent business practices, contrary to public policy, in violation of California Business & Professions Code §§ 17200, et seq., including the above described actions. Moreover, Hyper's conduct constitutes unfair competition under California Law.

115) As a direct and proximate cause of the aforementioned unfair and unlawful acts and practices, Addaday has suffered injury. These wrongful acts have directly and proximately caused Addaday substantial injury, including loss of customers, and damaging business relationships. Unless Hyper is restrained from the unfair, unlawful, and/or fraudulent business practices and unfair competition described herein, Addaday will continue to be irreparably harmed.

116) Addaday is informed and believes, and thereon alleges, that Hyper acquired from

Addaday profits and benefits amounting to a substantial sum of money in this pattern of unlawful, unfair, and/or fraudulent business acts and practices set forth in the preceding paragraphs of this Verified Complaint, all to the detriment of Addaday. This unjust enrichment continues to occur as Hyper continues to engage in said unlawful, unfair, and/or fraudulent business acts and practices.

117) Addaday has no adequate remedy at law to compensate it for the continued and irreparable harm it will suffer if Hyper's acts are allowed to continue.

118) Pursuant to California Business and Professions Code §17203, Addaday is entitled to temporary restraining orders, restitution, disgorgement of Hyper's profits, and preliminary and permanent restraining orders, restitution, and preliminary and permanent injunctions against the behavior as alleged hereinabove of Hyper, its agents, employees, representatives, and all persons acting in concert with them from engaging in further acts of unfair competition and unfair business practices.

119) By reason of the foregoing, Addaday is entitled to preliminary and permanent injunctive relief against Hyper, and anyone associated with it, and anyone who acts in concert with it, to restrain further acts of unfair competition and, after trial or summary judgment, to recover any damages proven to have been caused by reason of Hyper's aforesaid acts of unfair competition, and to recover enhanced damages and attorneys' fees, based upon the willful, intentional, and/or grossly negligent activities of the Hyper.

120) Pursuant to California Business & Professions Code Section 17203, Hyper is required to disgorge and restore to Addaday all profits and property acquired by means of Hyper's unfair competition with Addaday.

PRAYER FOR RELIEF

Addaday respectfully requests that a Declaratory Judgment be Entered in its favor and against Hyper as follows:

A. For a Declaratory Judgment that none of Addaday's products, including the Discontinued and Current BioZooms infringe the Asserted Patents and/or any other Patent allegedly owned by Hyper, and/or that the Asserted Patents are invalid and/or unenforceable.

B. For a Permanent Injunction enjoining Hyper and their agents and attorneys from further asserting rights pursuant to the Asserted Patents against Addaday and/or its dealers and/or its customers.

C. For the recovery of Addaday's damages suffered by Plaintiff as a consequence of said acts complained of herein;

D. For the recovery of Addaday's reasonable Attorneys' Fees and Taxable Costs pursuant to 35 U.S.C. §285 and the *Octane Fitness* line of cases; and

E. For such additional and further relief in law and equity, as the court may deem just and proper.

Respectfully submitted,
HANKIN PATENT LAW, APC

/Marc E. Hankin

Dated: August 6, 2020

Marc E. Hankin
Attorneys for Plaintiff,
ADDADAY LLC

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 3-6(a), Plaintiff hereby demands a Trial by Jury as to all issues so triable.

Respectfully Submitted,
HANKIN PATENT LAW, APC

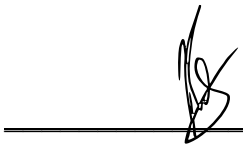
Date: August 6, 2020

By: /Marc E. Hankin/
Marc E. Hankin (SBN# 170505)
Attorney for Plaintiff,
Addaday LLC

VERIFICATION

I am a co-owner and Member of PLAINTIFF, ADDADAY LLC. I have read the foregoing Verified Complaint and Exhibits thereto, and I know the contents thereof. The same is true of my own personal knowledge, except for those matters which have been stated herein on information and belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California and the United States that the foregoing is true and correct. Executed at Santa Monica, California, on August 6, 2020.

By: 

Victor Yang