

1 Lena N. Bacani (SBN 213556)
2 lena.bacani@lozaip.com
3 LOZA & LOZA, LLP
4 305 N. Second Ave., Ste. 127
5 Upland, CA 91786
6 Telephone: (877) 406-5164
7 Facsimile: (213) 394-3625

8 Attorneys for Plaintiff,
9 California Costume Collections, Inc.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 CALIFORNIA COSTUME
13 COLLECTIONS, INC.,

14 Plaintiff,

15 v.

16 PANDALOON, LLC.

17 Defendant.

CASE NO. 2:21-cv-1323

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff California Costume Collections, Inc. (“CCC” or “Plaintiff”), by and
2 through its attorneys, brings this Complaint against Pandaloon, LLC (“Defendant”),
3 and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This case concerns Defendant’s allegations that CCC has infringed
6 United States Design Patent No. D806,325 (“the ‘325 Patent”), resulting in the
7 takedown of CCC’s product sales listings on Amazon.com.

8 2. CCC asserts claims for declaratory judgment of non-infringement,
9 invalidity, and unenforceability of the ‘325 Patent pursuant to the patent laws of the
10 United States, 35 U.S.C. §§ 102, 103, 282, and the Federal Declaratory Judgment
11 Act, 28 U.S.C. §§ 2201-2202. This action is necessary to resolve the controversy
12 regarding Defendant’s claims of infringement made against CCC and allow CCC to
13 resume selling its accused products.

14 3. CCC also asserts affirmative claims of intentional interference with
15 contract, intentional interference with prospective business relations and unfair
16 competition pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*

17 **PARTIES**

18 4. CCC is a California corporation having its principal place of business
19 at 210 Anderson St., Los Angeles, CA 90033.

20 5. On information and belief, Defendant is a limited liability corporation
21 organized and existing under the laws of the State of California having a place of
22 business at 1020 B. St., Ramona, CA 92065.

23 6. Upon information and belief, Defendant is the owner and assignee of
24 all right, title and interest in the ‘325 Patent, described more fully below.

25 **JURISDICTION AND VENUE**

26 7. This Court has subject matter jurisdiction over this action pursuant to
27 28 U.S.C. §§ 1331 and 1338(a) because this action involves claims arising under
28 the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal

1 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court also has
2 supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state claims
3 because they are related to the patent claims and form part of the same case and
4 controversy.

5 8. There exists a real and immediate controversy between CCC and
6 Defendant concerning Defendant's allegations that CCC infringes Defendant's '325
7 Patent.

8 9. Defendant claims to be the assignee of all rights, title and interest in
9 the '325 Patent and has alleged in writing to CCC and Amazon that certain of
10 CCC's products infringe the '325 Patent.

11 10. Defendant also obtained the suspension of CCC's accused product
12 listings, and the listings of CCC's customers selling CCC's accused products, on
13 Amazon.

14 11. CCC has tried to get Defendant to withdraw its Amazon complaints
15 against CCC's product listings, contacting Defendant's attorneys multiple times via
16 email, letter and phone calls. Defendant's attorneys have refused to reply to CCC's
17 correspondence and phone messages.

18 12. The Amazon listings for CCC's accused products remain down,
19 harming CCC and CCC's customers.

20 13. This Court has general personal jurisdiction over Defendant because it
21 has engaged in systematic and continuous business activities in this District and,
22 upon information and belief, has its principal place of business in California.

23 14. In addition, as described below, this Court has specific personal
24 jurisdiction over Defendant because Defendant has accused CCC of patent
25 infringement and purposefully directed its '325 Patent enforcement activities at
26 CCC, a California resident, within this District. Defendant sent a cease and desist
27 letter to CCC in this District. Defendant also obtained the take down of CCC's
28 sales listings of the accused products from Amazon which seeks to refrain CCC's

1 activities in this District directed to manufacturing, importing, offering to sell,
2 selling and using the accused products. CCC's declaratory judgment claims arise
3 out of and relate to those activities by Defendant.

4 15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c)
5 and 1400(b). CCC is a California corporation and a substantial part of the events
6 giving rise to CCC's claims occurred in this District. As Defendant is located here,
7 litigating here will not unduly burden Defendant and the District has a substantial
8 interest in protecting its residents from unwarranted patent infringement claims.

9 **FACTUAL ALLEGATIONS**

10 16. Founded in 1992, CCC is headquartered in Los Angeles and is a
11 worldwide industry leader and year round supplier of costumes, wigs and
12 accessories. CCC sells its products through brick and mortar retailers and third
13 party online stores.

14 17. In 2010, CCC developed and marketed a line of pet costumes which
15 were introduced commercially in 2011.

16 18. Since then, CCC has produced over 60 unique styles of pet costumes.

17 19. In 2011, CCC developed, and put into commerce in 2012, a series of
18 pet costumes that featured faux front limbs and a body suit covering the pet's actual
19 front limbs, creating an illusion of a stand up pet-faced character.

20 20. Since 2012, CCC has developed over 10 styles of pet costumes using
21 the same design concept.

22 21. In September 2019, CCC received a cease and desist letter from
23 Defendant's attorneys dated August 29, 2019. A true and correct copy of
24 Defendant's cease and desist letter is attached hereto as Exhibit 1.

25 22. Defendant's letter accused CCC of infringing the '325 Patent and
26 demanded that CCC stop "advertising, listing, distribution, selling, or offering for
27 sale" its Panda Pooch PET20163 costume ("Accused Product") from all online and
28 physical stores.

1 23. On or around August 2020, CCC was contacted by three of its
2 customer resellers who had their Amazon listings for CCC's Accused Product taken
3 down as a result of a complaint from Pandaloon to Amazon alleging that the
4 Accused Product listings infringed Defendant's '325 Patent.

5 24. CCC, through its attorneys, sent Defendant a letter on September 1,
6 2020 explaining why the Accused Product does not infringe the '325 Patent and
7 that the '325 Patent is invalid.

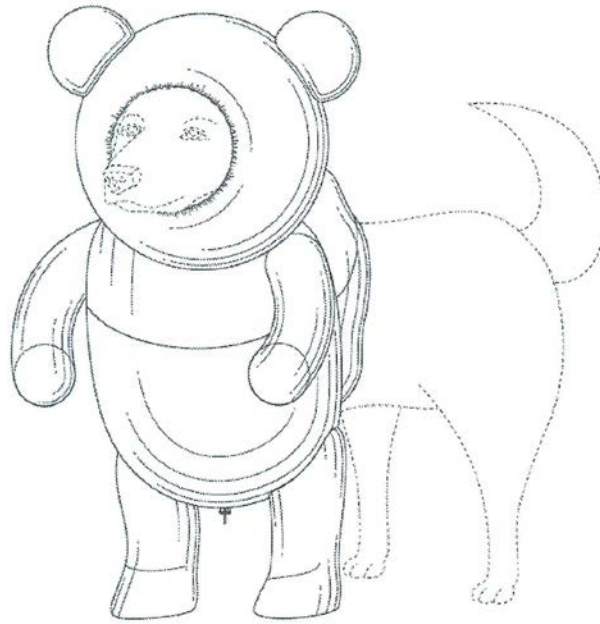
8 25. CCC included evidence of several prior art pet costumes hat were
9 available on the market years before Defendant filed its application for the '325
10 Patent.

11 26. One example of prior art provided was the Teddy Bear pet costume
12 from Rubies, which was widely available in the marketplace, including Amazon, at
13 least as early as February 23, 2016. A sample picture of the Teddy Bear costume is
14 shown below:



15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



37. Defendant submitted an Information Disclosure Statement (IDS) at the time the '325 Application was filed. In the submitted (IDS), no mention was made of the readily available prior art costumes such as those disclosed in CCC's letter.

COUNT 1

Declaratory Judgement of Non-Infringement of the '325 Patent

38. CCC incorporates the foregoing paragraphs by reference as though fully set forth herein.

39. CCC has not infringed and does not infringe the claim of the '325 Patent either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, including through its making, use, importation into the United States, sale, and/or offer for sale of the Accused Product.

40. Claim 1 of the '325 Patent is directed to only the ornamental design of the pet costume shown in Figures 1-8 of the patent.

41. The Accused Product does not infringe the '325 Patent because it does not include every claim limitation. As one example, the claimed design requires the

1 bear-shaped hood to be attached to the body of the costume. The hood on the
2 Accused Product is not attached to the costume body.

3 42. Separately and additionally, the claimed design requires a drawstring
4 closure around the face opening of the hood. The Accused Product does not have
5 such a closure.

6 43. As a further example, the '325 Patent claims a one-fold, half circle ear
7 shape which is not found in the Accused Product. Rather, the ears found in the
8 Accused Product are two-fold with a white fabric insert.

9 44. The Accused Product also features a head that has a smaller
10 circumference in proportion to the costume body whereas the head claimed in the
11 '325 Patent is much larger in proportion to the body of the costume.

12 45. The '325 Patent also claims a horizontal front seam that extends to the
13 back of the costume which is not present in the Accused Product, which instead has
14 a center Velcro closure.

15 46. As yet another example, the claimed design also includes tie-back
16 closures whereas the Accused Product does not.

17 47. The faux arms of the claimed design attach to the side seam. The
18 Accused Products' arms do not. Rather, they attach to the neck seam of the body of
19 the costume.

20 48. These differences in design are clearly distinguishable to an ordinary
21 observer.

22 49. Accordingly, at least for the above reasons, CCC does not infringe the
23 '325 Patent, either literally or under the doctrine of equivalents.

24 50. CCC also does not induce infringement of the '325 patent,
25 contributorily infringe, or otherwise indirectly infringe, for at least the reasons
26 stated above.

27 51. As set forth above, there exists an actual controversy between CCC
28 and Defendant with respect to alleged infringement of the '325 Patent of sufficient

1 immediacy and reality to warrant the issuance of a declaratory judgment as to
2 whether the asserted claim of the '325 Patent is infringed.

3 52. CCC seeks and is entitled to a declaratory judgment that the
4 manufacture, importation, offer for sale, sale and use of the Accused Product does
5 not infringe the '325 Patent.

6 53. CCC seeks and is entitled to a declaratory judgment that neither it, nor
7 its customers, infringe the '325 Patent, either literally or under the doctrine of
8 equivalents.

9 54. CCC seeks and is entitled to a declaratory judgment that neither it, nor
10 its customers, have induced others to infringe or contributed to the infringement by
11 others of the '325 Patent, either literally or under the doctrine of equivalents. A
12 judicial declaration is necessary and appropriate so that CCC may ascertain its
13 rights or responsibilities regarding the '325 Patent and the Accused Product.

14 **COUNT 2**

15 **Declaratory Judgement of Invalidity of the '325 Patent**

16 55. CCC incorporates the foregoing paragraphs by reference as though
17 fully set forth herein.

18 56. The design purportedly claimed in the '325 Patent does not qualify for
19 patent protection. For example and without limitation, the '325 Patent is invalid as
20 anticipated and/or obvious in view of the prior public use and sale of the Teddy
21 Bear pet costume from Rubies, which was widely available for sale on
22 Amazon.com more than one year prior to the effective filing date of the '325
23 Patent.

24 57. As a direct and proximate result of Defendant's complaints to Amazon
25 asserting the invalid '325 Patent against CCC's Accused Product, CCC has suffered
26 damages that are substantial, continuing and irreparable.

27 58. An actual controversy exists between CCC and Defendant regarding
28 the validity of the '325 Patent.

