

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

OMM IMPORTS, INC., a Florida
corporation, d/b/a ZERO GRAVITY,

Plaintiff,

v.

THE TOTAL AGENCY LLC, a Florida
limited liability company, ETERNO
HOLDINGS LLC, a Florida limited liability
company, and ROBERT MEIROVICH, an
individual,

Defendants.

CASE NO.: 0:21-cv-60655

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, OMM IMPORTS, INC., a Florida corporation, d/b/a ZERO GRAVITY, files this Complaint against THE TOTAL AGENCY LLC, a Florida limited liability company, ETERNO HOLDINGS LLC, a Florida limited liability company, and ROBERT MEIROVICH, an individual, and states:

JURISDICTION, VENUE AND THE PARTIES

1. This Court has original jurisdiction pursuant to Title 28, United States Code, Section 1331, as this case involves a federal question arising under the Constitution, laws or treaties of the United States.

2. Plaintiff OMM IMPORTS, INC. d/b/a ZERO GRAVITY (hereinafter “OMM”) is a Florida corporation with a principal address in Miami-Dade County, Florida.

3. Defendant THE TOTAL AGENCY LLC (“TTA”) is a Florida limited liability company with a principal address in Miami-Dade County, Florida, and is otherwise *sui juris*.

4. Defendant ETERNO HOLDINGS LLC (“Holdings”) is a Florida limited liability

company with a principal address in Miami-Dade County, Florida, and is otherwise *sui juris*.

5. Defendant ROBERT MEIROVICH (“Meirovich,” and together with TTA and Holdings, collectively the “Defendants”) is an individual believed to be a citizen of and residing in Miami-Dade County, Florida, is over the age of eighteen, conducts business via interstate channels in this judicial district, and is otherwise *sui juris*.

6. Meirovich is the sole member and manager of TTA and Holdings.

7. Venue is proper in the Southern District of Florida pursuant to Title 28, United States Code, Section 1400(b) because all Defendants reside and have regular, established places of business in this judicial district.

8. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

GENERAL ALLEGATIONS

9. OMM was formed as a Florida corporation in 2014, and since then has been focused, *inter alia*, on designing and developing the safest, most effective, and most uniquely designed anti-aging facial products to deliver to consumers across the globe.

10. OMM, via its trade name, Zero Gravity, has designed and developed several products which have been cleared by the FDA as Class II medical devices and which offer consumers the ability to perform easy, pain free, high-end facial skin rejuvenation in the comfort and privacy of their own homes (the “Zero Gravity Products”).

11. The Zero Gravity Products promote skin health through the use of light-emitting diodes (LED), which emit light at red and infrared wavelengths.

12. At one time, red LED facial treatment was exclusively offered through doctor’s offices and high-end spas, but OMM, through its Zero Gravity Products, became an industry leader by designing and bringing to market red light skin rejuvenation therapy for in-home consumer use.

13. On November 3, 2020, OMM was issued U.S. Patent No. 10,821,299 (“the ‘299 Patent”) titled TRANSPARENT HEAD FOR A SKIN TREATMENT DEVICE. The ‘299 Patent is related to a transparent head cover for a skin treatment device, and to a device using such a head. See [Exhibit “A,” a true and correct copy of the ‘299 Patent].

14. Although OMM has no direct affiliation or relationship with Defendants, in March 2018, some of OMM’s shareholders, through a separate, unrelated entity called Eterno Skincare, Inc. (“Eterno”), appointed TTA and Meirovich to provide management services to Eterno for the express purpose of promoting and selling an Eterno-branded LED skin care device (“The Eterno LED Device”).

15. Through this appointment, Meirovich served as President of Eterno as an independent contractor, and acted at the express direction and subject to the instructions of the shareholders.

16. OMM authorized the production and sale of The Eterno LED Device through Eterno.

17. As explained below, The Eterno LED Device is covered by one or more claims of the ‘299 Patent, and TTA/Meirovich were authorized to market and sell same, *but only while affiliated with Eterno*.

18. Ultimately, however, due to malfeasance and insubordination, on June 8, 2020, Eterno terminated its relationship with The Total Agency and voted to remove Mr. Meirovich as President, thereby ending his affiliation with Eterno and the ETERNO brand.

19. Nevertheless, on July 20, 2020, Meirovich incorporated Holdings with the Florida Division of Corporations.

20. Despite no longer being affiliated with Eterno, and despite repeated demands to

cease, Defendants have continued to market and sell The Eterno LED Device through, at least, the website www.eternoskincare.com.

21. Inasmuch as OMM, through its shareholders involved with Eterno, is familiar with the construction of The Eterno LED Device, it knows that the device infringes *at least* Claims 1 and 8 of the '299 Patent. As a non-limiting example, a description of how this device infringes exemplary Claim 8 of the '299 Patent is set forth below.

22. Claim 8 recites:

A transparent cover member for head assembly of a skin treatment device that provides light and heat therapy to a user's skin, comprising:

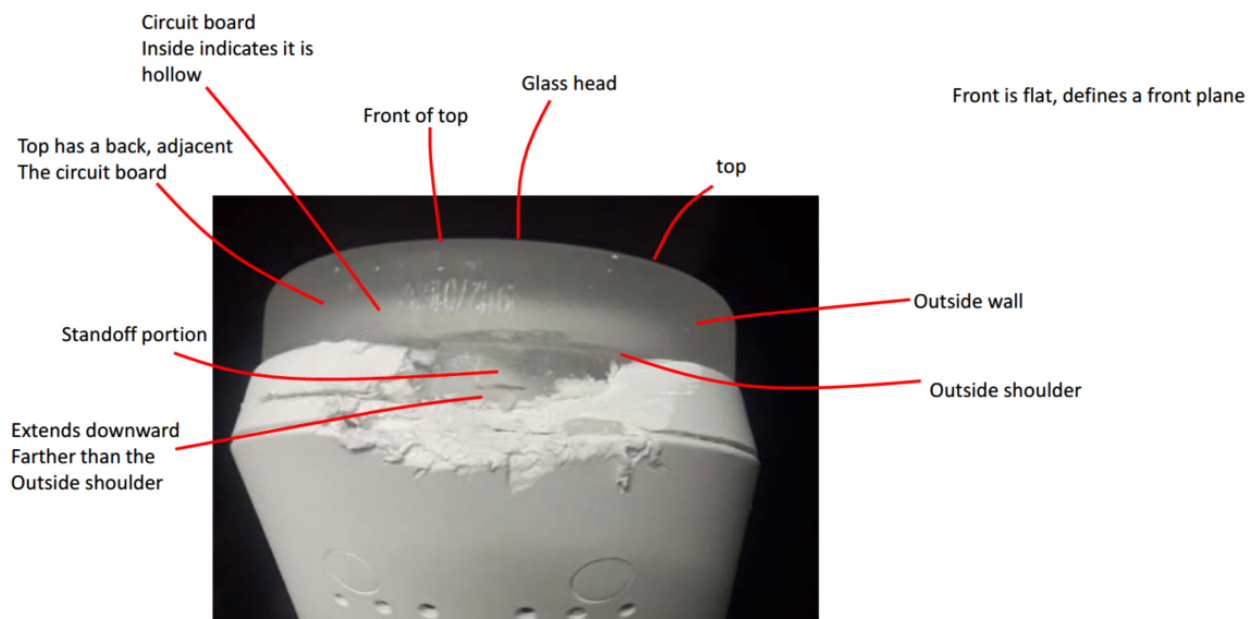
a flat front defining a front plane;

a back that is opposite the flat front, and includes a central portion;

an outside wall extending down from the front around an entirety of a perimeter of the front; and

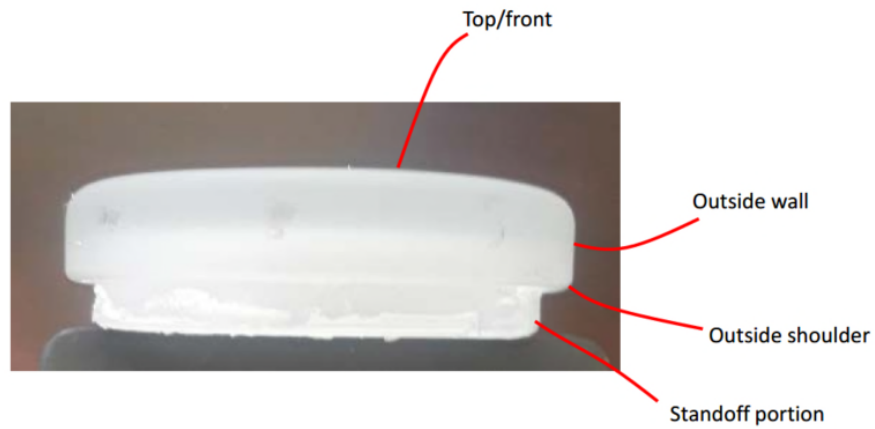
an outside shoulder formed at a bottom of the outside wall, the outside shoulder extending inward from the outside wall to an inner edge of the of the outside shoulder, wherein the inner edge of the outside shoulder meets an outer standoff wall of a standoff portion, the standoff portion extends downward from the inner edge of the outside shoulder in a direction away from the front and the standoff portion surrounds the central portion, wherein the outside shoulder surrounds the standoff portion, the standoff portion having an inner standoff wall that surrounds a hollow space at the back of the transparent cover member, wherein the hollow space is bounded by the inner standoff wall and the back of the top, wherein the entire standoff portion is transparent; and wherein the standoff portion extends downward, with respect to the front, farther than the outside shoulder and the central portion.

23. As demonstrated below, The Eterno LED Device meets each and every claim element:





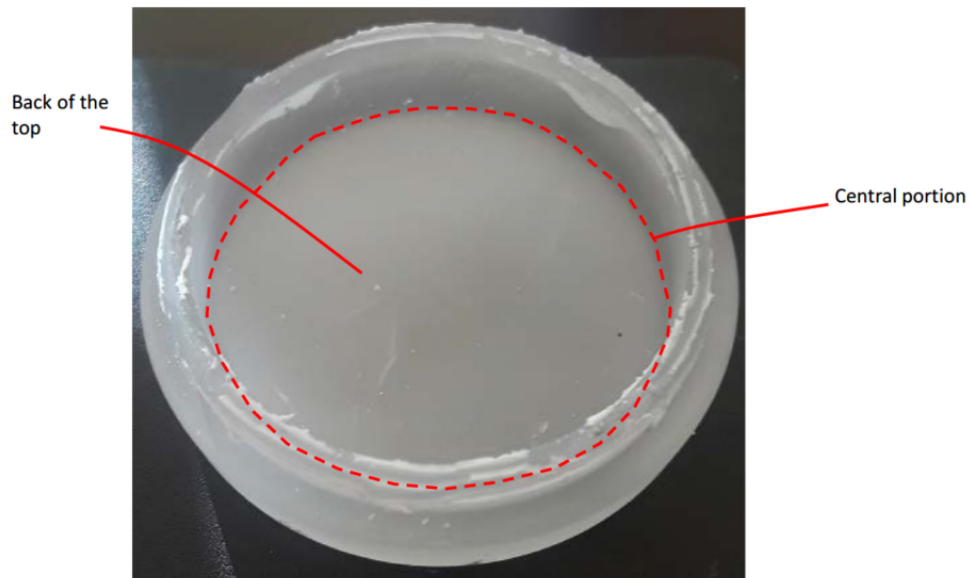
Top view of Eterno glass head after removal from device



Side view of Eterno glass head after removal



Bottom/Side view of Eterno glass head



Bottom angle view of Eterno Glass head

23. Meirovich, as the sole member, manager, and decision maker of TTA and Holdings, is the driving force behind Defendants' efforts to willfully infringe the '299 Patent.

24. Meirovich, as the sole member, manager, and decision maker of TTA and Holdings, possessed the right and ability to supervise and direct TTA's and Holding's unlawful and willful infringing activity, but did not take steps to stop said unlawful and willful infringing behavior.

25. Meirovich, as the sole member, manager, and decision maker of TTA and Holdings, stands to profit directly from TTA's and Holding's unlawful and willful infringing activity and has in fact profited from such unlawful and willful infringing activity.

26. OMM has been required to retain the undersigned counsel to pursue its interests in this matter, and is obligated to pay the undersigned a reasonable attorneys' fee for their services, and to reimburse the undersigned for any costs incurred in connection with said representation.

COUNT I:
WILLFUL PATENT INFRINGEMENT

27. OMM re-alleges and re-avers paragraphs 1-26 as if fully set forth herein.

28. This is an action for patent infringement pursuant to Title 35, United States Code, Section 271, of the United States Patent Act.

29. As more fully set forth above, Defendants have infringed, and continue to infringe, literally and/or through the doctrine of equivalents, at least Claims 1 and 8 of the '299 Patent by importing, making, using, offering to sell, and selling The Eterno LED Device.

30. All such infringing conduct has occurred and was committed by Defendants in a willful and bad faith manner considering Defendants are aware they have no rights whatsoever to market and sell The Eterno LED Device now that they are no longer affiliated with Eterno.

31. Defendants' actions have caused, and continue to cause, irreparable harm to Plaintiff to which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, OMM respectfully prays for the following relief:

- A. A judgment in favor of OMM that Defendants have infringed the '299 Patent;
- B. A judgment and order requiring Defendants, jointly and severally, to pay OMM the full amount of damages sustained, including, but not limited to, any and all remedies available

pursuant to 35 U.S.C. § 284, which include, but are not limited to, a reasonable royalty award and/or, disgorgement of the profits received by Defendants, non-duplicative actual damages, enhanced damages, costs, pre and post judgment interest at the maximum allowable rate, and attorneys' fees;

C. A judgment and order enjoining Defendants and all of those acting in concert with them, temporarily during this litigation, and permanently from using, making, selling, marketing, distributing, importing, or otherwise infringing on any of the claims of the '299 Patent;

D. Any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

OMM demands trial by jury of all issues so triable as a matter of law.

Dated: March 24, 2021

Respectfully Submitted,

/s/ Adam S. Goldman/
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