

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

2109971 ONTARIO INC. D/B/A XCELLA
FURNITURE,

Plaintiff,

v.

SAMIRA FURNITURE LTD D/B/A
SAMIRA OUTLET, VELVET IMPORT
CORP., HOLLYWOOD FURNITURE
LTD., WADHA IGBARA, REFAT
IJBARA, AND NEDAL IJBARA,

Defendants.

DOCUMENT FILED ELECTRONICALLY

Civil Action No. 1:21-4092

**FIRST AMENDED COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Plaintiff 2109971 Ontario Inc. d/b/a Xcella Furniture (“Plaintiff”) for its Complaint against the Defendants, Samira Furniture Ltd d/b/a Samira Outlet (“Samira”), Velvet Import Corp. (“Velvet”), Hollywood Furniture Ltd. (“Hollywood”), Wadha Igbara, Refat Ijbara, and Nedal Ijbara (collectively, “Defendants”), alleges as follows:

NATURE OF THIS ACTION

1. This is a civil action for the infringement of United States Design Patent No. D909,088 (“the ‘088 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, arising from Defendants’ manufacture, use, offer to sell, sale and/or importation of infringing articles of furniture; for infringement of Plaintiff’s copyrights in certain photographs under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*; and for Defendants’ civil conspiracy in violation of state law.

THE PARTIES

2. Plaintiff 2109971 Ontario Inc. d/b/a Xcella Furniture is a Canadian corporation with a principal place of business at 96-100 Carrier Drive, Etobicoke, Ontario, Canada and, until the Covid-19 pandemic began, had a showroom through which it made sales to authorized resellers at International Home Furnishings Center, H710 IHFC Floor 7, High Point, North Carolina.

3. Upon information and belief, Defendant Samira Furniture Ltd. is a New York corporation, is registered to use the alternative name Samira Outlet in New York, and has its principal place of business at 2314 Grand Concourse, Bronx, New York 10458.

4. Upon information and belief, Defendant Velvet Import Corp. is a New York corporation, having its principal place of business at 141 Lanza Avenue, Garfield, New Jersey 07026.

5. Upon information and belief, Defendant Hollywood Furniture Ltd. is a New York corporation, having its principal place of business at 1285 Saint Nicholas Avenue, New York, New York 10033.

6. Upon information and belief, Defendant Wadha Igbara is an individual conducting business in the Bronx, New York.

7. Upon information and belief, Defendant Refat Ijbara is an individual conducting business in the Bronx, New York and Garfield, New Jersey and is the incorporator of Defendant Velvet.

8. Upon information and belief, Defendants Wadha Igbara and Refat Ijbara are married to each other and both reside at either 137 Clinton Avenue, Clifton, New Jersey 07011 or 440 Liberty Street, Apt. 15, Little Ferry, New Jersey 07643.

9. Upon information and belief, Defendant Wadha Igbara is the incorporator of Defendant Samira, owns U.S trademark registration no. 5,359,863 for the mark SAMIRA FURNITURE for “retail furniture stores”, and is therefore in control over retail furniture store services offered under the SAMIRA FURNITURE trademark.

10. Upon information and belief, Defendant Wadha Igbara exercises control over, and is the moving, active, and conscious motivating force directing the wrongful acts of Defendant Samira and/or Defendant Velvet, and is personally responsible, and thereby liable, for the wrongful acts of Defendant Samira and Defendant Velvet.

11. Upon information and belief, Defendant Refat Ijbara exercises control over, and is the moving, active, and conscious motivating force directing the wrongful acts of Defendant Samira and/or Defendant Velvet, and is personally responsible, and thereby liable, for the wrongful acts of Defendant Samira and Defendant Velvet.

12. Upon information and belief, Defendant Nedal Ijbara is an individual residing at 421 Westminister Place, 2nd Floor, Lodi, New Jersey 07644, is the incorporator and an officer of Defendant Hollywood, and conducts business in New York, New York.

13. Upon information and belief, Defendant Nedal Ijbara exercises control over, and is the moving, active, and conscious motivating force directing the wrongful acts of Defendant Hollywood, and is personally responsible, and thereby liable, for the wrongful acts of Defendant Hollywood.

14. Upon information and belief, Defendant Nedal Ijbara is related to Defendants Wadha Igbara and Refat Ijbara, as a nephew.

15. Upon information and belief after reasonable investigation, the individual Defendants' last names are the same when written in Arabic but, when translated into English, may alternatively be spelled as "Igbara" or "Ijbara."

JURISDICTION AND VENUE

16. This Court has original jurisdiction over Plaintiff's federal patent infringement claims pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Action Arising Under Patent Act), because this is an action arising under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

17. This Court has original jurisdiction over Plaintiff's federal copyright infringement claims pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Action Arising Under Copyright Act), because this is an action arising under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*

18. This Court has subject matter jurisdiction over Plaintiff's claims that arise under the laws of the State of New York pursuant to 28 U.S.C. § 1367(a) (Supplemental Jurisdiction) and principles of supplemental jurisdiction. The state law claims are so related to, and intertwined with, Plaintiff's federal infringement and unfair competition claims as to be part of the same case or controversy under Article III of the United States Constitution.

19. This Court has personal jurisdiction over the Defendant Samira because: (a) Samira is a New York corporation having its principal place of business in Bronx, New York; (b) upon information and belief, Samira regularly transacts and solicits business in New York through the offer for sale, sale and/or importation of products in New York; (c) Samira is committing and has committed acts of patent infringement by offering for sale and selling infringing products within New York, including via its Instagram accounts @samira_furniture,

@samira__furniture, @samira_furniture2, and @dream_tx, its website at www.samirafurniture.com, and its brick-and-mortar showroom located in Bronx, New York; and (d) Samira is committing and has committed acts of copyright infringement by making unauthorized copies of Plaintiff's copyrighted photographs within New York.

20. This Court has personal jurisdiction over Defendant Velvet because: (a) Velvet is a New York corporation; (b) upon information and belief, Velvet regularly transacts and solicits business in New York through the offer for sale, sale and/or importation of products in New York; and (c) Velvet is committing and has committed acts of patent infringement by importing, offering for sale, and selling infringing products within New York.

21. This Court has personal jurisdiction over Defendant Hollywood because: (a) Hollywood is a New York corporation, with a principal place of business in New York, New York; (b) upon information and belief, Hollywood regularly transacts and solicits business in New York through the offer for sale, sale and/or importation of products in New York; and (c) Hollywood is committing and has committed acts of patent infringement by importing, offering for sale, and selling infringing products within New York.

22. This Court has personal jurisdiction over Defendant Wadha Igbara because upon information and belief, Defendant Wadha Igbara regularly and deliberately avails herself of the benefits of New York by conducting business in New York.

23. This Court has personal jurisdiction over Defendant Refat Ijbara because upon information and belief, Defendant Refat Ijbara regularly and deliberately avails himself of the benefits of New York by conducting business in New York.

24. This Court has personal jurisdiction over Defendant Nedal Ijbara because upon information and belief, Defendant Nedal Ijbara regularly and deliberately avails himself of the benefits of New York by conducting business in New York.

25. Venue is proper in this Judicial District: (a) under 28 U.S.C. §1400(b) because all Defendants have committed acts of patent infringement by selling and offering for sale infringing products within this District and have a regular and established place of business in this District; (b) with respect to Defendants Samira and Hollywood, under 28 U.S.C. § 1391 because Defendants Samira and Hollywood reside in this District; and (c) with respect to Defendants Samira, Wadha Igbara, and Refat Ijbara, such Defendants have committed acts of copyright infringement by making unauthorized copies of Plaintiff's photographs within this District.

THE PATENT-IN-SUIT

26. On February 2, 2021, the '088 Patent, entitled "Seating Unit," was duly and legally issued by the U.S. Patent and Trademark Office ("USPTO"). A true and correct copy of the '088 Patent is attached as **Exhibit A**. Representative figures are reproduced below.

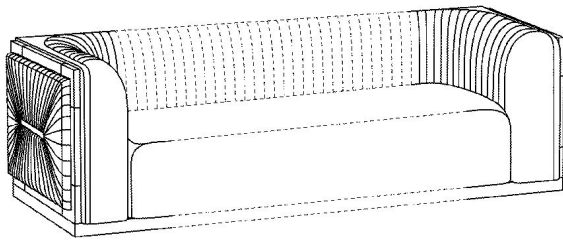


FIG. 5

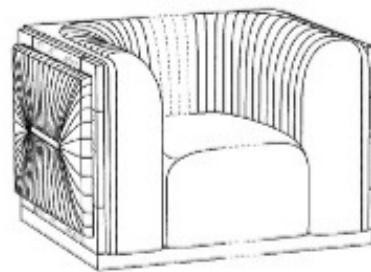


FIG. 10

27. The '088 Patent is valid, enforceable and currently in full force and effect.

28. Plaintiff is the owner of all right, title and interest in and to the '088 Patent.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

29. Plaintiff invents and designs furniture.

30. Plaintiff imports, manufactures, and commercializes unique and innovative furniture designs, including furniture designs incorporated into, and covered by, the '088 Patent under the trademark "PALOMA™," through wholesale sales to authorized retailers.

31. Upon information and belief, Defendant Samira is a former customer of Plaintiff, as a retail seller of furniture and is a current retail seller of, *inter alia*, furniture that infringes the '088 Patent, as demonstrated herein.

32. Upon information and belief, Defendant Velvet is a direct competitor of Plaintiff, as a wholesale seller of furniture, including sales to Defendant Samira of, *inter alia*, furniture that infringes the '088 Patent.

33. Upon information and belief, Defendant Hollywood is a direct competitor of Plaintiff, importing, *inter alia*, furniture that infringes the '088 Patent into the United States for sale to wholesale sellers of furniture, including Defendant Velvet.

DEFENDANTS' INFRINGING ACTIVITIES

34. Upon information and belief, Defendants have manufactured, offered for sale, sold, and/or imported into the United States articles of furniture that infringe the '088 Patent.

35. Upon information and belief, an ordinary observer will perceive the overall appearance of the designs of Defendants' articles of furniture to be substantially the same as and/or a colorable imitation of the overall appearance of the designs of the '088 Patent.

36. **Exhibit B** hereto compares representative figures of the '088 Patent with representative images of the furniture made, used, sold, offered for sale and/or imported by or on behalf of Defendants.

37. In the eye of the ordinary observer familiar with the relevant prior art, giving such attention as a purchaser usually gives, the claimed design of the '088 Patent and Defendants' accused products are substantially the same, such that the ordinary observer would be deceived into believing that Defendants' accused products are the design claimed in the '088 Patent.

38. Defendants have colluded with each other to make, use, offer to sell, sell, and/or import the infringing articles of furniture and, as a result of that collusion, have knowingly engaged in the making, using, offering to sell, selling, and/or importing of the infringing articles of furniture.

39. Plaintiff did not give Defendants authorization or license to make, use, offer to sell, sell, or import the infringing articles of furniture.

40. Defendants individually and collectively have directly infringed, and continue to directly infringe, the '088 Patent by making, using, offering to sell, selling and/or importing articles of furniture having substantially the same ornamental design as the design claimed in the '088 Patent, in violation of 35 U.S.C. §§ 271(a) and 289.

41. Upon information and belief, Defendants Samira, Wadha Igbara, and Refat Ijbara market and sell the infringing articles of furniture via Defendant Samira's website at www.samirafurniture.com, its brick-and-mortar showroom located in Bronx, New York, via Dream Furniture's brick-and-mortar showroom located in Dallas, Texas and on third party websites including Instagram.com.

42. Upon information and belief, Defendants Velvet, Wadha Igbara, and Refat Ijbara market and sell the infringing articles of furniture via emails to retail furniture stores, catalogs and brochures.

43. Upon information and belief, Defendants Hollywood and Nedal Ijbara import the infringing articles of furniture into the United States by purchases and shipments from foreign manufacturers, including but not limited to Chainiti Furniture Co., Limited in China, such importation including through shipments entering the ports of New York and New Jersey.

44. Upon information and belief, Defendants have engaged and continue to engage in the above activities willfully and without the authorization of Plaintiff, with the knowledge that the design of each infringing article of furniture is substantially the same as the designs of the '088 Patent.

45. Defendants' unauthorized acts as described herein have caused and will continue to cause irreparable damage to Plaintiff and his business unless restrained by this Court.

46. Since Plaintiff is the holder of exclusive rights in the patented design, Defendants' unauthorized acts as described herein have caused Plaintiff to lose profits because, but for Defendants' infringing activities and sales, Defendants' sales of the specific design shown in the '088 Patent would have been made by or on behalf of Plaintiff.

47. Since Plaintiff is the holder of exclusive rights in the patented design, Defendants' unauthorized acts as described herein have caused Defendants to receive revenues and profits to which they are not entitled.

48. Upon information and belief, Defendants Samara, Refat Ijbara, and Wadha Igbara have deliberately offered articles of furniture for designs highly similar to, if not substantially the same as, designs sold by Plaintiff, to third parties at prices designed to injure Plaintiff.

49. Specifically, Defendant Refat Ijbara sent a message to a principal of Plaintiff, threatening to sell knock offs of bed designs offered by Plaintiff below cost to hurt Plaintiff's

sales. The message stated: “Take out ur report or ur beds any one will be coast price in Canada or us or online Wayfair at 400 so u choose which way u want.”

50. Upon information and belief, the threat by Defendant Refat Ijbara was to offer furniture for sale to third parties at a cost below Plaintiff’s wholesale costs for the purpose of preventing Plaintiff from making sales to its customers, utilizing Defendants’ control of the entire distribution chain of infringing furniture, from import through retail sale.

51. The message sent by Defendant Refat Ijbara was in response to a lawful Instagram take down, requested by Plaintiff, of several Instagram posts made by Defendants which wrongfully incorporated Plaintiff’s copyright-protected photographs of Plaintiff’s furniture.

52. Upon information and belief, Defendants Samira and Refat Ijbara intend to or have taken acts to exert economic pressure against Plaintiff in a wrongful manner with intent to cause interference with Plaintiff’s business.

53. Upon information and belief, Defendants’ wrongful actions have been intentional, taken out of malice for the sole purpose of inflicting harm on Plaintiff, and used dishonest, unfair and improper means to interfere with Plaintiff’s existing and prospective customers.

54. Upon information and belief, Defendant Refat Ijbara sent messages to a principal at Plaintiff, threatening physical harm to said principal at an upcoming trade show in High Point, North Carolina. It is unclear whether the threat of physical harm is intended as a personal attack or an attempt to coerce Plaintiff to cease its efforts to protect its business interests and intellectual property rights.

COUNT I

**Infringement Under 35 U.S.C. § 271 of the '088 Patent
(As to all Defendants)**

55. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 54 above as though fully set forth herein.

56. Defendants, without authorization from Plaintiff, have made, used, offered for sale, sold, and/or imported into or in the United States, and continue to make, use, offer for sale, sell, and/or import into or in the United States, articles of furniture having designs that infringe the '088 Patent.

57. Upon information and belief, the Defendants colluded with each other in the unauthorized manufacture, use, offer for sale, sale and/or import into or in the United States, of articles of furniture having designs that infringe the '088 Patent.

58. By the foregoing acts, Defendants have infringed and continue to infringe the '088 Patent in violation of 35 U.S.C. §§ 271(a) and 289.

59. Defendants' conduct violates 35 U.S.C. § 271 and has caused, and unless enjoined by this Court pursuant to 35 U.S.C. § 283, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury, for which Plaintiff has no adequate remedy at law.

60. As a result of Defendants' infringement of the '088 Patent, Plaintiff has suffered monetary damages in amounts to be determined at trial pursuant to 35 U.S.C. §§ 284 and 289.

61. Defendants have also profited from, and continue to profit from, their infringing conduct.

62. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiff's rights. Such acts

constitute willful infringement, and pursuant to 35 U.S.C. §§ 284 and 285, entitle Plaintiff to enhanced damages and reasonable attorneys' fees.

COUNT II

Copyright Infringement in Violation of 17 U.S.C. § 501 (As to Defendants Samira, Refat Ijbara, and Wadha Igbara)

63. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 62 above as though fully set forth herein.

64. As part of its marketing and promotion of its furniture, Plaintiff obtains original high quality photographs of its furniture in its showrooms.

65. The photographs are taken by Plaintiff's employees, or by third party photographers who assign all rights to such photographs, including the copyright therein, to Plaintiff.

66. Plaintiff provides copies of these photographs to prospective customers, including Defendant Samira (who was a potential customer at the time), to promote sales of Plaintiff's furniture. The photographs of Plaintiff's furniture are not provided with any license for reproduction.

67. Upon information and belief, Defendants Samira, Refat Ijbara, and/or Wadha Igbara, without Plaintiff's consent or authorization, made unauthorized copies of Plaintiff's photographs and then wrongfully used Plaintiff's photographs to promote and sell furniture that was not manufactured by or for Plaintiff, but rather was furniture copied from Plaintiff's designs, including the furniture design covered by the '088 Patent.

68. Upon information and belief, Defendants Samira, Refat Ijbara, and/or Wadha Igbara, without Plaintiff's consent or authorization, provided unauthorized copies of Plaintiff's photographs to Defendant Velvet and Defendant Hollywood who made further unauthorized use

of Plaintiff's photographs to promote, in a wrongful manner, furniture that did not originate from Plaintiff.

69. Upon information and belief, Defendants Samira, Refat Ijbara, and/or Wadha Igbara, without Plaintiff's consent or authorization, also provided unauthorized copies of Plaintiff's photographs to unknown third parties outside of the United States for the purpose of manufacturing furniture embodying Plaintiff's patented design and for importation of such furniture into the United States by Defendants.

70. Upon information and belief, the Defendants colluded with each other in the unauthorized use, copying, publication and/or display of Plaintiff's photographs.

71. Plaintiff registered the copyright in a group of certain photographs taken in 2017, under Reg. No. VA 2-249-775, a U.S. copyright registration for a group titled "2017 Xcella photos". Plaintiff is the sole and exclusive owner of all right, title and interest in and to U.S. Copyright Reg. No. VA 2-249-775.

72. Included in the copyrighted 2017 Xcella photos group is a photograph titled "Xcella_Livingroom_Alt."

73. Plaintiff registered the copyright in a group of certain photographs taken in 2019, under Reg. No. VA 2-249-783, a U.S. copyright registration for a group titled "2019 Xcella photographs". Plaintiff is the sole and exclusive owner of all right, title and interest in and to U.S. Copyright Reg. No. VA 2-249-783.

74. Included in the copyrighted 2019 Xcella photographs group is a photograph titled "Accent Chair."

75. Upon information and belief, Defendants Samira, Refat Ijbara, and/or Wadha Igbara, without Plaintiff's consent or authorization, posted unauthorized copies of Plaintiff's

copyrighted photographs of Plaintiff's products depicted therein on social media sites, including Instagram and Facebook, specifically using the unauthorized copies to promote the sale of furniture that did not originate from Plaintiff.

76. Attached as **Exhibit C** are comparisons of (a) Plaintiff's copyrighted photograph titled "Xcella_Livingroom_Alt" and a post dated August 2, 2018 from the @samira_furniture Instagram account, and (b) Plaintiff's copyrighted photograph titled "Accent Chair" and a post dated August 17, 2019 from the @samira_furniture Instagram account, showing the infringing copies.

77. Defendants' conduct violates 17 U.S.C. § 501 as a violation of Plaintiff's exclusive right to reproduce its copyrighted photographs, and has caused, and unless enjoined by this Court, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury, for which Plaintiff has no adequate remedy at law.

78. As a result of Defendants' wrongful conduct, Plaintiff has suffered monetary damages in amounts to be determined at trial.

79. Defendants have also profited from, and continue to profit from, their wrongful conduct.

80. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiff's rights.

81. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury, for which Plaintiff has no adequate remedy at law.

COUNT III

**Civil Conspiracy
(As to all Defendants)**

82. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 81 above as though fully set forth herein.

83. The collective wrongful acts of Defendants, as alleged herein, for their mutual benefit, were clearly known by Defendants to be wrongful and would cause, and have caused, damage to Plaintiff.

84. Counts I and II are independently cognizable torts that Defendants mutually conspired to participate in committing.

85. As a result of Defendants' wrongful conduct as alleged herein, Plaintiff has suffered monetary damages in amounts to be determined at trial.

86. Each and every Defendant is therefore vicariously, jointly and severally, liable to Plaintiff, separately and independently, under each of Count I (patent infringement) and Count II (copyright infringement) for the damages proximately caused thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enter judgment that Defendants have infringed Plaintiff's '088 Patent and that such infringement has been willful;

B. Enter a permanent injunction against Defendants, pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court, enjoining Defendants and their respective officers, agents, affiliates, employees, and all others in active concert or participation with any of them, from further infringement of the '088 patent;

C. Enter a judgment that Defendants Samira, Refat Ijbara, and Wadha Igbara have willfully infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501;

D. Enter a permanent injunction against Defendants, pursuant to 17 U.S.C. § 502 and/or the equitable powers of this Court, enjoining Defendants and their respective officers, agents, affiliates, employees, and all others in active concert or participation with any of them, from further infringement of Plaintiff's copyrights;

E. Award damages, in an amount to be determined, adequate to compensate Plaintiff for the infringement that has occurred, pursuant to 35 U.S.C. § 284, together with pre-judgment interest from the date the infringement began;

F. Order Defendants to account for and pay to Plaintiff any and all profits made by Defendants from sales of infringing products pursuant to 35 U.S.C. § 289;

G. Award Plaintiff increased damages under 35 U.S.C. § 284 for Defendants' willful and deliberate infringement of the '088 Patent;

H. Award damages, in an amount to be determined, adequate to compensate Plaintiff for the infringement that has occurred, as well as any additional profits made by Defendants, pursuant to 17 U.S.C. § 504, together with pre-judgment interest from the date the infringement began;

I. Declare this to be an exceptional case pursuant to 35 U.S.C. § 285 and/or other applicable laws;

J. Order Defendants to pay Plaintiff its costs and attorneys' fees in this action, together with pre-judgment and post judgment interest, pursuant to 35 U.S.C. § 285, 17 U.S.C. § 505 and/or other applicable laws;

K. Enter an Order holding Defendants jointly and severally liable for all damages, costs and attorneys' fees awarded to Plaintiff as a result of Defendants' patent infringement and, independently, as a result of Defendants' copyright infringement; and

L. Award Plaintiff such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

MICHAEL J BROWN LAW OFFICE LLC

Dated: June 17, 2021

By: /s/ Michael J. Brown

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