

*Attorneys for Plaintiff Research Products Corp.*

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

RESEARCH PRODUCTS CORPORATION,

Plaintiff,

V.

THINK CRUCIAL LLC,

Defendant.

Case No. 7:21-cv-8063

## JURY TRIAL DEMANDED

## COMPLAINT

Plaintiff Research Products Corporation (“Plaintiff” or “Research Products”) alleges as follows for its Complaint against Defendant Think Crucial LLC (“Defendant” or “Think Crucial”):

## NATURE OF THE ACTION

1. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, resulting from Defendant's unauthorized manufacture, offers to sell, and sale of air filters in the United States that infringe at least two patents. This action also arises under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, New York General Business Law, and New York common law resulting from Defendant's advertising products in a manner that infringes Plaintiff's trademarks and from selling products in packaging that infringes Plaintiff's trademarks.

### **THE PARTIES**

2. Plaintiff Research Products Corporation is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 1015 East Washington Avenue, Madison, Wisconsin 53703-2938.

3. Defendant Think Crucial LLC is a corporation organized and existing under the laws of the State of New York and, on information and belief, with its principal place of business at 413 Maple Avenue, Nyack, New York 10960. Upon information and belief, Defendant markets, distributes, offers for sale and sells its infringing filters throughout the United States, including through its <https://www.thinkcrucial.com/> website, including in this District. Upon information and belief, Defendant advertises products in a manner that infringes Plaintiff's trademarks through its <https://www.thinkcrucial.com/> website and sells its products in packaging that infringes Plaintiff's trademarks throughout the United States, including in this District.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* and the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* Accordingly, this Court has original and subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1121(a), 1331 and 1338(a).

5. Plaintiff's claims for dilution, trademark infringement, and unfair competition under New York statutory and common law are so related to the federal claims that they form a part of the same case or controversy. Accordingly, this Court has supplemental jurisdiction of the New York statutory and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

6. This Court has personal jurisdiction over Defendant because Defendant resides in this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because, on information and belief, Defendant resides in this District, has committed acts of patent infringement in this District, and has a regular and established place of business in this District.

**PLAINTIFF RESEARCH PRODUCTS AND ITS APRILAIRE® PRODUCTS**

8. Plaintiff owns the Aprilaire® trademarks and manufactures indoor air quality products sold under that brand name, including air purifiers, air filters, humidifiers, dehumidifiers, thermostats, and ventilation.

9. Plaintiff invests substantial money and other resources in the research and development of new and improved technology for products in these fields and in developing and advertising its distinctive and original Aprilaire® trademarks.

10. Plaintiff also invests substantial time, effort, and resources to protect its technology and Aprilaire® brand name through patents and trademarks.

11. Plaintiff manufactures whole-house humidifiers, dehumidifiers, and air purifiers under the Aprilaire® brand name.

12. Plaintiff also manufactures replacement air filters under the Aprilaire® brand name for its whole-house humidifiers, dehumidifiers, and air purifiers.

13. Plaintiff has developed substantial consumer recognition, trust, and loyalty in its products and Aprilaire® marks, especially because its whole-house humidifiers, dehumidifiers, and air purifiers are permanent fixtures in its customers' homes.

14. Due to the popularity and installation base of Plaintiff's whole-house humidifiers, dehumidifiers, and air purifiers, it is common for off-brand manufacturers to sell replacement

filters for Plaintiff's equipment and to advertise their products as compatible with one or more Aprilaire® products.

15. Unfortunately, it is also common for such off-brand manufacturers to advertise their filters using the Aprilaire® trademarks in a misleading way that is likely to cause confusion as to the source of the air filters.

16. That is what Defendant has done with respect to its air filters that it advertises as compatible with certain Aprilaire® whole-house air purifiers.

17. In addition, Defendant is selling collapsible air filters that infringe at least two of Plaintiff's patents.

#### **THE PATENTS-IN-SUIT**

18. On January 7, 2014, U.S. Patent No. 8,623,109 ("the '109 patent") was duly and legally issued by the United States Patent and Trademark Office. A copy of the '109 patent is attached hereto as Exhibit 1. The '109 patent is presumed valid pursuant to 35 U.S.C. § 282.

19. On February 3, 2015, U.S. Patent No. 8,945,267 ("the '267 patent") was duly and legally issued by the United States Patent and Trademark Office. A copy of the '267 patent is attached hereto as Exhibit 2. The '267 patent is presumed valid pursuant to 35 U.S.C. § 282.

#### **DEFENDANT AND ITS SALE OF "REPLACEMENT APRILAIRE" AIR FILTERS**

20. Defendant sells replacement parts for household items, such as air purifier filters, vacuum filters, coffee filters, and pool filters.

21. Defendant sells its products directly to consumers through its website, <https://www.thinkcrucial.com/>.

22. Defendant also sells its products to well-known retailers, such as Amazon and Walmart.

23. Defendant sells replacement air filters that are intended to be compatible with Plaintiff's whole-house air purifier systems.

24. In particular, Defendant sells at least the following products:

- “Replacement Aprilaire 201 Air Filter, Fits Aprilaire 2200 & 2250 Air Purifiers”
- “Replacement Aprilaire 401 Air Filter, Fits Aprilaire Space-Gard 2400 Air Purifiers”
- “Replacement Aprilaire 213 Air Filter, Fits Models 1210, 1620, 2210, 2216, 3210, 4200 & Space Gard 2200”
- “Replacement Aprilaire 413 Air Filter, Fits Models 1410, 1610, 2410, 2416, 3410, 4400 & Space Gard 2400”

25. On information and belief, Defendant's “Replacement Aprilaire Air Filters” are of lesser quality than Plaintiff's competing air filters.

26. Defendant advertises its “Replacement Aprilaire Air Filters” at prices far lower than Plaintiff's competing air filters. For example, the price of Defendant's “Replacement Aprilaire 213 Air Filter” on its website is \$38.99, compared with \$59.99 for Plaintiff's competing air filter.

27. The similarities between Defendant's “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” and Plaintiff's air filters suggest that Defendant copied either Plaintiff's air filters or copied air filters depicted in Plaintiff's patents (or both).

28. For example, below is a comparison between Defendant's “Replacement Aprilaire 213 Air Filter” and Figure 9 of the '109 and '267 patents (with yellow annotations):

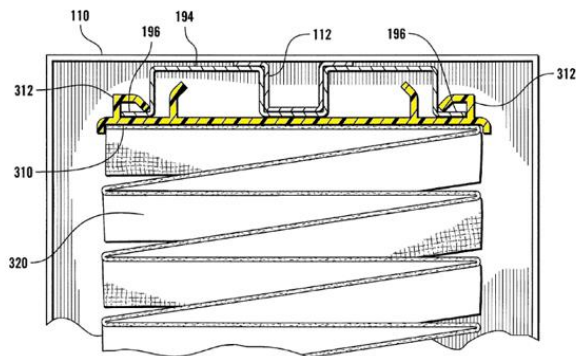


FIG. 9

Fig. 9 of the  
'109 and '267 patents



Defendant's "Replacement  
Aprilaire 213 Air Filter"

29. Below is a comparison between Defendant's "Replacement Aprilaire 213 Air Filter" and Plaintiff's Aprilaire® 213 air filter:



Research Products'  
Aprilaire® 213 air filter







Defendant's "Replacement  
Aprilaire 213 Air Filter"

### **THE APRILAIRE® TRADEMARKS-IN-SUIT**

30. Plaintiff owns distinct Aprilaire® trademarks that have come to symbolize the high quality of Plaintiff's products, which Plaintiff has continuously used in connection with the sale of its Aprilaire® products in the United States since at least 1956. Plaintiff typically includes

its Aprilaire® trademarks to signify to consumers that the product utilizes Plaintiff's premier air quality technology.

31. Plaintiff owns numerous trademark registrations for its Aprilaire® mark with the United States Patent and Trademark Office:

| Registration Number (year of reg.) | Trademark   | Word Mark  |
|------------------------------------|---|--|
| 0613970 (1955)                     |   | APRILAIRE  |
| 1032177 (1976)                     |   | APRILAIRE  |
| 2531863 (2001)                     |    | APRILAIRE  |
| 2531862 (2001)                     |  | APRILAIRE  |
| 3174855 (2006)                     |  | FOR PEAK<br>PERFORMANCE USE<br>GENUINE APRILAIRE<br>REPLACEMENT<br>PARTS |

32. The above U.S. registrations for the Aprilaire® trademarks are valid, subsisting, in full force and effect, and incontestable pursuant to 15 U.S.C. § 1065.

33. The registrations for the Aprilaire® trademarks constitute *prima facie* evidence of their validity and of Plaintiff's exclusive right to use the Aprilaire® trademarks.

34. Copies of the United States Registration Certificates for the above-listed Aprilaire® trademarks are attached as Exhibit 3.

35. The Aprilaire® trademarks signify to consumers that the products bearing them were designed by Plaintiff and manufactured to Plaintiff's high quality standards.

36. The Aprilaire® trademarks are famous marks as that term is used in 15 U.S.C. § 1125(c)(1) and have been continuously used and never abandoned.

37. The innovative marks, marketing, and product designs of Plaintiff have enabled the Aprilaire® brand to achieve widespread recognition and fame.

38. In addition, Plaintiff has expended substantial time, money and other resources in advertising and promoting its Aprilaire® trademarks.

39. As a result, products bearing the Aprilaire® trademarks are exclusively associated by consumers, the public, and the trade as being high-quality products sourced from Plaintiff.

40. As such, the goodwill associated with the Aprilaire® trademarks is of incalculable and inestimable value to Plaintiff.

### **INFRINGING TRADEMARK USES**

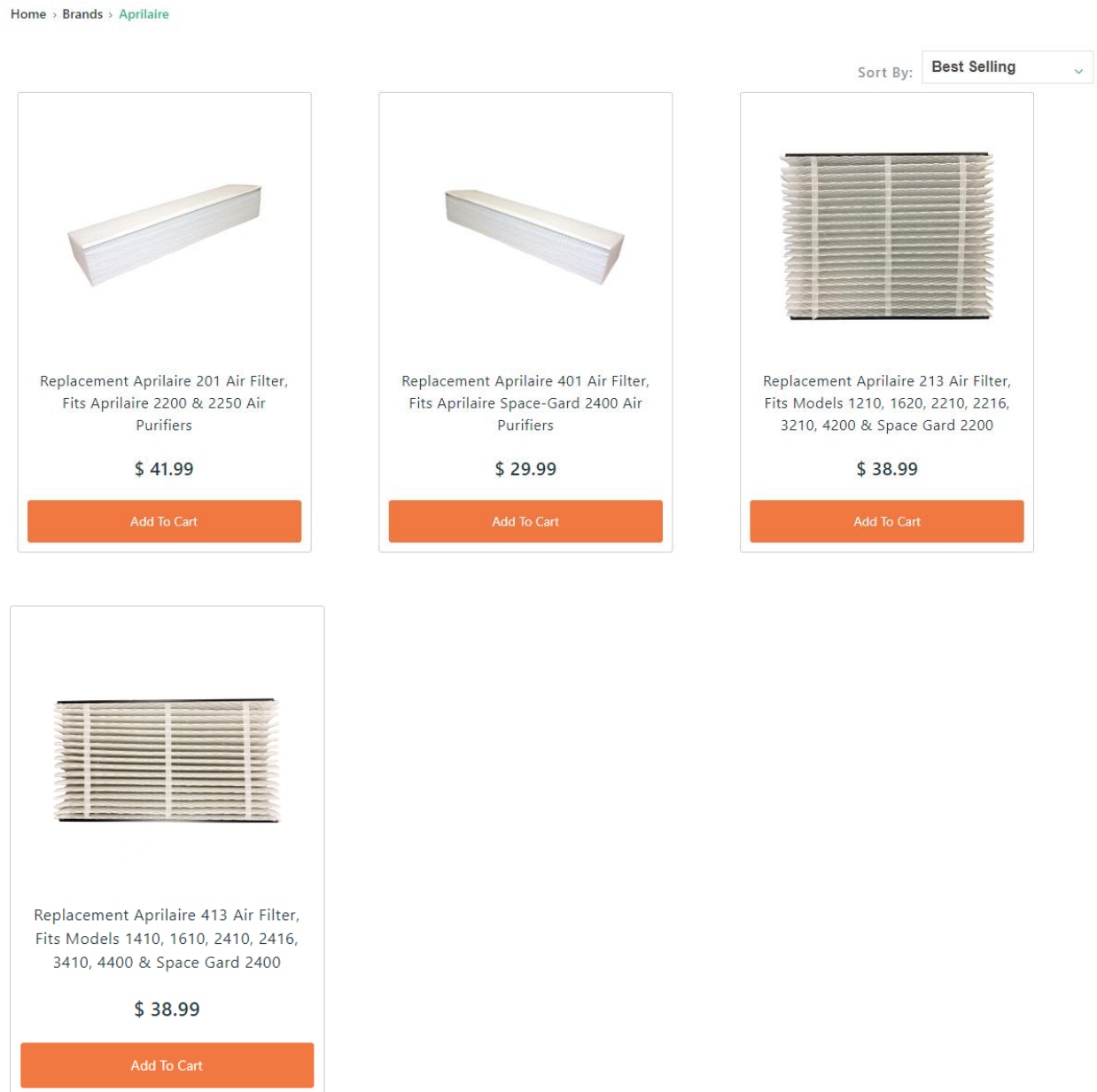
41. Defendant sells its products through the website <https://www.thinkerucial.com/>, among other places such as retailers Amazon and Walmart.

42. As a relatively new company to the industry, Defendant's ability to sell products in the market is due in part to its willingness to copy the trademarks of well-known air quality companies such as Plaintiff.



43. To that end, in disregard for Plaintiff's rights, Defendant is designing, manufacturing, producing, marketing, distributing, promoting, offering for sale, and selling in interstate commerce products that include the Airborne® trademarks.

44. Examples of marketing for Defendant's infringing products on its website (<https://www.thinkcrucial.com/>) are depicted below:



Aprilaire replacement filters for humidifiers and air purifiers. Absolutely Essential for Allergy Sufferers. Designed & Engineered by Crucial Air.

45. Defendant's use of Plaintiff's Aprilaire® trademarks is likely to cause confusion because Defendant does not make clear that the Aprilaire® trademarks are owned by Plaintiff.

46. An example of Defendant's reference to the ownership of the Aprilaire® trademark is depicted below:



47. The above images demonstrate that Defendant's advertising is likely to cause confusion because the above images do not clarify that the Aprilaire® trademarks are owned by Plaintiff (and not owned by Defendant).

48. In much smaller, italicized, and non-bolded font and located in the bottom portions of its webpages, Defendant states the following:

Please note the following important information about this product from Think Crucial: (i) it is a generic replacement, NOT a Aprilaire® Original Equipment Manufacturer (OEM) product; (ii) because it is not a Aprilaire® OEM product, it is not covered by any Aprilaire® guarantee or warranty; (iii) use of this generic replacement may violate or void Aprilaire®'s guarantee or warranty - it is entirely your responsibility to check, and entirely your risk if you decide to use this product; (iv) we do not guarantee or warrant that this generic replacement is compatible with any product from Aprilaire® or any other provider. Please check your manufacturer's warranty with regard to the use of non-OEM parts. Think Crucial provides no warranty or guarantee with regard to the product or its compatibility with your Aprilaire® product. The Aprilaire® brand and all Aprilaire® trademarks belong to Aprilaire® or its affiliates, and are used here only to explain the compatibility features of the generic replacement product.

49. Defendant's improper use of the Aprilaire® trademarks is likely to cause confusion despite the above language because the language is inconspicuous in terms of its location at the bottom of Defendant's webpages, small font size, and non-bolded font.

50. Defendant's packaging of its air filters is also likely to cause confusion.

51. An example of Defendant's packaging is depicted below:



52. The above image demonstrate that Defendant's packaging is likely to cause confusion because the above packaging does not clarify that the Aprilaire® trademarks are owned by Plaintiff (and not owned by Defendant).

53. Defendant's use of words that are the same or confusingly similar to the Aprilaire® trademarks violates Plaintiff's registered trademarks.

54. Defendant's use of identical or confusingly similar imitations of the Aprilaire® trademarks is likely to deceive, confuse and mislead actual and prospective purchasers before, during, and after purchase into believing that Defendant's products are manufactured or authorized by, or in some way associated with Plaintiff, when they are not.

55. This is damaging to Plaintiff because it causes diverted sales due to consumer confusion about the origin of the products.

56. Defendant has engaged in the above-described infringing activities knowingly and intentionally, or with reckless disregard or willful blindness to Plaintiff's rights, or with bad faith, for the purpose of trading on the goodwill and reputation of the Plaintiff's Aprilaire® trademarks.

57. Further, as a direct and proximate result of Defendant's misuse of the Aprilaire® trademarks, consumers are likely to be confused and deceived into believing that a connection or association exists between Plaintiff and Defendant, when there is none, causing additional injury to Plaintiff, and the reputation and goodwill of the Aprilaire® trademarks.

58. Defendant's misuse of the Aprilaire® trademarks also dilutes the distinctiveness of the Aprilaire® trademarks by eroding the public's exclusive identification of these famous trademarks with Plaintiff, tarnishing and degrading the positive associations and prestigious connotations of these famous trademarks, and otherwise lessening the capacity of the Aprilaire® trademarks to identify and distinguish Plaintiff's products.

59. In addition, Defendant has enriched itself at Plaintiff's expense by its commercial exploitation of the Aprilaire® trademarks without Plaintiff's consent and without any compensation to Plaintiff.

**COUNT I – PATENT INFRINGEMENT**  
**INFRINGEMENT OF U.S. PATENT NO. 8,623,109**

60. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

61. Plaintiff is the assignee of all right, title, and interest in the '109 patent.

62. Plaintiff has marked its Aprilaire® 213 and 413 air filters with the '109 patent number thereby giving notice to the public that such products are patented under 35 U.S.C. § 287(a).

63. In violation of 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, Defendant has been, and still is, infringing one or more claims of the '109 patent by, without authority, at least making, selling, and/or offering to sell its “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter.”

64. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each contain every element of at least claim 1 of the '109 patent, as set forth below and as shown in the attached Exhibit 4.

65. Exhibit 4 contains images of Defendant’s “Replacement Aprilaire 213 Air Filter” from its website, <https://www.thinkcrucial.com/products/replacement-aprilaire-213-air-filter-fits-models-1210-1620-2210-2216-3210-4200-space-gard-2200>, as well as photographs of the product.

66. Defendant’s “Replacement Aprilaire 413 Air Filter” is substantially similar to Defendant’s “Replacement Aprilaire 213 Air Filter.” Therefore, the images and photographs of Defendant’s “Replacement Aprilaire 213 Air Filter” in Exhibit 4 are representative of Defendant’s “Replacement Aprilaire 413 Air Filter” for purposes comparing Defendant’s “Replacement Aprilaire 213 Air Filter” with claim 1 of the '109 patent.

**“A collapsible air cleaner filter”**

67. The preamble of claim 1 of the ’109 patent recites: “A collapsible air cleaner filter.”

68. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” are collapsible air cleaner filters.

**“a collapsible pleated media filter having a first end, a second end, and a filter media extending between the first and second ends, wherein the filter media includes a plurality of pleats having a first plurality of flexible width portions and a second plurality of flexible width portions, the filter media having a width extending between and including the first and second plurality of flexible width portions”**

69. Claim 1 of the ’109 patent recites: “a collapsible pleated media filter having a first end, a second end, and a filter media extending between the first and second ends, wherein the filter media includes a plurality of pleats having a first plurality of flexible width portions and a second plurality of flexible width portions, the filter media having a width extending between and including the first and second plurality of flexible width portions.”

70. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each has a first end (in black) and a second end (in black).

71. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each has a collapsible pleated media filter with a filter media extending between the first and second ends and the filter media includes a plurality of pleats having a first plurality of flexible width portions and a second plurality of flexible width portions.

72. The filter media of Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” has a width extending between and including the first and second plurality of flexible width portions.

**“a first end member coupled to and extending along the first end of the collapsible pleated media filter, the first end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting first end foot member, the at least one outwardly projecting first end foot member at least partially defining at least one first end retaining channel, wherein the at least one first end retaining channel is adapted to receive a portion of a first rail provided in a first portion of an air duct”**

73. Claim 1 of the '109 patent recites: “a first end member coupled to and extending along the first end of the collapsible pleated media filter, the first end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting first end foot member, the at least one outwardly projecting first end foot member at least partially defining at least one first end retaining channel, wherein the at least one first end retaining channel is adapted to receive a portion of a first rail provided in a first portion of an air duct.”

74. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each has a first end member coupled to and extending along the first end of the collapsible pleated media filter, the first end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting first end foot member.

75. The at least one outwardly projecting first end foot member of Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” at least partially defines at least one first end retaining channel, wherein the at least one first end retaining channel is adapted to receive a portion of a first rail provided in a first portion of an air duct.

**“a second end member coupled to and extending along the second end of the collapsible pleated media filter, the second end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting second end foot member, the at least one outwardly projecting second end foot member at least partially defining at least one second end retaining channel, wherein the at least one second end retaining channel is adapted to receive a portion of a second rail provided in a second portion of an air duct and wherein the collapsible pleated media filter is adapted to be expanded to an open state by pulling the first and second end members apart to engage the first and second rails”**

76. Claim 1 of the '109 patent recites: “a second end member coupled to and extending along the second end of the collapsible pleated media filter, the second end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting second end foot member, the at least one outwardly projecting second end foot member at least partially defining at least one second end retaining channel, wherein the at least one second end retaining channel is adapted to receive a portion of a second rail provided in a second portion of an air duct and wherein the collapsible pleated media filter is adapted to be expanded to an open state by pulling the first and second end members apart to engage the first and second rails.”

77. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each has a second end member coupled to and extending along the second end of the collapsible pleated media filter, the second end member having a structural body with a cross sectional shape generally defining at least one outwardly projecting second end foot member.

78. The at least one outwardly projecting first end foot member of Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” at least partially defines at least one second end retaining channel, wherein the at least one second end retaining channel is adapted to receive a portion of a first rail provided in a first portion of an air duct.



79. The collapsible pleated media filter of “Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” is adapted to be expanded to an open state by pulling the first and second end members apart to engage the first and second rails.

80. On information and believe, Defendant’s “Replacement Aprilaire 213 Air Filter” is a copy of either Plaintiff’s Aprilaire® 213 air filter or the air filter depicted in Figure 9 of the ’109 patent (or both).

81. On information and believe, Defendant’s “Replacement Aprilaire 413 Air Filter” is a copy of either Plaintiff’s Aprilaire® 413 air filter or an air filter depicted in Figure 9 of the ’109 patent (or both).

82. Due to its copying of Plaintiff’s marked products and/or the air filter depicted in Figure 9 of the ’109 patent, Defendant has been, or at least should have been, aware of the ’109 patent prior to the filing of this Complaint.

83. On information and belief, Defendant knew or should have known (and upon receipt of this Complaint, knows or should know) that is actions constitute infringement of the ’109 patent, and has had such knowledge prior to the filing of this Complaint. As a result, Defendant’s infringement of the ’109 patent has been, and continues to be, willful and deliberate.

84. As a result of Defendant’s infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial and irreparable harm.

85. Upon information and belief, the conduct of Defendant presents an exceptional case such that Plaintiff is entitled to an award of its reasonable attorneys’ fees, as provided by 35 U.S.C. § 285.

**COUNT II – PATENT INFRINGEMENT**  
**INFRINGEMENT OF U.S. PATENT NO. 8,945,267**

86. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

87. Plaintiff is the assignee of all right, title, and interest in the '267 patent.

88. Plaintiff has marked its Aprilaire® 213 and 413 air filters with the '267 patent number thereby giving notice to the public that such products are patented under 35 U.S.C. § 287(a).

89. In violation of 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, Defendant has been, and still is, infringing one or more claims of the '267 patent by, without authority, at least making, selling, and/or offering to sell its “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter.”

90. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each contain every element of at least claim 1 of the '267 patent, as set forth below and as shown in the attached Exhibit 4.

91. Exhibit 4 contains images of Defendant’s “Replacement Aprilaire 213 Air Filter” from its website, <https://www.thinkcrucial.com/products/replacement-aprilaire-213-air-filter-fits-models-1210-1620-2210-2216-3210-4200-space-gard-2200>, as well as photographs of the product.

92. Defendant’s “Replacement Aprilaire 413 Air Filter” is substantially similar to Defendant’s “Replacement Aprilaire 213 Air Filter.” Therefore, the images and photographs of Defendant’s “Replacement Aprilaire 213 Air Filter” in Exhibit 4 are representative of Defendant’s “Replacement Aprilaire 413 Air Filter” for purposes comparing Defendant’s “Replacement Aprilaire 213 Air Filter” with claim 1 of the '267 patent.

**“A filter for an existing air cleaner housing having a first support member oriented about a first axis and provided substantially along a first wall of said air cleaner housing, the filter”**

93. The preamble of claim 1 of the '267 patent recites: “A filter for an existing air cleaner housing having a first support member oriented about a first axis and provided substantially along a first wall of said air cleaner housing.”

94. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” are filters for existing air cleaner housings having a first support member oriented about a first axis and provided substantially along a first wall of said air cleaner housing.

95. Defendant advertises its “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” as replacement products for Plaintiff’s whole-house air cleaner systems that have a filter housing with a first support member oriented about a first access and provided substantially along a first wall of the housing.

**“a filter media extending between a first end member and a second end member”**

96. Claim 1 of the '267 patent recites: “a filter media extending between a first end member and a second end member.”

97. Defendant’s “Replacement Aprilaire 213 Air Filter” and “Replacement Aprilaire 413 Air Filter” each has a filter media extending between a first end member (in black) and a second end member (in black).

**“the first end member having a first end projection comprising a first portion that projects out from the first end member”**

98. Claim 1 of the '267 patent recites: “the first end member having a first end projection comprising a first portion that projects out from the first end member.”

99. Defendant's "Replacement Aprilaire 213 Air Filter" and "Replacement Aprilaire 413 Air Filter" each has a first end member (in black) having a first end projection comprising a first portion that projects out from the first end member.

**"wherein the first end member and the second end member are moveable relative to each other to engage the first end projection and said first support member and expand the filter media in a direction transverse to said first axis"**

100. Claim 1 of the '267 patent recites: "wherein the first end member and the second end member are moveable relative to each other to engage the first end projection and said first support member and expand the filter media in a direction transverse to said first axis."

101. The first end member and the second end member of Defendant's "Replacement Aprilaire 213 Air Filter" and "Replacement Aprilaire 413 Air Filter" are movable relative to each other to engage the first end projection and said first support member and expand the filter media in a direction transverse to said first axis.

102. On information and believe, Defendant's "Replacement Aprilaire 213 Air Filter" is a copy of either Plaintiff's Aprilaire® 213 air filter or the air filter depicted in Figure 9 of the '267 patent (or both).

103. On information and believe, Defendant's "Replacement Aprilaire 413 Air Filter" is either a copy of Plaintiff's Aprilaire® 413 air filter or the air filter depicted in Figure 9 of the '267 patent (or both).

104. Due to its copying of Plaintiff's marked products and/or the air filter depicted in Figure 9 of the '267 patent, Defendant has been, or at least should have been, aware of the '267 patent prior to the filing of this Complaint.

105. On information and belief, Defendant knew or should have known (and upon receipt of this Complaint, knows or should know) that its actions constitute infringement of the

'267 patent, and has had such knowledge prior to the filing of this Complaint. As a result, Defendant's infringement of the '267 patent has been, and continues to be, willful and deliberate.

106. As a result of Defendant's infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial and irreparable harm.

107. Upon information and belief, the conduct of Defendant presents an exceptional case such that Plaintiff is entitled to an award of its reasonable attorneys' fees, as provided by 35 U.S.C. § 285.

**COUNT III – TRADEMARK INFRINGEMENT**  
**(UNDER SECTION 32 OF THE LANHAM ACT, 15 U.S.C. § 1114(1))**

108. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

109. The Aprilaire® trademarks are owned by Plaintiff, and are valid and subsisting.

110. Upon information and belief, Defendant has used, is using, and/or imminently intends to use the Aprilaire® trademarks, or words that are confusingly similar to the Aprilaire® trademarks, in interstate commerce, without the consent of Aprilaire®, in connection with the sale of goods and/or in connection with the advertising and promotion of such goods.

111. Defendant's conduct as alleged above constitutes the unauthorized use in interstate commerce in the United States of the Aprilaire® trademarks in connection with the sale, offering for sale, distribution, or advertising of its products, and has caused and/or is likely to cause confusion or mistake or deception of the public as to (i) the affiliation, connection, and/or association of Plaintiff with Defendant and the Infringing Products; (ii) the origin of the Infringing Products; and/or (iii) the sponsorship, endorsement, or approval of the Infringing Products by Plaintiff, in each case a violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

112. Upon information and belief, Defendant's actions were deliberate, willful, and in conscious disregard of Plaintiff's superior rights in its registered Aprilaire® trademarks.

113. As a result of Defendant's conduct, Plaintiff has suffered irreparable harm to its Aprilaire® trademarks, reputation and goodwill, for which it has no adequate remedy at law, and will continue to suffer irreparable injury unless and until Defendant's infringing acts are enjoined by this Court.

114. Pursuant to 15 U.S.C. §§ 1116-1117, Plaintiff is entitled to injunctive relief, actual damages in an amount to be determined at trial, to have such damages trebled, to Defendant's profits, and to the costs of this action and to attorneys' fees.

**COUNT IV – UNFAIR COMPETITION**  
**(UNDER SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)(1)(A))**

115. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

116. Defendant's use of Plaintiff's Aprilaire® trademarks to advertise, market, offer for sale, and sell its "Replacement Aprilaire Air Filters" also constitutes unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

117. Plaintiff has suffered, and will continue to suffer, irreparable harm from Defendant's acts and conduct complained of herein, unless restrained by law.

118. Plaintiff has no adequate remedy at law.

**COUNT V – TRADEMAR DILUTION**  
**(UNDER SECTION 43(c) OF THE LANHAM ACT, 15 U.S.C. § 1125(c))**

119. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

120. Plaintiff's Aprilaire® trademarks were famous before and at the time Defendant began using the Aprilaire® trademarks in commerce in connection with the advertising, promotion, offering for sale, and sale of Defendant's "Replacement Aprilaire Air Filter."

121. Defendant's use of Plaintiff's Aprilaire® trademarks in commerce in connection with the advertising, promotion, offering for sale, and sale of products is likely to dilute the distinctive quality of the Aprilaire® trademarks, such that the famous Aprilaire® trademarks' established selling power and value will be whittled away.

122. Defendant's use of Plaintiff's Aprilaire® trademarks in commerce in connection with the advertising, promotion, offering for sale, and sale of products is likely to dilute the distinctive quality of the Aprilaire® trademarks, such that the Aprilaire® trademarks' ability to identify Plaintiff as the exclusive source of products offered under the Aprilaire® trademarks will be whittled away.

123. Defendant's use of Plaintiff's Aprilaire® trademarks in commerce in connection with the advertising, promotion, offering for sale, and sale of products is likely to dilute the distinctive quality of the Aprilaire® trademarks, such that the Aprilaire® trademarks' ability to indicate the superior quality of products under such Aprilaire® trademarks will be whittled away.

124. Defendant's acts and conduct complained of herein constitute trademark dilution in violation of 15 U.S.C. § 1125(c).

125. Plaintiff has suffered, and will continue to suffer, irreparable harm from Defendant's acts and conduct complained of herein, unless restrained by law.

126. Plaintiff has no adequate remedy at law.

**COUNT VI – DILUTION AND INJURY TO BUSINESS REPUTATION**  
**(UNDER NEW YORK GENERAL BUSINESS LAW § 360-l)**

127. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

128. Defendant's acts and conduct complained of herein constitute dilution and injury to business reputation in violation of New York General Business Law § 360-l.

129. Plaintiff has suffered, and will continue to suffer, irreparable harm from Defendant's acts and conduct complained of herein, unless restrained by law.

130. Plaintiff has no adequate remedy at law.

**COUNT VII – TRADEMARK INFRINGEMENT**  
**(UNDER NEW YORK COMMON LAW)**

131. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

132. Defendant's acts and conduct complained of herein constitute trademark infringement in violation of New York common law.

133. Plaintiff has suffered, and will continue to suffer, irreparable harm from Defendant's acts and conduct complained of herein, unless restrained by law.

134. Plaintiff has no adequate remedy at law.

**COUNT VIII – UNFAIR COMPETITION AND PASSING OFF**  
**(UNDER NEW YORK COMMON LAW)**

135. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

136. Defendant's acts and conduct complained of herein constitute unfair competition and passing off in violation of New York common law.



137. Plaintiff has suffered, and will continue to suffer, irreparable harm from Defendant's acts and conduct complained of herein, unless restrained by law.

138. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant as follows:

- A. For judgment in Plaintiff's favor on each Count asserted herein;
- B. For judgment that Defendant's patent infringement has been willful;
- C. For judgment that Defendant's trademark infringement has been willful;
- D. For judgment that Defendant's conduct is "exceptional" under 35 U.S.C. § 284;
- E. For judgment that Defendant's conduct is "exceptional" under 15 U.S.C. § 1117;
- F. Awarding all damages sustained by Plaintiff as a result of Defendant's acts of patent infringement, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- G. For a permanent injunction enjoining Defendant from infringing the claims of the '109 and '267 patents;
- H. Awarding enhanced patent infringement damages pursuant to 35 U.S.C. § 284;
- I. Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- J. Granting an injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, 17 U.S.C. § 502 and 15 U.S.C. § 1116, preliminarily and permanently restraining and enjoining Defendant, its officers, agents, employees and attorneys, and all those persons or entities in active concert or participation with them from designing, manufacturing, importing, advertising, marketing, promoting, supplying, distributing, offering for sale

and/or selling any products that bear the Aprilaire® trademarks and/or any other design, mark, symbol or other elements substantially similar or confusingly similar thereto, including, without limitation, the Infringing Products, and engaging in any other activity constituting an infringement of any of Plaintiff's rights in the Aprilaire® trademarks;

- K. Requiring Defendant to file with this Court and to serve on Plaintiff within thirty (30) days after entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction under 15 U.S.C. § 1116;
- L. Directing such other and further relief as the Court may deem appropriate to prevent consumers, the public and/or the trade from deriving any erroneous impression that any product at issue in this action that has been manufactured, imported, advertised, marketed, promoted, supplied, distributed, offered for sale and/or sold by Defendant has been authorized by Plaintiff, or is related in any way with Plaintiff and/or its products;
- M. Ordering Defendant to account to and pay to Plaintiff all profits realized by its wrongful acts, awarding Plaintiff its actual damages, and directing that such profits or actual damages be trebled in accordance with § 35 of the Lanham Act, 15 U.S.C. § 1117;
- N. Pursuant to 15 U.S.C. § 1118, ordering the destruction of all unauthorized materials with the possession, custody, or control of Defendant that bear, feature, and/or contain any copy or colorable imitation of Plaintiff's trademarks;
- O. For an injunction under New York General Business Law § 360-*l*;
- P. Awarding Plaintiff its attorneys' fees, together with the costs and disbursements of this action;
- Q. Awarding all pre-judgment interest and post-judgment interest; and

R. Awarding such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

Dated: September 28, 2021  
NEW YORK, NEW YORK

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