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19 Attorneys for Plaintiffs/Counterclaim-Defendants

20 UNITED STATES DISTRICT COURT  
21 DISTRICT OF ARIZONA

22 Top Brand LLC, Sky Creations, LLC,  
23 E Star LLC, - Flying Star LLC, and  
24 John Ngan

25 Plaintiffs,

26 v.

27 Cozy Comfort Company LLC, Brian  
28 Speciale, and Michael Speciale,

Defendants.

Cozy Comfort Company LLC,

Counterclaim-Plaintiff,

v.

No. CV-21-00597-PHX-SPL

**THIRD AMENDED COMPLAINT**

**(Jury trial demanded)**



A PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

1 Top Brand LLC, Sky Creations, LLC,  
2 E Star LLC, and Flying Star LLC,  
3 John Ngan, XYZ Corporations, John  
4 Does, and Jane Does,

Counterclaim-Defendants.

5  
6 Plaintiffs, Top Brand LLC (“Top Brand”), Sky Creations LLC (“Sky”), E Star  
7 LLC (“E-Star”), Flying Star LLC (“Flying Star”), and John Ngan (collectively  
8 “Plaintiffs”), for their complaint against Cozy Comfort Company LLC (“Cozy Comfort”),  
9 Brian Speciale, and Michael Speciale (collectively “Defendants”) allege as follows:

10 **NATURE OF THE ACTION**

- 11 1. This is a declaratory judgement action seeking a determination that Plaintiffs  
12 do not infringe any valid or enforceable claim of U.S. Design Patent No.  
13 D859,788 (“the ‘788 patent”) under 35 U.S.C. §271.
- 14 2. This is a declaratory judgement action seeking a determination that the ‘788  
15 Design patent is invalid, and unenforceable.
- 16 3. This is a declaratory judgement action seeking a determination that Plaintiffs  
17 do not infringe any valid or enforceable claim of U.S. Design Patent No.  
18 D905,380 (“the ‘380 patent”) under 35 U.S.C. §271.
- 19 4. This is a declaratory judgement action seeking a determination that the ‘380  
20 Design patent is invalid, and unenforceable.
- 21 5. This is a declaratory judgement action seeking a determination that Plaintiffs  
22 do not infringe any valid or enforceable claim of U.S. Design Patent No.  
23 D886,416 (“the ‘416 patent”) under 35 U.S.C. §271.
- 24 6. This is a declaratory judgement action seeking a determination that the ‘416  
25 Design patent is invalid, and unenforceable.
- 26 7. This is a declaratory judgement action seeking a determination that Plaintiffs  
27 do not infringe any valid or enforceable claim of U.S. Design Patent No.  
28 D903,237 (“the ‘237 patent”) under 35 U.S.C. §271.

- 1 8. This is a declaratory judgment action seeking a determination that the ‘237
- 2 Design patent is invalid, and unenforceable.
- 3 9. This is a declaratory judgment action seeking a determination that Top Brand
- 4 LLC, Sky Creations LLC, E-Star LLC, Flying Star LLC, and John Ngan do not
- 5 directly, indirectly, or contributorily infringe any valid or enforceable claim of
- 6 U.S. Patent No. 10,420,431 (“the ‘431 Utility Patent”) under 35 U.S.C. § 271.
- 7 10. This is a declaratory judgment action seeking a determination that the ‘431
- 8 Utility Patent is invalid and unenforceable under 35 U.S.C §§ 101 *et seq.*
- 9 11. This is also an action seeking a determination that that Defendants have
- 10 engaged in false marking in violation of 35 U.S.C. §292.
- 11 12. Plaintiffs also assert in this action Illinois state law claims for Unfair
- 12 Competition and Intentional Interference with Contract.
- 13 13. This is an action seeking damages, attorneys fee and costs for violations of 35
- 14 U.S.C. §292 and 815 ILCS 510.
- 15 14. A true and correct copy of the ‘788 patent is attached as Exhibit A.
- 16 15. A true and correct copy of the file history of the ‘788 patent is attached as
- 17 Exhibit B.
- 18 16. A true and correct copy of the ‘380 patent is attached as Exhibit C.
- 19 17. A true and correct copy of the file history of the ‘380 patent is attached as
- 20 Exhibit D.
- 21 18. A true and correct copy of the ‘416 patent is attached as Exhibit E.
- 22 19. A true and correct copy of the file history of the ‘416 patent is attached as
- 23 Exhibit F.
- 24 20. A true and correct copy of the ‘237 patent is attached as Exhibit G.
- 25 21. A true and correct copy of the file history of the ‘237 patent is attached as
- 26 Exhibit H.
- 27 22. A true and correct copy of U.S. Patent No. 10,420,431 (“the ‘431 Utility
- 28 Patent”) is attached as Exhibit I.

1 23. A true and correct copy of the file history of the ‘431 Utility Patent is attached  
2 as Exhibit J.

3 **THE PARTIES**

4 24. Top Brand LLC is a California limited liability company with its principal  
5 place of business in Carson, California.

6 25. Top Brand is in the business of producing and selling clothing including  
7 hooded sweatshirts as well as wearable blankets through on-line retailers  
8 throughout the United States, including the state of Illinois.

9 26. E Star LLC is a California limited liability company with its principal place of  
10 business in Carson, California.

11 27. E Star is in the business of producing and selling clothing including hooded  
12 sweatshirts and wearable blankets through on-line retailers throughout the  
13 United States, including the state of in Illinois.

14 28. Flying Star LLC is an Illinois limited liability company having its principal  
15 place of business in Elgin, Illinois.

16 29. Flying Star is in the business of producing and selling clothing including  
17 hooded sweatshirts and wearable blankets though on-line retailers throughout  
18 the United States, including the state of in Illinois.

19 30. Sky Creations, LLC is an Illinois limited liability company located in Chicago,  
20 IL.

21 31. Sky owns all rights, title and interests in U.S. Design Patent No. D728,900 (the  
22 ‘900 patent) for a Hoodie.

23 32. The ‘900 patent is cited as a reference in connection with the ‘788 patent and,  
24 along with other cited references, limits the scope of the claims of the ‘788  
25 patent.

26 33. Top Brand and Flying Star are the sole licensees of Sky’s intellectual property,  
27 including the ‘900 Patent.  
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- 1 34. John Ngan is a Member of Top Brand, Sky Creations, E Star, and Flying Star  
2 and is a resident of California.
- 3 35. Cozy Comfort is a limited liability company organized under the laws of  
4 Arizona.
- 5 36. Cozy Comfort has a principal place of business at 4634 E. Peak View Rd., Cave  
6 Creek, AZ 85331.
- 7 37. Michael Speciale and Brian Speciale are individuals and the only two members  
8 of Cozy Comfort.
- 9 38. On information and belief, Michael Speciale and Brian Speciale, individually  
10 and/or together manage, direct and control the actions of Cozy Comfort.
- 11 39. On information and belief, Michael Speciale and Brian Speciale are co-  
12 founders of Cozy Comfort and are involved with Cozy Comfort's day-to-day  
13 operations.
- 14 40. Michael Speciale is a resident of Arizona, and maintains an address of 30604  
15 N. 41st Way, Cave Creek, AZ 85331.
- 16 41. Brian Speciale is a resident of Arizona, and maintains an address of 4634 E.  
17 Peak View Rd., Cave Creek, AZ 85331.
- 18 42. In a communication to the United States Patent and Trademark Office  
19 ("USPTO") on September 21, 2017, attorney Thomas W. Galvani, acting on  
20 behalf of Defendants, represented to the Patent Office that the application that  
21 would mature into the '788 patent was assigned to Cozy Comfort by Michael  
22 Speciale and Brian Speciale, and that the assignment was recorded on  
23 September 14, 2017 on Reel/Frame 043595/0508.
- 24 43. As of the date of the filing of this Third Amended Complaint, there is a  
25 purported assignment of the '788 patent recorded with the United States Patent  
26 and Trademark Office.
- 27 44.
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1 45. In the absence of a valid assignment by each of Michael Speciale and Brian  
2 Speciale, as the individuals listed as the inventors on the '788 patent, each is  
3 presumed to be a co-owner of all right title and interest in and to the '788 patent.

4 46. In early November 2019 Cozy Comfort sent an email to Amazon.com alleging  
5 that Top Brand products infringed the '788 patent and requested that Amazon  
6 take down Top Brand listings to prevent sales of 15 different Top Brand  
7 products.

8 47. Throughout November of 2019 and continuing to this date, and at all material  
9 times, Cozy Comfort and the Speciales have filed multiple patent infringement  
10 complaints with Amazon.com in an attempt to bar Plaintiffs from selling  
11 products through Amazon.com based on Defendants' assertions that various  
12 products of Plaintiffs infringe Defendants' intellectual property including the  
13 '788 Patent.

14 48. Plaintiffs maintain that their products do not infringe any valid and enforceable  
15 claim of the '788 Patent.

16 **JURISDICTION AND VENUE**

17 49. Plaintiffs bring this action under Title 35 of the United States Code, and under  
18 28 U.S.C. §§2201 and 2202, to obtain a declaration of non-infringement and  
19 invalidity with respect to the '788 Patent.

20 50. This action arises under the patent laws of the United States, 35 U.S.C. §§100  
21 et seq., which are within the original subject matter jurisdiction of this Court  
22 under 28 U.S.C. §§1331 and 1338(a).

23 51. Defendants sell Cozy Comfort products in Illinois through on-line retailers  
24 such as Amazon.com, and at Costco, Target, Walmart, Kohl's, Macy's, JC  
25 Penny, and Bed Bath & Beyond brick and mortar stores in the Chicagoland  
26 area. On information and belief, in the last two years alone Defendants have  
27 over 70 million in sales for their products, a substantial amount of which have  
28 been sold and delivered to consumers in Illinois.

1 52. This Court has personal jurisdiction over each of the Defendants because each  
2 and every Defendant at least resides or transacts business in this jurisdiction.

3 53. Brian Speciale and Michael Speciale, as the sole and controlling members of  
4 Cozy Comfort, use Cozy Comfort to sell their products, assert the ‘788 patent,  
5 and to engage and maintain continuous and systematic contacts with the state  
6 of Illinois, including conducting substantial and regular business in Illinois at  
7 least through marketing and sales of products purportedly covered by the ‘788  
8 patent including but not limited to “the Comfy” through at least  
9 [www.thecomfy.com](http://www.thecomfy.com) (the “Cozy Website”).

10 54. Numerous other on-line retailers advertise and sell Cozy products into Illinois  
11 including Target.com, QVC.com, big5sportinggoods.com, and others.

12 55. The Cozy Website is an interactive website directed to the online promotion  
13 and sale of Cozy Comfort’s goods throughout the United States.

14 56. Defendants utilize at least the Cozy Website to deliver Defendants’ products  
15 into the stream of commerce with the intent that they will be purchased by  
16 consumers in Illinois as evidenced by the Cozy Website’s use of a drop-down  
17 shipping menu thorough which Illinois may be selected as the shipping  
18 destination state.

19 57. Through the Cozy Website and others, Defendants knowingly enter into  
20 contracts for the sale of goods, including but not limited to *The Comfy Original*,  
21 *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter*  
22 *Zip*, and *the Comfy Original Quarter Zip*, as well as *The Comfy Lite*, *The Comfy*  
23 *Hoodie*, and *The Comfy Kids*, with customers that are residents of Illinois.

24 58. Plaintiffs compete for the exact same customers that are residents of Illinois.

25 59. Based on Defendants’ actions there exists an actual substantial controversy  
26 between the parties with adverse legal interests of such immediacy and  
27 existence so as to warrant a declaratory judgment.

28

1 60. Sky and Flying Star, as Illinois companies, are directly impacted and damaged  
2 in Illinois by Defendants' wrongful conduct.

3 61. Venue is proper in this judicial district under 28 U.S.C. §§1391(b) and (c) at  
4 least because a substantial part of the property and events giving rise to the  
5 claims herein occurred in this district, because Defendants reside in this district,  
6 and because Defendants have sufficient minimum contacts with this district for  
7 personal jurisdiction.

8 62. Further, this court has supplemental jurisdiction over Plaintiffs' state law  
9 claims pursuant to 28 U.S.C. §1367(a).

10 63. Additionally, pursuant to 35 U.S.C. §292, any person is permitted to sue for  
11 false marking.

12 64. Accordingly, while each of Plaintiffs have been damaged by Defendants'  
13 actions for at least the reasons set forth below, regardless of whether or not  
14 each is damaged, each may bring this action under 35 U.S.C. §292 in this  
15 District.

16 **GENERAL ALLEGATIONS**

17 65. Top Brand, E Star, and Flying Star are each clothing providers that sell a variety  
18 of different clothing, some of which are sold under license from Sky, through  
19 various retail outlets including Amazon.com.

20 66. One of Flying Star and Top Brand's clothing products is a large sweatshirt,  
21 referred to by Flying Star and Top Brand as the Tirrinia® Hoodie. (A true and  
22 correct photograph of said Hoodie is attached as Exhibit K).

23 67. The Tirrinia® Hoodie is available in a variety of colors, shapes, and sizes.

24 68. Top Brand, E Star and Flying Star also sell a variety of other products  
25 including:

- 26 a. clothing for infants, children and adults;
- 27 b. bed blankets and baby bedding;
- 28 c. bags for carrying baby accessories;



- d. wearable blankets; and
- e. novelty children's wearable blankets.

69. Cozy Comfort purports to be the owner of the '788 patent titled ENLARGED OVER-GARMENT WITH AN ELEVATED MARSUPIAL POCKET.

70. Brian Speciale purports to be a co-inventor of the '788 patent

71. Michael Speciale purports to be a co-inventor of the '788 patent.

72. Brian Speciale and Michael Speciale are the moving, active, conscious force behind and direct the actions of Defendant Cozy Comfort.

73. Defendants, collectively by and through Cozy Comfort, have accused Top Brand E Star and Flying Star products of infringing the '788 patent and '431 Utility Patent. Those accusations have resulted in Plaintiffs' products being barred from sale on Amazon.com.

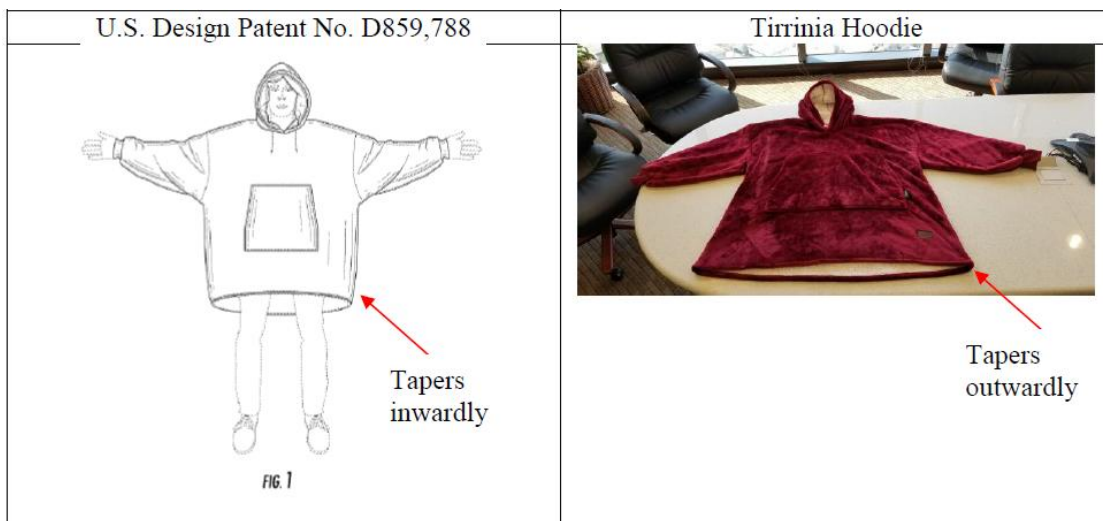
74. Defendants have used the '788 patent and '431 Utility Patent to prevent Top Brand, E Star and Flying Star from selling its products on Amazon.com.

75. Cozy Comfort's actions have resulted in Amazon.com removing listings of Top Brand, E Star and Flying Star products from sale on the Amazon.com website.

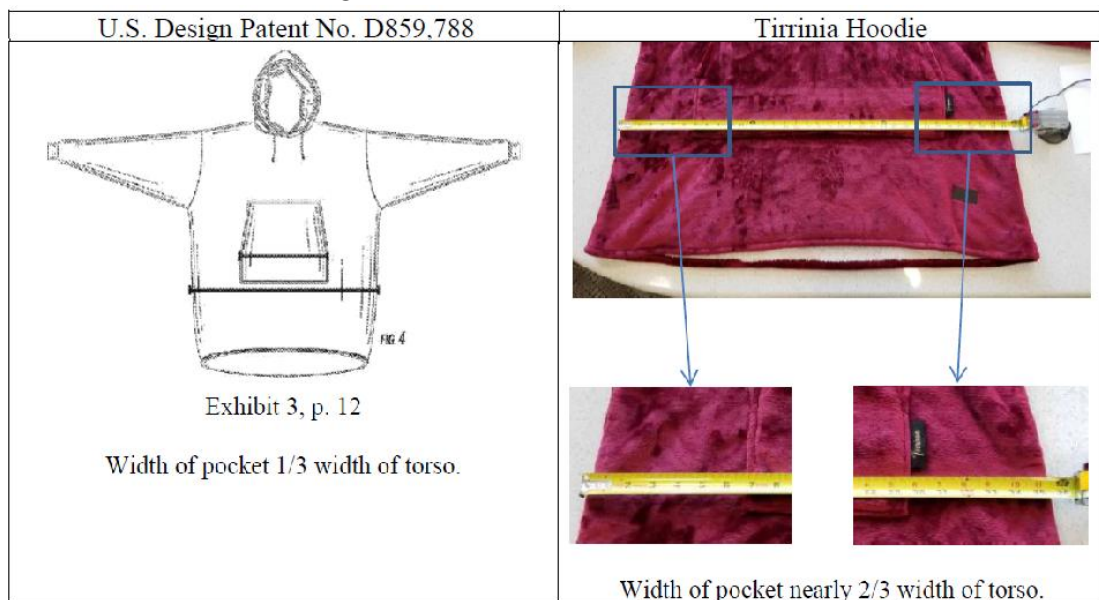
76. On November 13, 2019, attorneys for Top Brand sent a letter to Cozy Comfort counsel, attached hereto as Exhibit L, in which Top Brand described in detail the non-infringement of Top Brand products. Despite that notice, Cozy Comfort has refused to provide any basis for the claim of infringement, has continued to assert patent infringement claims, including those claims of infringement of the '788 patent, against Top Brand, E Star and Flying Star, and has continued its campaign to prevent sales of a wide range of Top Brand, E Star and Flying Star products through Amazon.

77. Indeed, the letter compared the overall appearance of the accused product and the '788 patent noting numerous significant differences in the design of the accused product.

1 78. The letter established that the accused product (the Tirrinia ® Hoodie) has an  
 2 outward taper at the hemline whereas the '788 patent has a hemline that tapers  
 3 inward as shown:





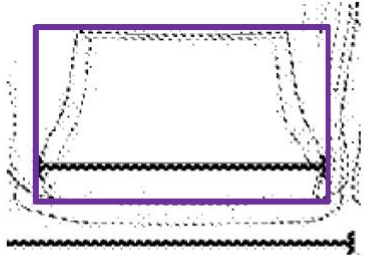
12 79. The letter established that the accused product has an enlarged front pocket that  
 13 covers approximately 2/3 of the width of the front of the garment whereas the  
 14 '788 patent has a narrow pocket that only covers approximately 1/3 of the width  
 15 of the front of the garment as shown:



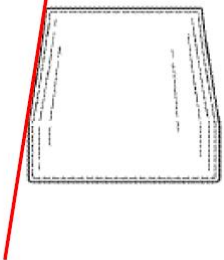

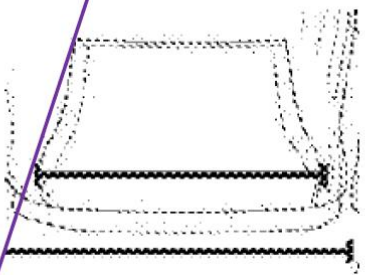
26 80. The letter established that the accused product has a wide, rectangular pocket  
 27 having curved sides as in the prior art '900 patent of Sky whereas the '788  
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patent has a substantially square pocket with straight sides and no curves at all as shown:

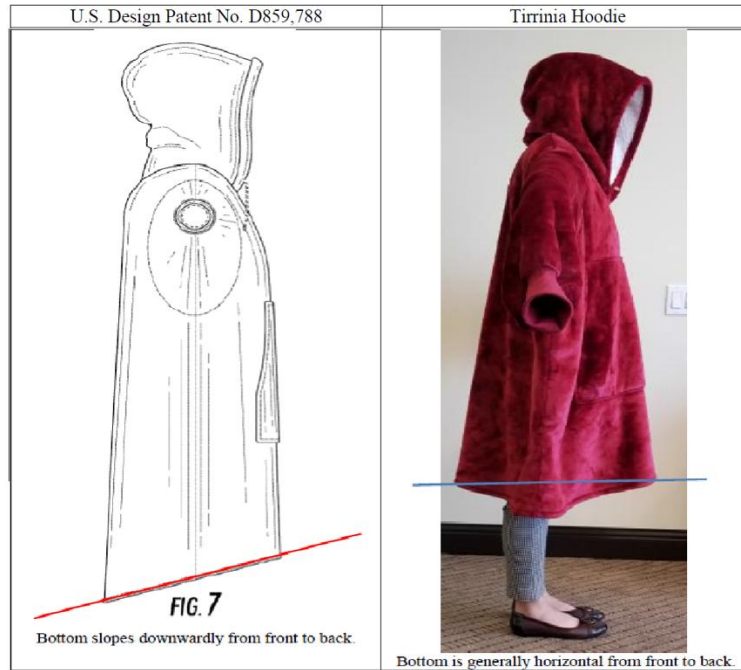
U.S. Design Patent No. D859,788	Tirrinia Hoodie
 <p data-bbox="375 548 870 573">Close-up of pocket in Figure 1, generally square.</p>	 <p data-bbox="1036 558 1305 583">Demonstrably rectangular.</p>  <p data-bbox="1117 898 1203 926">FIG. 3</p> <p data-bbox="938 936 1398 961">Prior art closer to square than accused hoodie.</p>

81. The letter established that the accused product has curved pocket sides that exhibit a shallow angle as in the '900 patent whereas the '788 patent has straight sides with a very steep angle as shown:

U.S. Design Patent No. D859,788	Tirrinia Hoodie
 <p data-bbox="456 1497 786 1522">Steep angle of entry into pocket.</p>	  <p data-bbox="1117 1707 1203 1734">FIG. 3</p> <p data-bbox="938 1770 1398 1850">Angle of entry of prior art is closer to claimed angle of entry than angle of entry for accused hoodie.</p>

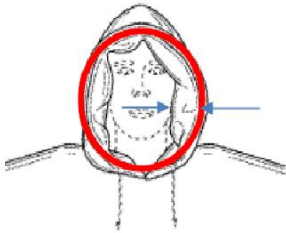

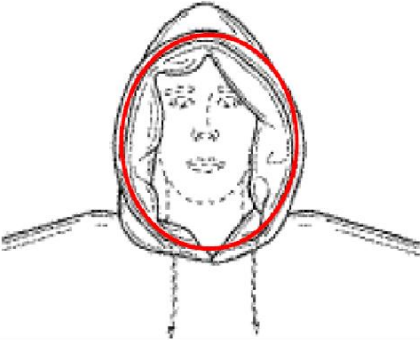

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82. The letter established that the accused product has a horizontal hemline whereas the '788 patent has a substantially angled hemline that is significantly longer in the back than in the front as shown:



83. The letter established that the accused product has an elongated, tear-drop hood opening with smooth sides whereas the '788 patent has a substantially circular hood opening with fat, puffy sides as shown:

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U.S. Design Patent No. D859,788	Tirrinia Hoodie
 <p data-bbox="535 527 776 558">Hood is circular and puffy.</p>	 <p data-bbox="992 531 1279 558">Hood is teardrop shape and thin.</p>
	

84. Accordingly, upon analyzing the ‘788 patent and comparing it to Top Brand products, it is clear that Top Brand products do not infringe the ‘788 patent.

85. Top Brand products exhibit a number of distinguishing characteristics and design elements that establish that they are distinct from what is claimed by the ‘788 patent.

86. For example, the hood shape of Top Brand products and the ‘788 patent is different and would be perceived as distinct in the eyes of an ordinary observer.

87. For example, the hemline shape of Top Brand products and the ‘788 patent is different and would be perceived as distinct in the eyes of an ordinary observer.

88. For example, the pocket shape of Top Brand products and the ‘788 patent is different and would be perceived as distinct in the eyes of an ordinary observer.

89. For example, one or more of the forgoing features, whether viewed individually or collectively give the Top Brand product an overall appearance that it distinct and different from the appearance of anything claimed in the ‘788 patent.

1 90. Defendants' conduct has and continues to cause harm to Plaintiffs through  
2 Defendants' use of the '788 patent to interfere with Plaintiffs' sales of its  
3 products.

4 91. Defendants' conduct and accusations of infringement raise an actual case or  
5 controversy between the parties.

6 92. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs  
7 have been damaged, not only by the prevention of the sale of fleece hooded  
8 garments, but also by the prevention of sale of unrelated products such as  
9 blankets, bedding, and bags.

10 93. Indeed, Cozy Comfort has repeatedly made erroneous patent infringement  
11 accusations against Defendants.

12 94. For example, Cozy Comfort asserted patent infringement against the Catalonia  
13 Wearable Fleece Blanket with Sleeves and Foot Pockets sold by E Star and  
14 Flying Star.

15 95. An image of the Catalonia Wearable Fleece Blanket with Sleeves and Foot  
16 Pockets is as follows:



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27 96. Cozy Comfort asserted infringement even though the forgoing product has no  
28 hood and no marsupial pocket.

1 97. As a result of Cozy Comfort’s actions, Top Brand, E Star, and Flying Star have  
2 all received Notice emails from Amazon identifying that a complaint has been  
3 made against them.

4 98. The Amazon notices are sent from the email address [notice-](mailto:notice-dispute@amazon.com)  
5 [dispute@amazon.com](mailto:dispute@amazon.com).

6 99. The emails all include the same stock language that merely relays that Amazon  
7 has “received a report from a rights owner that claims” that the listed items in  
8 the email infringe the alleged owner’s patent rights.

9 100. The emails instruct the accused company to “work directly with the rights  
10 owner to resolve this dispute.”

11 101. The emails further state that “[f]ailure to do so may result in removal of  
12 your offers or your Amazon.com selling privileges.”

13 102. At no point does the Amazon Notice indicate that Amazon performed any  
14 substantive assessment of the claim.

15 103. At no point does the Amazon notice provide any infringement analysis.

16 104. At no point does the Amazon notice indicate that Amazon has formed a  
17 substantive opinion respecting whether the accused products do in fact infringe  
18 any purported intellectual property asset.

19 105. At no point does the Amazon notice indicate that Amazon has formed a  
20 substantive opinion respecting whether the accusation has any merit.

21 106. On information and belief, Amazon does not publish or otherwise make  
22 available to the rights owner or the seller any notification that it has made any  
23 determination respecting infringement.

24 107. On information and belief, when Amazon is provided with a complaint by  
25 a rights owner, the rights owner is not required to provide Amazon with a copy  
26 of the file history of the patent.

27 108. On information and belief, when Cozy Comfort contacted Amazon  
28 regarding its allegations of infringement by Defendants, Cozy Comfort did not

1 provide Amazon with a copy of the file history of any of the intellectual  
2 property it was asserting was infringed.

3 109. On information and belief, to the extent that Amazon performed any  
4 infringement analysis, Amazon performed that analysis without the benefit of  
5 the file history of any asserted patent for the purpose of properly construing the  
6 claims.

7 110. On information and belief, Amazon does not gather prior art in response to  
8 an allegation of infringement by a rights owner.

9 111. On information and belief, Amazon did not gather prior art in response to  
10 any allegation of infringement by a Cozy Comfort.

11 112. On information and belief, Amazon did not perform an invalidity analysis  
12 of Cozy Comfort's intellectual property prior to sending any of the Plaintiffs a  
13 notice of any dispute filed by Cozy Comfort.

14 113. On information and belief, Amazon did not perform any analysis as to  
15 whether Cozy Comfort engaged in inequitable conduct in prosecuting the '788  
16 patent prior to Amazon's sending any of Plaintiffs a notice of the dispute filed  
17 by Cozy Comfort.

18 114. Defendants' actions have effectively functioned as an extrajudicial  
19 injunction based on a mere claim of infringement, not a judicial finding of  
20 infringement or even a judicial finding of a likelihood of infringement of a valid  
21 patent. There are at least six pending lawsuits against parties whose actions are  
22 similar to Defendants' actions concerning the misuse of the Amazon process  
23 to unlawfully suppress competition.

24 115. As a result of Cozy Comfort's actions, the Amazon sales of accused  
25 products by Top Brand, E Star and Flying Star to Illinois customers were  
26 stopped and Plaintiffs have been damaged.

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1 116. As a result of Cozy Comfort's actions, consumers have been deprived of  
2 competition in the market place between the products of Top Brand, E Star and  
3 Flying Star and Defendants' products.

4 117. As a result of Cozy Comfort's actions, Cozy Comfort has granted itself a  
5 de facto injunction against Top Brand, E Star and Flying Star without ever  
6 substantiating its claims under the level of legal scrutiny required for the  
7 issuance of a legal injunction.

8 118. As a result of Cozy Comfort's actions, Sky Creations has been damaged  
9 due to Cozy Comfort's interference with Sky's licensees, Top Brand and  
10 Flying Star and preventing Top Brand and Flying Star from selling its licensed  
11 products on Amazon.

12 119. Cozy Comfort has never substantiated any of its claims of infringement.

13 120. Counsel for Plaintiffs has written to Cozy Comfort requesting a claim chart  
14 identifying how any of Plaintiffs' products meet all of the limitation of any  
15 patent claim Cozy has asserted to be infringed.

16 121. Cozy Comfort has never provided a claim chart of any kind to any to  
17 Plaintiffs.

18 122. Despite the Defendants' failure to provide a claim chart for any patent for  
19 any of Plaintiffs' products, Defendants have accused the Tirrinia, Catalonia,  
20 "or other brands" of having a design that infringes the '788 patent and features  
21 that infringe claims of the '431 Utility Patent.

22 123. Defendants' vague accusations make it impossible for Plaintiffs' to identify  
23 with particularity all of the Plaintiffs' products that Defendant may assert are  
24 infringing.

25 124. Due to Defendants' history of making unsubstantiated claims of  
26 infringement both directly to Plaintiffs and to 3<sup>rd</sup> Parties contracting with  
27 Plaintiffs, Plaintiffs have a present apprehension of being interfered with, sued,  
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1 or both by Defendants with respect to each of U.S. Patent Nos.10,420,431,  
2 D859,788, D886,416, D903,237, and D905,380.

3 125. E Star has sold a product on Amazon under ASIN B07Z8SJ6CY, titled  
4 “Catalonia Sherpa Wearable Blanket with Sleeves & Foot Pockets for Adult  
5 Women Men, Comfy Snuggle Wrap Sleeved Throw Blanket Robe, Gift Idea,  
6 Blue” (the “Catalonia Wearable Blanket”).

7 126. Without regard to color, the Catalonia Wearable Blanket exhibits the  
8 structure depicted in the following images:

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1 127. Cozy Comfort has repeatedly made erroneous, factually unsupported patent  
2 infringement accusations against E Star.

3 128. Cozy Comfort has also sought to hold Mr. Ngan personally liable for the  
4 activities of E Star.

5 129. For example, Cozy Comfort has asserted patent infringement against E Star  
6 and Mr. Ngan based on E Star's selling of the Catalonia Wearable Blanket.

7 130. Cozy Comfort asserted infringement even though the Catalonia Wearable  
8 Blanket has no hood and no marsupial pocket.

9 131. As a result of Cozy Comfort's actions, Mr. Ngan has received through E  
10 Star notice emails from Amazon identifying that a complaint has been made  
11 against the Catalonia Wearable Blanket.

12 132. The Amazon notices are sent from the email address [notice-  
13 dispute@amazon.com](mailto:notice-dispute@amazon.com).

14 133. The emails all include the same stock language that merely relays that  
15 Amazon has "received a report from a rights owner that claims" that the listed  
16 items in the email infringe the alleged owner's patent rights.

17 134. For example, on January 14, 2020, Mr. Ngan, through E Star, received a  
18 notice from Amazon (Complaint ID 6745977871) that Cozy Comfort has  
19 asserted that the Catalonia Wearable Blanket, specifically ASIN B07Z8SJ6CY,  
20 was infringing the '431 Utility Patent and was being removed from Amazon.

21 135. Mr. Ngan, through E Star, receive additional takedown notices from  
22 Amazon pertaining to the Catalonia Wearable Blanket, all filed by Cozy  
23 Comfort and Brian Speciale claiming infringement of the '431 Utility Patent.

24 136. Cozy Comfort has never substantiated any of its claims of infringement.

25 137. Counsel for Plaintiffs/Counterclaim-Plaintiffs has written to Cozy Comfort  
26 requesting a claim chart identifying how the Catalonia Wearable Blanket meets  
27 all of the limitations of any patent claim Cozy has asserted to be infringed.  
28

- 1 138. Cozy Comfort has never provided a claim chart, analysis or response of any  
2 kind.
- 3 139. Despite Cozy Comfort’s failure to provide a claim chart for any patent for  
4 any of the accused products, Cozy Comfort has alleged that the Catalonia  
5 Wearable Blanket “or other brands” of having a structure that infringes the  
6 claims of the ‘431 Utility Patent.
- 7 140. Cozy Comforts’ vague, conclusory accusations make it impossible for  
8 Plaintiffs/Counterclaim-Plaintiffs to identify with particularity all of the  
9 products that Cozy Comfort asserts are infringing on their patents.
- 10 141. Due to Cozy Comfort’s history of making unsubstantiated claims of  
11 infringement to E Star and to third parties contracting with E Star, and to Mr.  
12 Ngan directly and indirectly, and due to the working relationship between and  
13 among Plaintiffs/Counterclaim-Plaintiffs, Plaintiffs/Counterclaim-Plaintiffs  
14 have a present apprehension of being interfered with, sued, or both by Cozy  
15 Comfort or the Speciales with respect to the ‘431 Utility Patent.

16 **FIRST CLAIM FOR RELIEF**

17 **(Declaratory Judgment of Non-Infringement of the ‘788 Patent)**

- 18 142. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
19 fully set forth in this paragraph.
- 20 143. As a result of the acts set forth in the paragraphs herein, a substantial  
21 controversy of sufficient immediacy and reality exists to warrant the issuance  
22 of a declaratory judgment.
- 23 144. A judicial declaration is necessary and appropriate so that Plaintiffs may  
24 definitively establish their rights with respect to the sale of their products in  
25 view of the ‘788 patent.
- 26 145. Such a determination is further necessary to bar Defendants from  
27 continuing to misuse its patent though assertions of infringement by Plaintiffs  
28

1 to third-party retailers (such as Amazon.com) and inducing such third-party  
2 retailers to remove Plaintiffs' products.

3 146. On information and belief, Defendants knew or should have known that  
4 Plaintiffs' products do not infringe the '788 patent.

5 147. Specifically, Defendants intentionally approached third-parties just prior to  
6 the critical holiday retail selling season, and specifically just prior to 2019  
7 Black Friday, and filed complaints to remove the products of Top Brand, E Star  
8 and Flying Star even though those products did not infringe.

9 148. The complaints filed by Cozy Comfort with Amazon continue despite  
10 Defendants being advised and informed that Plaintiffs' products do not infringe  
11 the '788 patent.

12 149. Defendants' conduct was egregious and exemplified Defendants'  
13 unilaterally and improperly expanding the scope of its patent to misuse the '788  
14 patent against Plaintiffs.

15 150. Defendants' conduct makes this case an exceptional case, entitling  
16 Plaintiffs to an award of their fees and costs under 35 U.S.C. § 285.

17 151. Plaintiffs are entitled to a declaratory judgment that each has not infringed  
18 and does not infringe, directly, indirectly, or contributorily any valid and  
19 enforceable claim of the '788 patent.

20 **SECOND CLAIM FOR RELIEF**

21 **(Declaratory Judgment of Invalidity of the '788 Patent)**

22 152. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
23 fully set forth in this paragraph.

24 153. The '788 patent includes a single claim to the ornamental design for an  
25 enlarged over-garment with an elevated marsupial pocket, as shown and  
26 described in the '788 patent.

27 154. The design of the '788 patent is nothing more than a design for an ordinary  
28 sweatshirt but made larger.

1 155. On information and belief, garments exhibiting the same features as those  
2 disclosed and claimed by the '788 patent were on sale, sold, or described in one  
3 or more printed publications prior to the priority date of the '788 patent  
4 rendering the '788 patent invalid under one or more of 35 U.S.C. §102, 103.

5 156. Additionally, or in the alternative, the drawings of the '788 patent are  
6 indefinite.

7 157. Only solid lines may be used to identify the subject matter of the design.

8 158. Dashed (or broken) lines cannot form the subject matter of the design.

9 159. Many of the drawings in the '788 Patent include lines that at some points  
10 appear to be solid lines, but at other points appear to be dashed (or broken)  
11 lines.

12 160. Due to the indefinite nature of the drawings, it is not possible to discern the  
13 proper scope of the ornamental design that is supposedly covered by the claim  
14 of the '788 patent.

15 161. The '788 patent is invalid under 35 U.S.C. §112 at least for failing to  
16 distinctly set forth the subject matter of the invention.

17 162. Additionally, or in the alternative, the '788 patent is invalid under 35 U.S.C.  
18 §171 because the design of the alleged invention is primarily functional rather  
19 than ornamental.

20 **THIRD CLAIM FOR RELIEF**

21 **(Declaratory Judgment of Unenforceability of the '788 Patent)**

22 163. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
23 fully set forth in this paragraph.

24 164. The application that would mature into the '788 patent was filed on  
25 September 13, 2017.

26 165. The Patent Office did not issue a notice of allowance in the application that  
27 would mature into the '788 patent until June 5, 2019.  
28

1 166. During the prosecution of the application that would mature into the '788  
2 patent, the Defendants filed a single Information Disclosure Statement.

3 167. On September 13, 2018, Defendants filed a utility patent application (U.S.  
4 Patent Application No. 16/130,502, "the '502 application") that included  
5 identical figures to those figures contained in the '788 patent.

6 168. During the prosecution of the '502 application, Defendants filed an  
7 Information Disclosure Statement that was limited to disclosing the same  
8 references as were disclosed in the Information Disclosure Statement that they  
9 filed in the '788 patent.

10 169. During the prosecution of the '502 application, and at a time when the  
11 application that would mature into the '788 patent was still pending, the Patent  
12 Examiner identified a number of prior art references other than those references  
13 listed by the Defendants on their Information Disclosure Statements.

14 170. Rather than disclosing the existence of the new prior art references in the  
15 application that would mature into the '788 patent through the filing of another  
16 Information Disclosure Statement, Defendants chose to hide those references  
17 from the Examiner of the application that would mature into the '788 patent.

18 171. The Defendants knew or should have known that the references identified  
19 in the prosecution of the '502 application were relevant and material to the  
20 patentability of the claim of the '788 patent.

21 172. At least by choosing not to disclose the prior art to the Examiner of the  
22 application that would mature into the '788 patent, Defendants breached their  
23 duty of candor to the Patent Office and engaged in inequitable conduct that  
24 renders the '788 patent unenforceable.

25 173. Plaintiffs are entitled to a declaratory judgment that the '788 patent is  
26 unenforceable due to inequitable conduct.

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**FOURTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Non-Infringement of the ‘380 Patent)**

174. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if fully set forth in this paragraph.

175. As a result of the acts set forth in the paragraphs herein, a substantial controversy of sufficient immediacy and reality exists to warrant the issuance of a declaratory judgment.

176. A judicial declaration is necessary and appropriate so that Plaintiffs may definitively establish their rights with respect to the sale of their products in view of the ‘380 patent.

177. Such a determination is further necessary to bar Defendants from continuing to misuse its patent through assertions of infringement by Plaintiffs to third-party retailers (such as Amazon.com) and inducing such third-party retailers to remove Plaintiffs’ products.

178. Plaintiffs are entitled to a declaratory judgment that each has not infringed and does not infringe, directly, indirectly, or contributorily any valid and enforceable claim of the ‘380 patent.

**FIFTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Invalidity of the ‘380 patent)**

179. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if fully set forth in this paragraph.

180. Defendants assert that THE COMFY is covered by the claim of the ‘380 patent.

181. The application that matured into the ‘380 patent was filed as a continuation-in-part application on April 11, 2020.

182. THE COMFY was on sale more than one year before April 11, 2020.

183. THE COMFY was offered for sale more than one year before April 11, 2020.



1 184. THE COMFY was described in a printed publication more than one year  
2 before April 11, 2020.

3 185. The '380 patent is not entitled to the priority date of any of application No.  
4 29/705,878, application No. 29/645,978, and application No. 29/617,421.

5 186. The sale of THE COMFY more than one year before April 11, 2020 is  
6 material prior art to the '380 patent.

7 187. The offer to sell THE COMFY more than one year before April 11, 2020 is  
8 material prior art to the '380 patent.

9 188. The description of THE COMFY in a printed publication more than one  
10 year before April 11, 2020 is material prior art to the '380 patent.

11 189. During the prosecution of the application that matured into the '380 patent,  
12 the applicant did not provide side views and front elevation views of each of  
13 the embodiment.

14 190. The '380 patent does not incorporate by reference the subject matter of any  
15 of application No. 29/705,878, application No. 29/645,978, and application No.  
16 29/617,421.

17 191. On information and belief, garments exhibiting the same features as those  
18 disclosed and claimed by the '380 patent were on sale, sold, or described in one  
19 or more printed publications prior to the priority date of the '380 patent  
20 rendering the '380 patent invalid under one or more of 35 U.S.C. §102, 103.

21 192. Additionally, or in the alternative, the drawings of the '380 patent are  
22 indefinite.

23 193. Only solid lines may be used to identify the subject matter of the design.

24 194. Dashed (or broken) lines cannot form the subject matter of the design.

25 195. Many of the drawings in the '380 Patent include lines that at some points  
26 appear to be solid lines, but at other points appear to be dashed (or broken)  
27 lines.

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1 196. Due to the indefinite nature of the drawings, it is not possible to discern the  
2 proper scope of the ornamental design that is supposedly covered by the claim  
3 of the '380 patent.

4 197. The '380 patent is invalid under 35 U.S.C. §112 at least for failing to  
5 distinctly set forth the subject matter of the invention.

6 198. Additionally, or in the alternative, the '380 patent is invalid under 35 U.S.C.  
7 §171 because the design of the alleged invention is primarily functional rather  
8 than ornamental.

9 **SIXTH CLAIM FOR RELIEF**

10 **(Declaratory Judgment of Unenforceability of the '380 Patent)**

11 199. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
12 fully set forth in this paragraph.

13 200. During the prosecution of the application that matured into the '380 patent,  
14 one or more of the Defendants and the prosecuting attorney decided not to  
15 disclose to the Patent Office that THE COMFY was on sale more than one year  
16 before April 11, 2020.

17 201. During the prosecution of the application that matured into the '380 patent,  
18 the fact that THE COMFY was on sale more than one year before April 11,  
19 2020 was never disclosed to the Patent Office.

20 202. During the prosecution of the application that matured into the '380 patent,  
21 one or more of the Defendants and the prosecuting attorney decided not to  
22 disclose to the Patent Office that THE COMFY was offered for sale more than  
23 one year before April 11, 2020.

24 203. During the prosecution of the application that matured into the '380 patent,  
25 the fact that THE COMFY was offered for sale more than one year before April  
26 11, 2020 was never disclosed to the Patent Office.

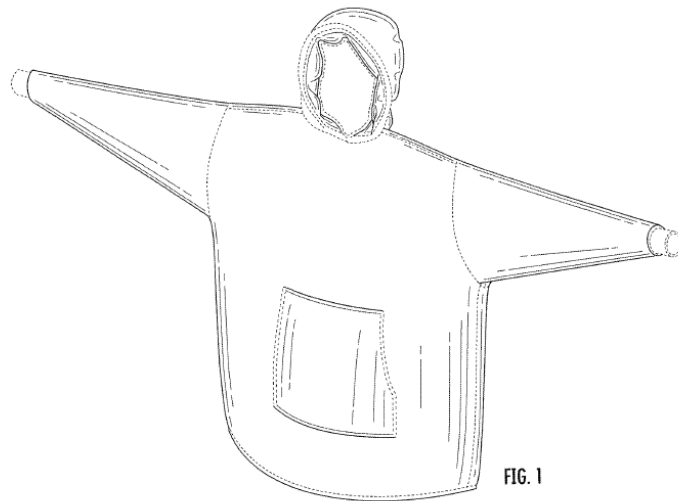
27 204. During the prosecution of the application that matured into the '380 patent,  
28 one or more of the Defendants and the prosecuting attorney decided not to

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disclose to the Patent Office that THE COMFY was described in a printed publication more than one year before April 11, 2020.

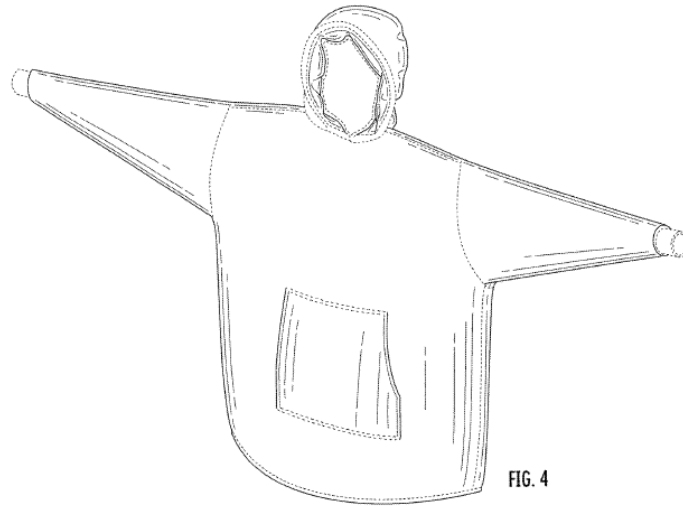
205. During the prosecution of the application that matured into the '380 patent, the fact that THE COMFY was described in a printed publication more than one year before April 11, 2020 was never disclosed to the Patent Office.

206. None of application No. 29/705,878, application No. 29/645,978, and application No. 29/617,421, disclose an embodiment having an appearance identical to the following image:

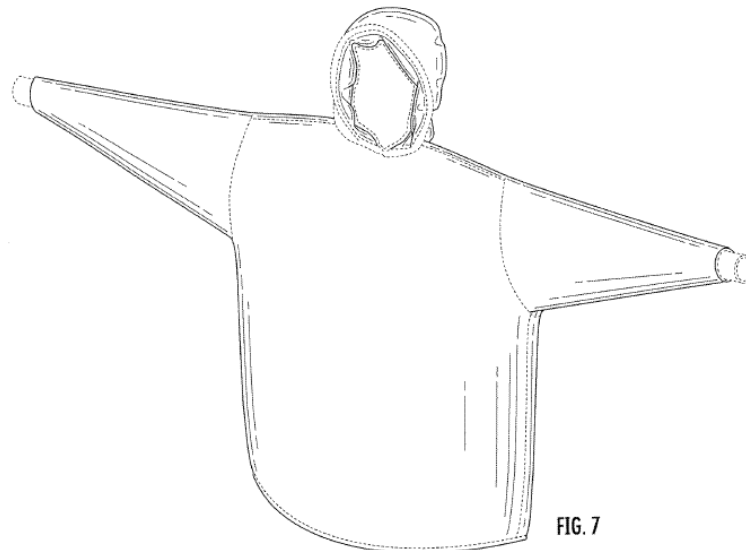


207. None of application No. 29/705,878, application No. 29/645,978, and application No. 29/617,421, disclose an embodiment having an appearance identical to the following image:

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208. None of application No. 29/705,878, application No. 29/645,978, and application No. 29/617,421, disclose an embodiment having an appearance identical to the following image:



209. As to each of application No. 29/705,878, application No. 29/645,978, and application No. 29/617,421, one or more of the foregoing images constitutes new matter in the application that matured into the '380 patent.

1 210. The '380 patent is not entitled to the priority date of any of application No.  
2 29/705,878, application No. 29/645,978, and application No. 29/617,421.

3 211. The sale of THE COMFY more than one year before April 11, 2020 is  
4 material prior art to the '380 patent.

5 212. The offer to sell THE COMFY more than one year before April 11, 2020 is  
6 material prior art to the '380 patent.

7 213. The description of THE COMFY in a printed publication more than one  
8 year before April 11, 2020 is material prior art to the '380 patent.

9 214. The decision by one or more of Defendants and the attorney prosecuting  
10 the application that matured into the '380 patent was undertaken with the intent  
11 to deceive the Patent Office into allowing the '380 patent based on an  
12 illegitimate claim of priority to one or more of application No. 29/705,878,  
13 application No. 29/645,978, and application No. 29/617,421.

14 215. Defendants filed the application that matured into the '380 patent, after  
15 being sued by Plaintiffs, after examining Plaintiffs' products and realizing that  
16 Plaintiffs' pockets had tops that were below the armpits of the sleeves, and with  
17 the intent of capturing Plaintiffs' products.

18 216. Defendants' prosecution of the application that would mature into the '380  
19 patent was done with deceptive intent.

20 217. The '380 patent was procured through fraudulent and inequitable conduct  
21 and is therefore unenforceable.

22 **SEVENTH CLAIM FOR RELIEF**

23 **(Declaratory Judgment of Non-Infringement of the '416 Patent)**

24 218. Defendants reallege and incorporate each of the foregoing paragraphs as if  
25 fully set forth in this paragraph.

26 219. As a result of the acts set forth in the paragraphs herein, a substantial  
27 controversy of sufficient immediacy and reality exists to warrant the issuance  
28 of a declaratory judgment.

1 220. A judicial declaration is necessary and appropriate so that Plaintiffs may  
2 definitively establish their rights with respect to the sale of their products in  
3 view of the '416 patent.

4 221. Such a determination is further necessary to bar Defendants from  
5 continuing to misuse its patent through assertions of infringement by Plaintiffs  
6 to third-party retailers (such as Amazon.com) and inducing such third-party  
7 retailers to remove Plaintiffs' products.

8 222. Plaintiffs are entitled to a declaratory judgment that each has not infringed  
9 and does not infringe, directly, indirectly, or contributorily any valid and  
10 enforceable claim of the '416 patent.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Declaratory Judgement of Invalidity of the '416 Patent)**

13 223. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
14 fully set forth in this paragraph.

15 224. On information and belief, garments exhibiting the same features as those  
16 disclosed and claimed by the '416 patent were on sale, sold, or described in one  
17 or more printed publications prior to the priority date of the '416 patent  
18 rendering the '416 patent invalid under one or more of 35 U.S.C. §102, 103.

19 225. Additionally, or in the alternative, the drawings of the '416 patent are  
20 indefinite.

21 226. Only solid lines may be used to identify the subject matter of the design.

22 227. Dashed (or broken) lines cannot form the subject matter of the design.

23 228. Many of the drawings in the '416 patent include lines that at some points  
24 appear to be solid lines, but at other points appear to be dashed (or broken)  
25 lines.

26 229. Due to the indefinite nature of the drawings, it is not possible to discern the  
27 proper scope of the ornamental design that is supposedly covered by the claim  
28 of the '416 patent.

1 230. The '416 patent is invalid under 35 U.S.C. §112 at least for failing to  
2 distinctly set forth the subject matter of the invention.

3 231. Additionally, or in the alternative, the '416 patent is invalid under 35 U.S.C.  
4 §171 because the design of the alleged invention is primarily functional rather  
5 than ornamental.

6 **NINTH CLAIM FOR RELIEF**

7 **(Declaratory Judgment of Unenforceability of the '416 patent)**

8 232. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
9 fully set forth in this paragraph.

10 233. U.S. Patent Application no. 29/645,978 matured into the '416 patent.

11 234. The '416 patent is in the same patent family with the '380 patent.

12 235. At least due to the inequitable conduct perpetrated by one or more of the  
13 Defendants or their attorney in the prosecution of the '380 patent, the '416  
14 patent is tainted with fraud and unenforceable.

15 **TENTH CLAIM FOR RELIEF**

16 **(Declaratory Judgment of Non-Infringement of the '237 Patent)**

17 236. Defendants reallege and incorporate each of the foregoing paragraphs as if  
18 fully set forth in this paragraph.

19 237. As a result of the acts set forth in the paragraphs herein, a substantial  
20 controversy of sufficient immediacy and reality exists to warrant the issuance  
21 of a declaratory judgment.

22 238. A judicial declaration is necessary and appropriate so that Plaintiffs may  
23 definitively establish their rights with respect to the sale of their products in  
24 view of the '237 patent.

25 239. Such a determination is further necessary to bar Defendants from  
26 continuing to misuse its patent through assertions of infringement by Plaintiffs  
27 to third-party retailers (such as Amazon.com) and inducing such third-party  
28 retailers to remove Plaintiffs' products.

1           240. Plaintiffs are entitled to a declaratory judgment that each has not infringed  
2           and does not infringe, directly, indirectly, or contributorily any valid and  
3           enforceable claim of the '237 patent.

#### 4                           **ELEVENTH CLAIM FOR RELIEF**

##### 5                               **(Declaratory Judgment Invalidity of the '237 Patent)**

6           241. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
7           fully set forth in this paragraph.

8           242. The '237 patent is identified as a continuation-in-part of U.S. Application  
9           No. 29/671,421 (the '788 patent) and U.S. Application No. 29/645,978 (the  
10          '416 patent).

11          243. The application that matured into the '237 patent was filed on September  
12          16, 2019.

13          244. Defendants assert that THE COMFY is covered by the claim of the '237  
14          patent.

15          245. THE COMFY was on sale more than one year before September 16, 2019.

16          246. THE COMFY was offered for sale more than one year before September  
17          16, 2019.

18          247. THE COMFY was described in a printed publication more than one year  
19          before September 16, 2019.

20          248. None of the Figures in the '788 patent is identical to any of the Figures in  
21          the '237 patent.

22          249. None of the Figures in the '416 patent is identical to any of the Figures in  
23          the '237 patent.

24          250. The '237 patent is not entitled to the priority date of either the '416 patent  
25          or the '237 patent.

26          251. The sale of THE COMFY more than one year before September 16, 2019  
27          is material prior art to the '237 patent.  
28



1 252. The offer to sell THE COMFY more than one year before September 16,  
2 2019 is material prior art to the '237 patent.

3 253. The description of THE COMFY in a printed publication more than one  
4 year before September 16, 2019 is material prior art to the '237 patent.

5 254. On information and belief, garments exhibiting the same features as those  
6 disclosed and claimed by the '237 patent were on sale, sold, or described in one  
7 or more printed publications prior to the priority date of the '237 patent  
8 rendering the '237 patent invalid under one or more of 35 U.S.C. §102, 103.

9 255. Additionally, or in the alternative, the drawings of the '237 patent are  
10 indefinite.

11 256. Only solid lines may be used to identify the subject matter of the design.

12 257. Dashed (or broken) lines cannot form the subject matter of the design.

13 258. Many of the drawings in the '237 Patent include lines that at some points  
14 appear to be solid lines, but at other points appear to be dashed (or broken)  
15 lines.

16 259. Due to the indefinite nature of the drawings, it is not possible to discern the  
17 proper scope of the ornamental design that is supposedly covered by the claim  
18 of the '237 patent.

19 260. The '237 patent is invalid under 35 U.S.C. §112 at least for failing to  
20 distinctly set forth the subject matter of the invention.

21 261. Additionally, or in the alternative, the '237 patent is invalid under 35 U.S.C.  
22 §171 because the design of the alleged invention is primarily functional rather  
23 than ornamental.

24 **TWELFTH CLAIM FOR RELIEF**

25 **(Declaratory Judgment Unenforceability of the '237 Patent)**

26 262. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
27 fully set forth in this paragraph.

28 263. U.S. Patent Application no. 29/705,878 matured into the '237 patent.

1 264. The '237 patent is in the same patent family as both the '788 patent and the  
2 '380 patent.

3 265. During the prosecution of the '237 patent, neither the Defendants nor their  
4 attorney disclosed the sale, offer to sell, or printed publication of THE COMFY  
5 more than one year prior to September 16, 2019.

6 266. Defendants and their attorney's decision not to disclose material prior art  
7 was done with deceptive intent and for the purpose of perpetuating a fraud on  
8 the Patent Office.

9 267. At least due to the inequitable conduct perpetrated by one or more of the  
10 Defendants or their attorney in the prosecution of the '380 patent and '788  
11 patent, the '237 patent is tainted with fraud and unenforceable.

12 **THIRTEENTH CLAIM FOR RELIEF**

13 **(False Marking)**

14 268. Plaintiffs' reallege and incorporate each of the foregoing paragraphs as if  
15 fully set forth in this paragraph.

16 269. It is a violation of 35 U.S.C. §292 to affix or use in advertising in connection  
17 with an article any words that imply that the article is covered by a patent when  
18 it is not.

19 270. At all times relevant, Defendants owned and operate the Cozy Website  
20 [www.thecomfy.com](http://www.thecomfy.com).

21 271. On information and belief, the promotion the Cozy Website by Defendants  
22 is one of the day-to-day operations of Cozy Comfort.

23 272. On information and belief, at least Michael Speciale is involved in the day-  
24 to-day operations of Cozy Comfort, and involved with the promotion of the  
25 Cozy Website.

26 273. On information and belief, as co-founders, both Michael Speciale and Brian  
27 Speciale have knowledge of the contents of the Cozy Website and approved  
28 the content of the Cozy Website.

1 274. On information and belief, Defendants intend that consumers, including  
2 consumers in Illinois, rely on the statements made on the Cozy Website in  
3 determining whether to purchase one of Defendants' products over a  
4 competitor's product, such as the products of Plaintiffs.

5 275. Products offered on the Cozy Website have included *The Comfy Original*,  
6 *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter*  
7 *Zip*, and *the Comfy Original Quarter Zip* as well as *The Comfy*, *The Comfy*  
8 *Lite*, *The Comfy Hoodie*, and *The Comfy Kids*.

9 276. The Cozy Website has stated: "*The Comfy*, *The Comfy Lite*, *The Comfy*  
10 *Hoodie*, and *The Comfy Kids* U.S. Patent Nos. D859788 and 10,420,431 and  
11 *other patents pending.*"

12 277. The Cozy Website has stated: "*The Comfy Original*, *The Comfy Original*  
13 *Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the Comfy*  
14 *Original Quarter Zip* are protected by U.S. Patent Nos. 10,420,431, D859,788,  
15 D886,416, D903,237, D905,380 and other pending patents."

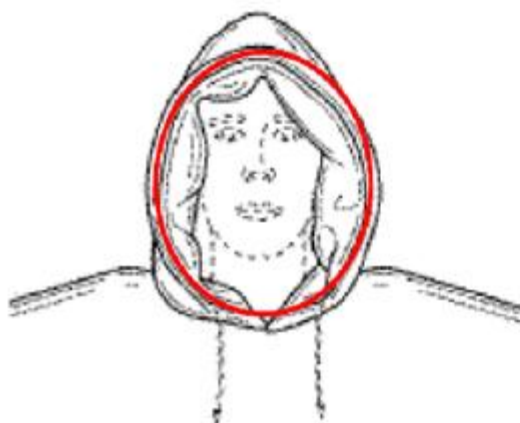
16 278. On information and belief, through the Cozy Website, Defendants intend  
17 that customers are to believe that each of *The Comfy Original*, *The Comfy*  
18 *Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the*  
19 *Comfy Original Quarter Zip*, as well as each of *The Comfy*, *The Comfy Lite*,  
20 *The Comfy Hoodie*, and *The Comfy Kids*, is covered by the '788 patent.

21 279. The '788 patent includes only a single claim.

22 280. One or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy*  
23 *Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The*  
24 *Comfy Teddy Bear Quarter Zip*, and *the Comfy Original Quarter Zip* do not  
25 exhibit the ornamental design that is within the scope of the single claim of the  
26 '788 patent.

27 281. For example, the shape of the hood exhibited by one or more of *The Comfy*,  
28 *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The*

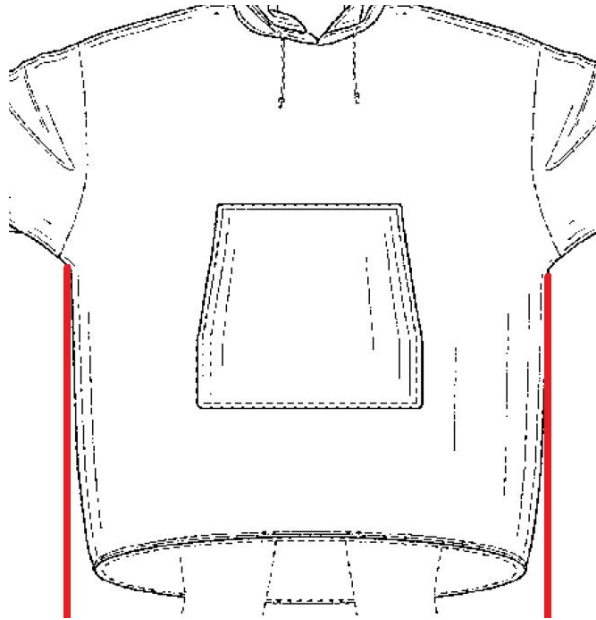
1            *Comfy Original Jr., The Comfy Dream, The Comfy Teddy Bear Quarter Zip,*  
2            *and the Comfy Original Quarter Zip* do not exhibit the ornamental design that  
3            is within the scope of the claim of the '788 patent as the '788 is circular and  
4            puffy with two hanging drawstrings while, for example, *The Comfy Original*  
5            is smooth and tear-drop shaped with no drawstrings ('788 shown left, *The*  
6            *Comfy Original* shown right):



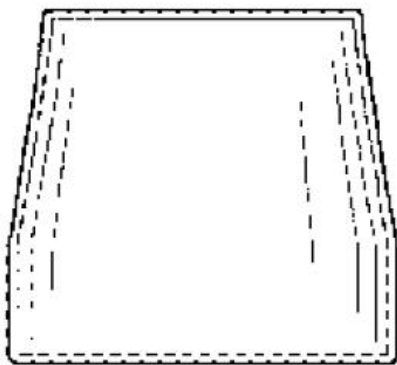
14            282. For example, the shape of the body exhibited by one or more of *The Comfy,*  
15            *The Comfy Lite, The Comfy Hoodie, The Comfy Kids, The Comfy Original, The*  
16            *Comfy Original Jr., The Comfy Dream, The Comfy Teddy Bear Quarter Zip,*  
17            *and the Comfy Original Quarter Zip* do not exhibit the ornamental design that  
18            is within the scope of the claim of the '788 patent as the '788 curves inward  
19            while, for example, *The Comfy Original* is straight and angles outward ('788  
20            shown left, *The Comfy Original* shown right)

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283. For example, the shape and placement of the pocket exhibited by one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the Comfy Original Quarter Zip* do not exhibit the ornamental design that is within the scope of the claim of the '788 patent as the '788 pocket appears taller than it is wide, and has a bottom third that exhibits straight sides while, for example, *The Comfy Original* is wider than it is tall and only a small portion of the bottom includes straight sides ('788 shown left, *The Comfy Original* shown right).



284. For example, the overall combined appearance of features of one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy*

1            *Original, The Comfy Original Jr., The Comfy Dream, The Comfy Teddy Bear*  
2            *Quarter Zip, and the Comfy Original Quarter Zip* do not exhibit the ornamental  
3            design that is within the scope of the claim of the '788 patent ('788 shown left,  
4            *The Comfy Original* shown right).



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12        285. At least due to the one or more of the substantial design differences  
13        identified above, whether considered separately or in combination, one or more  
14        of *The Comfy, The Comfy Lite, The Comfy Hoodie, The Comfy Kids, The Comfy*  
15        *Original, The Comfy Original Jr., The Comfy Dream, The Comfy Teddy Bear*  
16        *Quarter Zip, and the Comfy Original Quarter Zip* would be viewed as not being  
17        covered by the claim of the '788 patent in the eyes of the ordinary observer.

18        286. Plaintiffs have suffered a competitive injury and been damaged by  
19        Defendants' assertions that one or more of *The Comfy, The Comfy Lite, The*  
20        *Comfy Hoodie, The Comfy Kids, The Comfy Original, The Comfy Original Jr.,*  
21        *The Comfy Dream, The Comfy Teddy Bear Quarter Zip, and the Comfy*  
22        *Original Quarter Zip* are covered by the '788 patent.

23        287. Brian Speciale and Michael Speciale are each listed as an inventor on the  
24        '788 patent.

25        288. In filing the application that would mature into the '788 patent, both Brian  
26        and Michael Speciale signed an oath that they reviewed and understand the  
27        contents of the application, including the claims.  
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1           289. Brian and Michael Speciale were further assisted by patent counsel in  
2           preparing and prosecuting the application that would mature into the '788  
3           patent and therefore, on information and belief, each was fully aware of the  
4           limits of the scope of the '788 patent.

5           290. On information and belief, one of the reasons that Defendants' initially  
6           applied to patent their product was so that Defendants could say its products  
7           were patent pending.

8           291. On information and belief, Defendants' intent in marking its products with  
9           patent numbers was for the purpose of marketing and attracting attention.

10          292. On information and belief, Defendants' intended that its representations  
11          regarding its products being covered by patent applications was to entice  
12          potential customers and investors into giving money to Defendants.

13          293. On information and belief, since the issuance of the '788 patent,  
14          Defendants' have represented that their products are covered by the '788 patent  
15          with the intent that consumers believe that the products are covered by the '788  
16          patent and therefore will be swayed into purchasing Defendants' product over  
17          another product, such as one of Plaintiffs' products.

18          294. On information and belief, Defendants knew that one or more of *The*  
19          *Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy*  
20          *Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear*  
21          *Quarter Zip*, and *the Comfy Original Quarter Zip* is not within the scope of  
22          any claim of the '788 patent at least due to such products having differing  
23          ornamental appearances than the claim of the '788 patent as set forth above.

24          295. Because one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*,  
25          *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy*  
26          *Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the Comfy Original Quarter*  
27          *Zip* are not covered by the '788 patent, Defendants' intent that the public rely  
28          on its false representations that its products are covered by the '788 patent is

1           undertaken with the further intent to deceive the public into believing that  
2           Defendants’ products are covered by the ‘788 patent when they are not.

3           296. On information and belief, Defendants further routinely make disparaging  
4           remarks about competitors, such as Plaintiffs, referring to them as “Comfy  
5           knockoffs” with the intent that consumers be swayed to place greater  
6           importance of the false representation that Defendants’ products are covered  
7           by the ‘788 patent and to only purchase its falsely marked products.

8           297. Brian Speciale and Michael Speciale are each listed as an inventor on the  
9           U.S. Patent No. 10,420,431.

10          298. In filing the application that would mature into the ‘431 Utility Patent, both  
11          Brian and Michael Speciale signed an oath that they reviewed and understand  
12          the contents of the application, including the claims.

13          299. Brian and Michael Speciale were further assisted by patent counsel in  
14          preparing and prosecuting the application that would mature into the ‘431  
15          Utility Patent and therefore, on information and belief, each was fully aware of  
16          the limits of the scope of the ‘431 Utility Patent.

17          300. On information and belief, through the Cozy Website, Defendants intend  
18          that customers are to believe that each of *The Comfy*, *The Comfy Lite*, *The*  
19          *Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*,  
20          *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the Comfy*  
21          *Original Quarter Zip* is covered by the ‘431 Utility Patent.

22          301. The ‘431 Utility Patent includes sixteen claims.

23          302. Every one of the claims of the ‘431 Utility Patent includes the limitation,  
24          “the marsupial pocket has a height between its top and bottom which is 1.2  
25          times the distance between the neck opening and the top of the marsupial  
26          pocket.”

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1 303. During the prosecution of the '431 Utility Patent, the Applicants amended  
2 the claims that recited the limitation "approximately 1.2 times" by deleting the  
3 word "approximately."

4 304. One or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy*  
5 *Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The*  
6 *Comfy Teddy Bear Quarter Zip*, and *the Comfy Original Quarter Zip* do not  
7 exhibit a marsupial pocket has a height between its top and bottom which is 1.2  
8 times the distance between the neck opening and the top of the marsupial  
9 pocket.

10 305. For example, the actual *The Comfy Original* has a pocket with a height 10.5  
11 inches:



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19 306. The distance between the top of the pocket and the neck of *The Comfy*  
20 *Original* is 7.25 inches:



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1 307. A pocket having a height that is 1.2 times the 7.25 inch distance between  
2 the neck and the pocket would be a pocket having a height of only 8.7 inches.  
3 That is nearly two inches shorter than the required pocket height (i.e. the actual  
4 pocket height of 10.5 inches).

5 308. For a 10.5 inch pocket to be 1.2 times the distance from the neck to the top  
6 of the pocket, the distance from the neck to the pocket would need to be 8.75  
7 inches (i.e. a full inch and a half longer than the structure of The Comfy  
8 Original).

9 309. Thus, the actual dimension of The Comfy Original are such that the 10.5  
10 inch pocket height is 1.45 times the 7.25 inch distance from the top of the  
11 pocket to the neck of The Comfy Original.

12 310. On information and belief, and in view of the fact that the dimensions in  
13 question are so easily ascertainable, Cozy Comfort Co, and its founders and  
14 named inventors of the '431 Utility Patent knew that The Comfy Original did  
15 not meet all of the limitations of any claims of the '431 Utility Patent and thus  
16 was not covered by the '431 Utility Patent.

17 311. On information and belief, despite not being covered by the patent,  
18 Defendants willfully and intentionally marked The Comfy Original with the  
19 '431 Utility Patent for the purpose of inducing and deceiving customers into  
20 believing the The Comfy Original was patented under the '431 Utility Patent  
21 when it was not.

22 312. On information and belief, The Comfy Dream has a pocket height of 1.1  
23 times the distance from the top of the pocket to the neck.

24 313. On information and belief, The Comfy Teddy Bear Quarter Zip has a pocket  
25 height of 4.0 times the distance from the top of the pocket to the neck.

26 314. On information and belief, The Comfy Original Quarter Zip has a pocket  
27 height of 4.0 times the distance from the top of the pocket to the neck.  
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1 315. On information and belief, The Comfy Original Jr. has a pocket height of  
2 1.0 times the distance from the top of the pocket to the neck.

3 316. On information and belief, since the issuance of the '431 Utility Patent,  
4 Defendants have represented that their products are covered by the '431 Utility  
5 Patent with the intent that consumers believe that the products are covered by  
6 the '431 Utility Patent and therefore will be swayed into purchasing  
7 Defendants' product over another product, such as one of Plaintiffs' products.

8 317. On information and belief, Defendants knew that one or more of *The*  
9 *Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy*  
10 *Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear*  
11 *Quarter Zip*, and *the Comfy Original Quarter Zip* is not within the scope of  
12 any claim of the '431 Utility Patent at least due to such products having a  
13 pocket with a height that is not 1.2 times the distance from the top of the pocket  
14 to the neck.

15 318. Because one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*,  
16 *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy*  
17 *Dream*, *The Comfy Teddy Bear Quarter Zip*, and *the Comfy Original Quarter*  
18 *Zip* are not covered by the '431 Utility Patent, Defendants' intent that the public  
19 rely on its false representations that its products are covered by the '431 Utility  
20 Patent is undertaken with the further intent to deceive the public into believing  
21 that Defendants' products are covered by the '431 Utility Patent when they are  
22 not.

23 319. On information and belief, Defendants further routinely make disparaging  
24 remarks about competitors, such as Plaintiffs, referring to them as "Comfy  
25 knockoffs" with the intent that consumers be swayed to place greater  
26 importance of the false representation that Defendants' products are covered  
27 by the '431 Utility Patent and to only purchase its falsely marked products.

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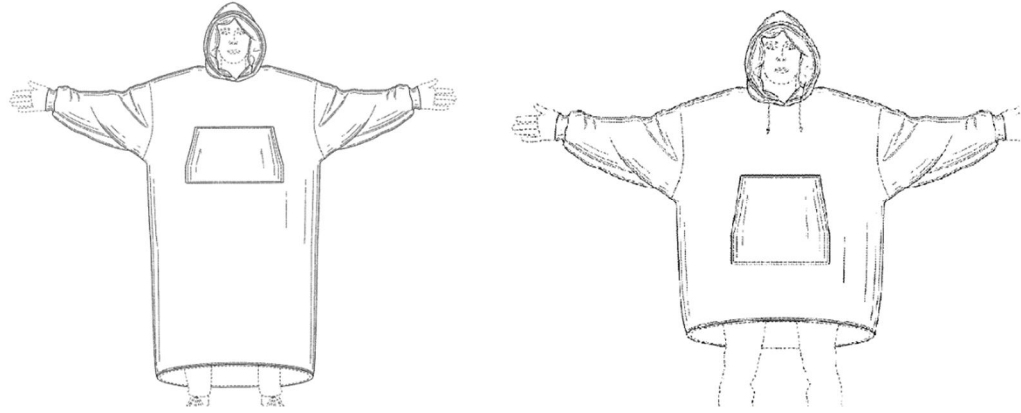
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320. Brian Speciale and Michael Speciale are each listed as an inventor on U.S. D886,416.

321. In filing the application that would mature into the '416 patent, both Brian and Michael Speciale signed an oath that they reviewed and understand the contents of the application, including the claims.

322. Brian and Michael Speciale were further assisted by patent counsel in preparing and prosecuting the application that would mature into the '416 patent and therefore, on information and belief, each was fully aware of the limits of the scope of the '416 patent.

323. The '416 patent is directed to a sweatshirt having the appearance of the image on the left, while the '788 patent is directed to a sweatshirt having the appearance of the image on the right:



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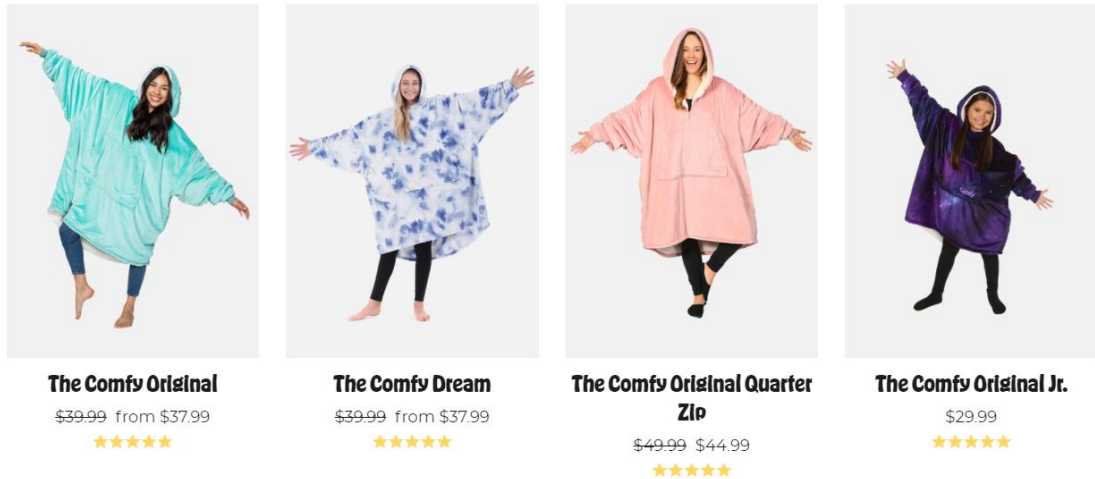
324. One example of The Comfy Original is depicted below:



325. On information and belief, at least The Comfy Original does not have substantially the same overall ornamental appearance as the subject matter of the '416 patent at least because The Comfy Original has a hemline that terminates above the knee whereas the subject matter of the '416 patent has a hemline that terminates at the ankle.

326. On information and belief, since the issuance of the '416 patent, Defendants' have represented that their products are covered by the '416 patent with the intent that consumers believe that the products are covered by the '416 patent and therefore will be swayed into purchasing Defendants' product over another product, such as one of Plaintiffs' products.

327. The images below depict *The Original Comfy*, *The Comfy Dream*, *the Comfy Original Quarter Zip*, and *the Comfy Original Jr.*



328. On information and belief, none of the *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and the *Comfy Original Quarter Zip* exhibit a hemline that terminates at the ankle.

329. On information and belief, Defendants knew that one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and the *Comfy Original Quarter Zip* is not within the scope of any claim of the '416 patent at least due to such products having hemlines that terminate above the knee, rather than at the ankle.

330. Because one or more of *The Comfy*, *The Comfy Lite*, *The Comfy Hoodie*, *The Comfy Kids*, *The Comfy Original*, *The Comfy Original Jr.*, *The Comfy Dream*, *The Comfy Teddy Bear Quarter Zip*, and the *Comfy Original Quarter Zip* are not covered by the '416 patent, Plaintiffs intent that the public rely on its false representations that its products are covered by the '416 patent is undertaken with the further intent to deceive the public into believing that Defendants' products are covered by the '416 patent when they are not.

331. On information and belief, Defendants further routinely make disparaging remarks about competitors, such as Plaintiffs, referring to them as "Comfy

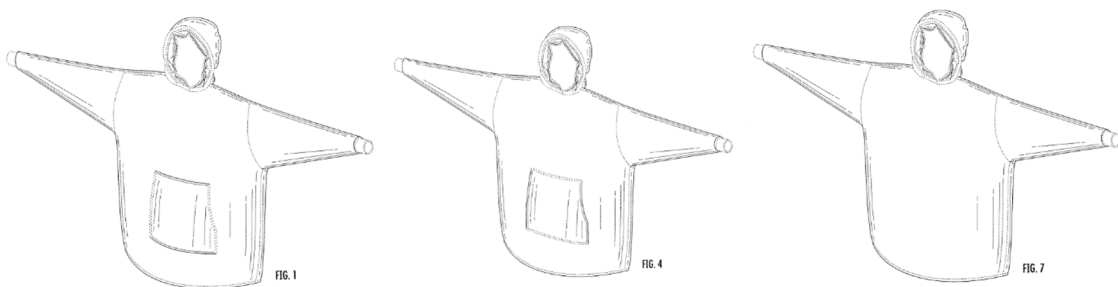
1 knockoffs” with the intent that consumers be swayed to place greater  
2 importance of the false representation that Defendants’ products are covered  
3 by the ‘416 patent and to only purchase its falsely marked products.

4 332. Brian Speciale and Michael Speciale are each listed as an inventor on the  
5 ‘380 patent.

6 333. In filing the application that would mature into the ‘380 patent, both Brian  
7 and Michael Speciale signed an oath that they reviewed and understand the  
8 contents of the application, including the claims.

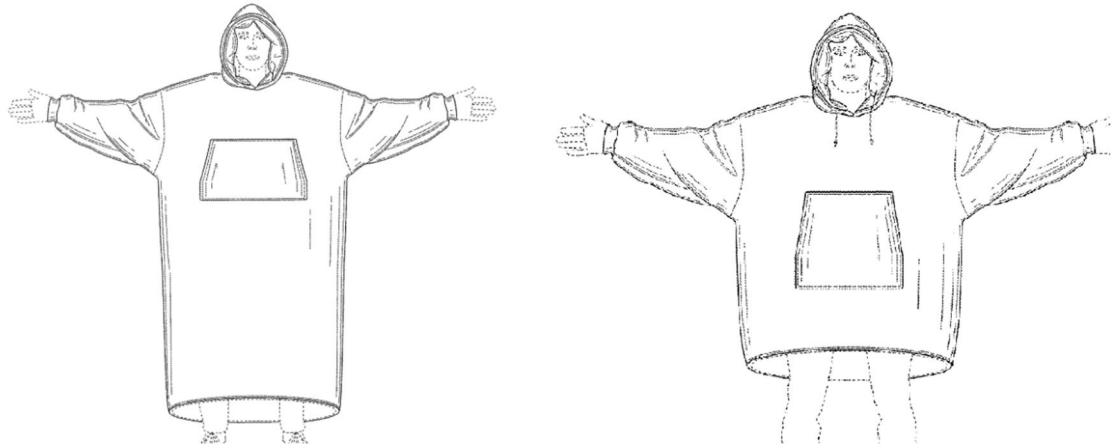
9 334. Brian and Michael Speciale were further assisted by patent counsel in  
10 preparing and prosecuting the application that would mature into the ‘380  
11 patent and therefore, on information and belief, each was fully aware of the  
12 limits of the scope of the ‘380 patent.

13 335. The ‘380 patent is directed to a sweatshirt having the appearance of the  
14 images below, none of which include a pocket were the top of the pocket is  
15 above the armpit of each sleeve:



21 336. The ‘416 patent is directed to a sweatshirt having the appearance of the  
22 image on the left, while the ‘788 patent is directed to a sweatshirt having the  
23 appearance of the image on the right, both of which have pockets where the top  
24 of the pocket is above the armpit of each sleeve:

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337. During the prosecution of the '788 patent, the Applicant argued that a feature of the subject matter of the '788 patent that distinguished over the prior art was that the top of the pocket was above the armpit of each sleeve.

338. The subject matter of the '380 patent is not substantially similar in overall ornamental appearance to the subject matter of either the '416 or the '788 patent.

339. The same product cannot exhibit the substantially the same overall ornamental appearance as the subject matter of each of the '380 patent, the '416 patent, and the '788 patent.

340. On information and belief, at least The Comfy Original does not have substantially the same overall ornamental appearance as the subject matter of the '380 patent at least because The Comfy Original has a pocket with a top that is above the armpit of each sleeve whereas no embodiment of the subject matter of the '380 patent includes a pocket with a top above the armpit of each sleeve.

341. Defendants' aggressive marketing tactics promoting its products as being patented—when they are not—has driven customers to purchase Defendants' products rather than Plaintiffs' products.

342. Defendants' false assertions of selling a product covered by the claim of any of the '788 patent, '416 patent, '380 patent, or '431 Utility Patent have



1 consequently damaged Plaintiffs by driving customers to purchase Defendants'  
2 product over Plaintiffs' products and artificially making Plaintiffs' products  
3 seem less attractive in the marketplace.

4 343. Plaintiffs are entitled to damages pursuant to 35 U.S.C. § 292(b) to  
5 compensate for its injury.

6 **FOURTEENTH CLAIM FOR RELIEF**

7 **(Unfair Competition under 815 ILCS 510)**

8 344. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
9 fully set forth in this paragraph.

10 345. It is a violation of 815 ILCS 510/2 when, among other things, a person  
11 engages in a deceptive trade practice through, in the course of business,  
12 disparaging the goods, services, or business of another by making a false or  
13 misleading representation of fact.

14 346. Defendants made false or misleading statements of fact to at least the online  
15 retailer Amazon.

16 347. For example, Defendants represented to Amazon that Plaintiffs' products  
17 infringed the '788 design patent and the '431 utility patent when those products  
18 did not.

19 348. Defendants made such representations willfully and with knowledge that  
20 they were false or misleading.

21 349. Plaintiffs provided Defendants with a detailed explanation of why their  
22 products neither infringed the '788 patent nor the '431 Utility Patent, yet  
23 Defendants willfully ignored such bases of noninfringement in making further  
24 bad faith claims of infringement to third parties such as Amazon.

25 350. On February 3, 2020 and again on February 14, 2020 counsel for Plaintiff  
26 requested that Cozy provide a claim chart supporting its assertions to Amazon  
27 that the Plaintiffs' goods infringed on the '431 Utility Patent. See Exhibit M.  
28 Defendants never responded to the requests.

1 351. Plaintiffs have been damaged by Defendants' representations at least  
2 insofar as Plaintiffs have been prevented from selling their products on  
3 Amazon.com.

4 352. Additionally, Defendants have falsely advertised and marketed its products  
5 as being covered by the '788 patent when they are not.

6 353. Defendants' false statements have been made at least on the Cozy Website,  
7 which is accessible to customers in Illinois.

8 354. Defendants' Cozy Website includes a dropdown menu that allows for  
9 shipping of its falsely advertised and marketed products to Illinois.

10 355. On information and belief, Defendants have actually sold and shipped such  
11 products to customers in Illinois.

12 356. Plaintiffs have been damaged by Defendants' false representations at least  
13 insofar as Defendants' false representations reduce the market value of  
14 Plaintiffs' goods, disparage Plaintiffs' goods, drive customers in Illinois view  
15 Defendants' products as more desirable, and drive customers in Illinois to  
16 purchase Defendants' products over Plaintiffs' products.

17 357. Plaintiffs have further suffered damage to their seller's ranking on Amazon  
18 due to Defendants' conduct which has caused reputational damage to Plaintiffs  
19 throughout the relevant U.S. market.

20 358. Plaintiffs incorporate each of the paragraphs below as if fully set forth  
21 herein.

22 359. On information and belief, each time a company submits a complaint to  
23 Amazon, like Defendant did, Amazon maintains a record of that complaint.

24 360. On information and belief, Amazon does not rank the complaints or  
25 reconsider the merits of the complaints in the event that they are determined,  
26 such as by a court, to be unfounded.

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1 361. On information and belief, if a company receives too many complaints  
2 against a seller, Amazon will permanently revoke the seller's ability to sell on  
3 Amazon.

4 362. If a seller's ability to sell on Amazon is revoked, it loses all of its reviews  
5 and Amazon site rankings.

6 363. Thus, even if the seller relaunches a product that had been complained of,  
7 but for example, a court had determined that the complaint was unfounded, the  
8 seller will have to rebuild its ranking which is extremely difficult when starting  
9 anew.

10 364. Due to Defendants' improper complaints, Plaintiffs' Amazon seller's  
11 profiles have been permanently damaged, and those seller's profiles are at  
12 further risk for being revoked.

13 365. Plaintiffs are entitled to injunctive relief, damages, costs, and its attorney's  
14 fees.

15 **FIFTEENTH CLAIM FOR RELIEF**  
16 **(Tortious Interference with Contract)**

17 366. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
18 fully set forth in this paragraph.

19 367. Prior to November of 2019, Top Brand had a contract with Amazon  
20 whereby Top Brand was permitted to sell its products on Amazon.com in  
21 exchange for a fee per sale.

22 368. The contract was valid and enforceable.

23 369. Defendants were aware of the contract because Defendant also sold on  
24 Amazon.com and therefore knew what was required of sellers like Top Brand  
25 that sold products on Amazon.com.

26 370. Defendants willfully and intentionally induced Amazon to breach its  
27 contract with Top Brand and prevent Top Brand from selling its products on  
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1 Amazon.com by making false claims of patent infringement against Top  
2 Brand.

3 371. Defendants actively persuaded and encouraged Amazon to prohibit Top  
4 Brand from selling its products on Amazon.com by filing complaints with  
5 Amazon.com alleging that Top Brand was infringing the '788 patent and '431  
6 Utility Patent.

7 372. Plaintiffs provided Defendants with a detailed explanation of why their  
8 products did not infringe the '788 patent nor the '431 Utility Patent, yet  
9 Defendants willfully ignored such bases of noninfringement in making further  
10 bad faith claims of infringement to third parties such as Amazon.

11 373. Amazon did breach its contract and prevent Top Brand from selling its  
12 products on Amazon.com due to Defendants' wrongful conduct.

13 374. Top Brand sells its products under license from Sky.

14 375. Prior to November of 2019, E Star had a contract with Amazon whereby E  
15 Star was permitted to sell its products on Amazon.com in exchange for a fee  
16 per sale.

17 376. The contract was valid and enforceable.

18 377. Defendants were aware of the contract because Defendant also sold on  
19 Amazon.com and therefore knew what was required of sellers like E Star that  
20 sold product on Amazon.com.

21 378. Defendants willfully and intentionally induced Amazon to breach its  
22 contract with E Star and prevent E Star from selling its products on  
23 Amazon.com by making false claims of patent infringement against E Star.

24 379. Defendants actively persuaded and encouraged Amazon to prohibit E Star  
25 from selling its products on Amazon.com by filing a complaint with  
26 Amazon.com alleging that E Star was infringing the U.S. Utility Patent No  
27 10,420,431 in the same manner as its assertions for infringement of the '788  
28 Design patent. When asked by Plaintiffs' counsel to provide a substantiating

1 claim chart as a basis for the infringement claim, Defendants simply ignored  
2 Plaintiffs' counsel's repeated requests for that infringement analysis.

3 380. Amazon did breach its contract and prevent E Star from selling its products  
4 on Amazon.com due to Defendants' wrongful conduct.

5 381. Prior to November of 2019, Flying Star had a contract with Amazon  
6 whereby Flying Star was permitted to sell its products on Amazon.com in  
7 exchange for a fee per sale.

8 382. The contract was valid and enforceable.

9 383. Defendants were aware of the contract because Defendant also sold on  
10 Amazon.com and therefore knew what was required of sellers like Flying Star  
11 that sold products on Amazon.com.

12 384. Defendants willfully and intentionally induced Amazon to breach its  
13 contract with Flying Star and prevent Flying Star from selling its products on  
14 Amazon.com by making false claims of patent infringement against Flying  
15 Star.

16 385. Defendants actively persuaded and encouraged Amazon to prohibit Flying  
17 Star from selling its products on Amazon.com by filing a complaint with  
18 Amazon.com alleging that Flying Star was infringing the U.S. Utility Patent  
19 No 10,420,431 in the same manner as its assertions for infringement of the '788  
20 Design patent. When asked by Plaintiffs' counsel to provide a substantiating  
21 claim chart as a basis for the infringement claim, Defendants simply ignored  
22 Plaintiffs' counsel's repeated requests for that infringement analysis.

23 386. Amazon did breach its contract and prevent Flying Star from selling its  
24 products on Amazon.com due to Defendants' wrongful conduct.

25 387. Flying Star sells its products under license from Sky.

26 388. Plaintiffs have suffered damages as a result of Defendants' wrongful  
27 conduct at least insofar as they have been prevented from selling products  
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1 through Amazon.com, have lost sales, and their seller's reputations have been  
2 damaged because of Defendants' tortious actions.

3 **SIXTEENTH CLAIM FOR RELIEF**

4 **(Tortious Interference with Prospective Economic Advantage)**

5 389. Plaintiffs reallege and incorporate each of the foregoing paragraphs as if  
6 fully set forth in this paragraph.

7 390. Prior to November of 2019, Top Brand had a business relationship with  
8 Amazon whereby Top Brand was permitted to sell its products on Amazon.com  
9 in exchange for a fee per sale.

10 391. Top Brand reasonably expected that it would continue to sell its products  
11 through Amazon.com.

12 392. Defendants were aware of the relationship because Defendant contacted  
13 Amazon about Top Brand's products being sold on Amazon.com and therefore  
14 knew that Top Brand expected to continue to sell its products on Amazon.com.

15 393. Defendants willfully, intentionally and unjustifiably induced Amazon to  
16 terminate the business relationship and Top Brand's expectancy and prevented  
17 Top Brand from selling its products on Amazon.com by making false claims  
18 of patent infringement against Top Brand.

19 394. Defendants actively persuaded and encouraged Amazon to prohibit Top  
20 Brand from selling its products on Amazon.com by filing complaints with  
21 Amazon.com alleging that Top Brand was infringing the '788 patent and '431  
22 Utility Patent.

23 395. Plaintiffs provided Defendants with a detailed explanation of why their  
24 products did not infringe the '788 patent and '431 Utility Patent, yet  
25 Defendants willfully ignored such bases of noninfringement in making further  
26 bad faith claims of infringement to third parties such as Amazon.

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1 396. Amazon did terminate its business relationship with Top Brand, preventing  
2 Top Brand from selling its products on Amazon.com due to Defendants'  
3 wrongful conduct.

4 397. Top Brand sells its products under license from Sky.

5 398. Prior to November of 2019, E Star had a business relationship with Amazon  
6 whereby E Star was permitted to sell its products on Amazon.com in exchange  
7 for a fee per sale.

8 399. E Star reasonably expected that it would continue to sell its products  
9 through Amazon.com.

10 400. Defendants were aware of the relationship because Defendant contacted  
11 Amazon about E Star's products being sold on Amazon.com and therefore  
12 knew that E Star expected to continue to sell its products on Amazon.com.

13 401. Defendants willfully, intentionally and unjustifiably induced Amazon to  
14 terminate the business relationship and E Star's expectancy and prevented E  
15 Star from selling its products on Amazon.com by making false claims of patent  
16 infringement against E Star.

17 402. Defendants actively persuaded and encouraged Amazon to prohibit E Star  
18 from selling its products on Amazon.com by filing a complaint with  
19 Amazon.com alleging that E Star was infringing the U.S. Utility Patent No  
20 10,420,431 in the same manner as its assertions for infringement of the '788  
21 Design patent. When asked by Plaintiffs' counsel to provide a substantiating  
22 claim chart as a basis for the infringement claim, Defendants simply ignored  
23 Plaintiffs' counsel's repeated requests for that infringement analysis.

24 403. Prior to November of 2019, Flying Star had a business relationship with  
25 Amazon whereby Flying Star was permitted to sell its products on  
26 Amazon.com in exchange for a fee per sale.

27 404. Flying Star reasonably expected that it would continue to sell its products  
28 through Amazon.com.

1 405. Defendants were aware of the relationship because Defendant contacted  
2 Amazon about Flying Star's products being sold on Amazon.com and therefore  
3 knew that Flying Star expected to continue to sell its products on Amazon.com.

4 406. Defendants willfully, intentionally and unjustifiably induced Amazon to  
5 terminate the business relationship and Flying Star's expectancy and prevented  
6 Flying Star from selling its products on Amazon.com by making false claims  
7 of patent infringement against Flying Star.

8 407. Defendants actively persuaded and encouraged Amazon to prohibit Flying  
9 Star from selling its products on Amazon.com by filing complaints with  
10 Amazon.com alleging that Flying Star was infringing the U.S. Utility Patent  
11 No 10,420,431 in the same manner as its assertions for infringement of the '788  
12 Design patent. When asked by Plaintiffs' counsel to provide a substantiating  
13 claim chart as a basis for the infringement claims, Defendants simply ignored  
14 Plaintiffs' counsel's repeated requests for that infringement analysis.

15 408. Flying Star sells its products under license from Sky.

16 409. Plaintiffs have suffered damages as a result of Defendants' wrongful  
17 conduct at least insofar as they have been prevented from selling products  
18 through Amazon.com, have lost sales, and their seller's reputations have been  
19 damaged because of Defendants' tortious actions.

20 **SEVENTEENTH CLAIM FOR RELIEF**

21 **(Declaratory Judgment of Non-Infringement of the '431 Utility Patent)**

22 410. Plaintiffs incorporate each of the foregoing paragraphs as if set forth fully  
23 herein.

24 411. Every claim of the '431 Utility Patent includes a limitation requiring "a  
25 marsupial pocket."

26 412. Every claim of the '431 Utility Patent includes a limitation requiring that  
27 the marsupial pocket has a height between its top and bottom which is 1.2 times  
28 the distance between the neck opening and the top of the marsupial pocket.



1 413. No product offered for sale either directly or indirectly by any of  
2 Plaintiffs/Counterclaim-Plaintiffs exhibits a structure that meets all of the  
3 limitations of any claim of the '431 Utility Patent either literally or under the  
4 doctrine of equivalents.

5 414. Therefore, no product offered for sale either directly or indirectly by any of  
6 Plaintiffs, either individually or through the actions of E Star, Flying Star, or  
7 Top Brand could infringe the '431 Utility Patent, and in fact all such products  
8 do not infringe the '431 Utility Patent.

9 **EIGHTEENTH CLAIM FOR RELIEF**

10 **(Declaratory Judgment of Invalidity of the '431 Utility Patent)**

11 415. Plaintiffs incorporate each of the foregoing paragraphs as if set forth fully  
12 herein.

13 416. The '431 Utility Patent is simply directed to a sweatshirt.

14 417. On information and belief, garments exhibiting the same features as those  
15 disclosed and claimed by the '431 Utility Patent were on sale, sold, or described  
16 in one or more printed publications prior to the priority date of the '431 Utility  
17 Patent, rendering the '431 Utility Patent invalid under one or more of 35 U.S.C.  
18 §§ 102, 103

19 418. The claimed proportions of the sweatshirt are mere changes in the size of a  
20 component.

21 419. A change in size is generally recognized as being within the level of  
22 ordinary skill in the art and therefore obvious.

23 420. Moreover, to the extent that the particular proportion provides some  
24 effective structure, discovering the optimum value of an effective variable  
25 involves only routine skill in the art.

26 421. Overall, the subject matter set forth in the claims of the '431 Utility Patent  
27 is at least either anticipated or obvious in view of the prior art.  
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**NINETEENTH CLAIM FOR RELIEF**

**(Cancellation of U.S. Trademark Registration 5,608,347)**

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3 422. Plaintiffs incorporates each of the foregoing paragraphs as if set forth fully  
4 herein.

5 423. On information and belief, Cozy Comfort owns Registration No. 5,608,347  
6 for THE COMFY (“The Comfy Word Mark”).

7 424. Registration No. 5,608,347 issued less than 5 years ago.

8 425. “Comfy” is a generic term for comfortable.

9 426. Alternatively, “Comfy” is descriptive of Cozy Comfort’s applied for goods  
10 or services.

11 427. Neither “THE COMFY” nor COMFY have any secondary meaning.

12 428. Registration No. 5,608,347 is directed and limited to goods in Class 24 for  
13 blanket throws, namely whole body blankets.

14 429. The Specimen included in the application fails to show blanket throws,  
15 namely whole body blankets.

16 430. In fact, Cozy Comfort does not sell blanket throws, namely, whole body  
17 blankets.

18 431. On information and belief, Cozy Comfort was found guilty of fraudulently  
19 identifying its goods as “blankets” when importing them into the United States  
20 in a scheme to avoid paying the proper duty on such imports.

21 432. On information and belief, Cozy Comfort was obliged to pay a duty for  
22 clothing on its products.

23 433. Cozy’s Registration No. 5,608,347 was obtained through fraudulently  
24 representing to the USPTO the nature of the goods/services associated with the  
25 applied for mark.

26 434. To the extent Cozy Comfort ever did sell blanket throws, namely, whole  
27 body blankets, it has failed to continuously use the mark on such products and  
28 therefore abandoned the mark with respect to such goods.

1 435. Google search results for Cozy Comfort Company yield the following  
2 information:

3 <https://thecomfy.com> :

4 **The Comfy | The Blanket You Wear!**

5 Created by two brothers, **The Comfy®** has been making the everyday better since launching on  
6 Shark Tank in 2017. Our line of wearable blankets are like living ...

7 **The Comfy® Original**

8 The Comfy Original · It's The  
9 Original: When you buy The ...

**The Comfy Dream**

The Comfy Dream · It's The  
Original: When you buy The ...

**Shop**

The Comfy® Original - The Comfy  
Dream - The Comfy Dream Jr.

**Contact Us**

Comfy does not cover these  
additional fees. Taxes: Did you ...

[More results from thecomfy.com »](#)

10 436. The Google search results show Cozy Comfort improperly utilizing the ®  
11 registration symbol with reference to products and services that are not  
12 encompassed by the goods/services listed on Registration No. 5,608,347.

13 437. On information and belief, Cozy Comfort utilizes the ® in the foregoing  
14 manner to deter others from using the term “Comfy” in the promotion and sale  
15 of their products and services.

16 438. Registration No. 5,608,347 should be canceled under 15 U.S.C. § 1064.

17 **TWENTIETH CLAIM FOR RELIEF**

18 **(Cancellation of U.S. Trademark Registration 5,712,456)**

19 439. Plaintiffs incorporate each of the foregoing paragraphs as if set forth fully  
20 herein.

21 440. On information and belief, Cozy Comfort owns Registration No. 5,712,456  
22 for THE COMFY (“The Comfy Service Mark”).

23 441. Registration No. 5,712,456 issued less than 5 years ago.

24 442. “Comfy” is a generic term for comfortable.

25 443. Alternatively, “The Comfy” is descriptive of Cozy Comfort’s applied for  
26 goods or services.

27 444. Neither “THE COMFY” nor COMFY have any secondary meaning.  
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1 445. Registration No. 5,712,456 is directed to Class 35 for On-line retail store  
2 services featuring blanket throws, namely, whole body blankets.

3 446. The Specimen included in the application fails to show on-line retail store  
4 services featuring blanket throws, namely, whole body blankets.

5 447. In fact, Cozy Comfort does not sell blanket throws, namely, whole body  
6 blankets.

7 448. Cozy Comfort does not operate an on-line retail store services featuring  
8 blanket throws, namely, whole body blankets.

9 449. On information and belief, Cozy Comfort was found guilty of fraudulently  
10 identifying its goods as “blankets” when importing them into the United States  
11 in a scheme to avoid paying the proper duty on such imports.

12 450. On information and belief, Cozy Comfort was obliged to pay a duty for  
13 clothing on its products.

14 451. Cozy’s Registration No. 5,712,456 was obtained through fraudulently  
15 representing to the USPTO the nature of the goods/services associated with the  
16 applied for mark.

17 452. To the extent Cozy Comfort ever offer online retail store services for  
18 blanket throws, namely, whole body blankets, it has failed to continuously use  
19 the mark with such services and therefore abandoned the mark with respect to  
20 such services.

21 453. Cozy’s Registration No. 5,712,456 was obtained through fraudulently  
22 representing to the USPTO the nature of the goods/services associated with the  
23 applied for mark.

24 454. To the extent Cozy Comfort ever did sell blanket throws, namely, whole  
25 body blankets, it has failed to continuously use the mark on such products and  
26 therefore abandoned the mark with respect to such goods.

27 455. Google search results for Cozy Comfort Company yield the following  
28 information:

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456. The Google search results show Cozy Comfort improperly utilizing the ® registration symbol with reference to products and services that are not encompassed by the goods/services listed on Registration No. 5,712,456.

457. On information and belief, Cozy Comfort utilizes the ® in the foregoing manner to deter others from using the term “Comfy” in the promotion and sale of their products and services.

458. Registration No. 5,712,456 should be canceled under 15 U.S.C. § 1064.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for this Court to enter an Order granting the following relief on the claims in suit and against Cozy Comfort, Brian Speciale, and Michael Speciale, jointly and severally:

1. A declaration that Plaintiffs’ products do not infringe, either directly, indirectly, or contributorily any valid and enforceable claim of the ‘788 patent;
2. A declaration that the claim of the ‘788 patent is invalid;
3. A declaration that the ‘788 patent is void and unenforceable;
4. A declaration that Plaintiffs’ products do not infringe, either directly, indirectly, or contributorily any valid and enforceable claim of the ‘380 patent;
5. A declaration that the claim of the ‘380 patent is invalid;
6. A declaration that the ‘380 patent is void and unenforceable;

- 1 7. A declaration that Plaintiffs' products do not infringe, either directly,  
2 indirectly, or contributorily any valid and enforceable claim of the '416 patent;
- 3 8. A declaration that the claim of the '416 patent is invalid;
- 4 9. A declaration that the '416 patent is void and unenforceable;
- 5 10. A declaration that Plaintiffs' products do not infringe, either directly,  
6 indirectly, or contributorily any valid and enforceable claim of the '237 patent;
- 7 11. A declaration that the claim of the '237 patent is invalid;
- 8 12. A declaration that the '237 patent is void and unenforceable;
- 9 13. An order declaring that Plaintiffs are the prevailing party and that this is an  
10 exceptional case, awarding Plaintiffs their costs, expenses, and reasonable  
11 attorney's fees under 35 U.S.C. §285;
- 12 14. An order awarding Plaintiffs damages for the injury they suffered due to  
13 Defendants' false marking;
- 14 15. An order that Defendants, jointly, severally and all those acting in concert or  
15 participation with them be permanently enjoined from contacting third-parties  
16 to remove Plaintiffs' products as infringing any of the '788, '380, '416, '237  
17 and '431 patents;
- 18 16. An order awarding Plaintiffs their damages adequate to compensate Plaintiffs  
19 for Defendants' tortious acts;
- 20 17. A declaration that the products offered for sale by E Star, Flying Star, Top  
21 Brand, or Sky Creation do not infringe, either directly, indirectly, or  
22 contributorily, any valid and enforceable claim of the '431 Utility Patent;
- 23 18. A declaration that the claims of the '431 Utility Patent are invalid;
- 24 19. An order canceling Registration No. 5,608,347;
- 25 20. An order canceling Registration No. 5,712,456;
- 26 21. An order awarding Plaintiffs punitive damages due to Defendants' willful and  
27 wanton misconduct;
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22. An order awarding Plaintiffs such other and additional and equitable relief as the Court deems just and proper.

**JURY DEMAND**

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

DATED this 11th day of October, 2021.

OSBORN MALEDON, P.A.

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