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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAMTECH LLC d/b/a MASSIF

Plaintiff,

v.

BROOKLYN ARMED FORCES, LLC,

Defendant

Civil No. 1:23-cv-01185 (CBA)(RML)

SECOND AMENDED COMPLAINT

Plaintiff Samtech LLC d/b/a Massif, by its attorneys Zeichner Ellman & Krause LLP, as and for its second amended complaint against defendant Brooklyn Armed Forces, LLC, alleges, upon information and belief, as follows:

NATURE OF THE ACTION

1. This is a civil action seeking relief from defendant Brooklyn Armed Forces, LLC's (i) patent infringement of U.S. Design Patent No. D641,137 (the '641 Patent); (ii) false commercial representations under the Lanham Act, 15 U.S.C. § 1125(a); and (iii) violation of the New York Deceptive Practices Act, N.Y. General Business Law § 349. A copy of the '641 Patent is attached hereto as **Exhibit A**.

THE PARTIES

2. Plaintiff Samtech LLC d/b/a Massif ("Massif" or "Plaintiff") is a California limited liability company with a principal place of business in Ashland, Oregon.

3. Upon information and belief, defendant Brooklyn Armed Forces, LLC ("BAF" or

“Defendant”) is a New York limited liability company with a principal place of business in Brooklyn, New York.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the claims in this action under 28 U.S.C. § 1331 (federal question), § 1338 (patent infringement), and § 1367 (supplemental jurisdiction).

5. Defendant has committed acts of patent infringement, false commercial representation, and deception in this judicial district.

6. This Court has personal jurisdiction over Defendant in this action.

7. Venue is proper in this district under 28 U.S.C. § 1400(b) because Defendant has committed acts of patent infringement in this judicial district, and proper under 28 U.S.C. § 1391 because Defendant resides in this judicial district, and a substantial part of the events/omissions giving rise to this claim occurred in this judicial district.

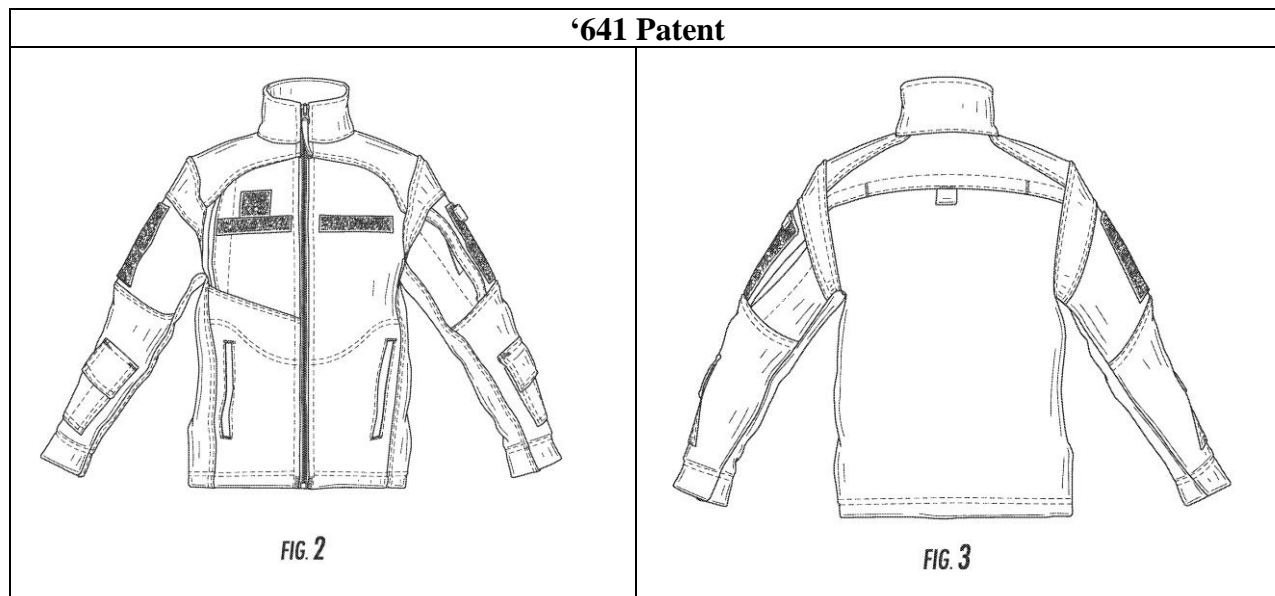
FACTS COMMON TO ALL CLAIMS

Massif and the ‘641 Patent

8. Massif manufactures and sells high performance apparel, including flame-resistant apparel, to customers that include, but is not limited to, the U.S. military. Massif operates a website at www.massif.com.

9. Massif owns several valuable U.S. patents and other intellectual property. Massif is the assignee and owner of all right, title, and interest in and to the ‘641 Patent, which the United States Patent and Trademark Office issued on July 12, 2011. The ‘641 Patent is a design patent that discloses and claims the non-functional ornamental design for a military style jacket, which is described and shown from multiple perspectives in FIGS. 1-16 of the ‘641 Patent. For

illustrative purposes, FIGS. 2-3 of the '641 Patent are reproduced below.



10. Massif products which incorporate the '641 Patent are offered for sale to its customers in the United States, are commercially successful, and are leading products of its kind in the market. An example of the non-functional ornamental design for a military style jacket disclosed and claimed in the '641 Patent is incorporated in a Massif product known as "ELEMENTS JACKET – IWOL" (the "Massif IWOL Jacket"), which is available in a variety of sizes but embodies the same non-functional ornamental features. Copies of the product page from Massif's online store website for the Massif IWOL Jacket – IWOL stands for Intermediate Weather Outer Layer – are attached hereto as **Exhibit B**, with photos from that product page reproduced below.

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11. Massif has complied with the marking requirements of 35 U.S.C. § 287(a).

Defendant's Infringement of the '641 Patent

12. Defendant makes, uses, sold, sells, and/or offers to sell products in interstate commerce which infringe the '641 Patent under various names, including but not limited to the "BAF SOFTSHELL ELEMENT JACKET", the "ELEMENT CREWMAN JACKET", the "BAF WTPRF SOFTSHELL ELEMENT JACKET OCP" (WTPRF stands for waterproof, and OCP stands for Operational Camouflage Pattern), the "ABU ELEMENT CREWMAN JACKET" (ABU stands for Airman Battle Uniform), the "FREE IWOL JACKET" (FREE stands for flame-resistant environmental ensemble), the "SOFTSHELL ELEMENT JACKET OCP", the "Brooklyn Armed Forces Light Weather Crewman Jacket", and the "Brooklyn Armed Forces Crewman Jacket." These infringing products, irrespective of name, are collectively referred herein

as the “Accused Jackets.” Defendant sells the Accused Jackets through a chain of commerce, including various websites, online stores, and locations.

13. By way of example, Sportsman’s Guide, LLC f/k/a The Sportsman’s Guide, Inc. (“Sportsman’s Guide”) purchases merchandise from suppliers, including Defendant, located in this judicial district and operates an online store website (the “Sportsman’s Guide website”) that sells merchandise to customers in this judicial district.¹ At least two of the Accused Jackets – the “Brooklyn Armed Forces Light Weather Crewman Jacket” (the “Light Weather Jacket”) and the “Brooklyn Armed Forces Crewman Jacket” (the “Crewman Jacket”) – were made available and sold via the Sportsman’s Guide website. Copies of the product pages from the Sportsman’s Guide website for the Light Weather Jacket and the Crewman Jacket are attached hereto as **Exhibit C** and reproduced below.

Accused Jackets	
Light Weather Jacket	Light Weather Jacket
	

¹ The original Complaint in this action, filed February 13, 2023, named BAF and Sportsman’s Guide as defendants. *See* Complaint [ECF Docket No. 1]. Since then, Plaintiff voluntarily dismissed this action against Sportsman’s Guide without prejudice. *See* Notice of Dismissal Without Prejudice as to Defendant Sportsman’s Guide, LLC Only [ECF Docket No. 14].



14. An exemplary side-by-side comparison produced below of FIGS. 2-3 of the '641 Patent with photos of the Accused Jackets show that Defendant has misappropriated the non-functional ornamental design for a military style jacket disclosed and claimed in the '641 Patent.





15. As the above side-by-side comparison shows, Defendant copied the non-functional ornamental features disclosed and claimed in the '641 Patent, including stitch patterns and layout and shaping of pockets, Identification Friend or Foe (IFF) tabs, and a pass-through flap.

16. In the eye of an ordinary observer giving such attention as a purchaser usually gives, the non-functional ornamental design for a military style jacket disclosed and claimed in the '641 Patent and the Accused Jackets are substantially the same, deceiving and inducing him or her to purchase an Accused Jacket supposing it to be the claimed non-functional ornamental design.

17. The Massif IWOL Jacket incorporating the claimed non-functional ornamental design and the Accused Jackets do appear substantially the same to an ordinary observer, as evidenced by relevant online posts on the Internet forums Bushcraft USA (www.bushcraftusa.com) and Reddit (www.reddit.com). These online posts include the following statements describing the Light Weather Jacket:

- Bushcraft USA account with username paulf155 asserts, in relevant part, "...the crew men's jacket is the same as a massif elements iwol jacket..." (<https://bushcraftusa.com/forum/threads/any-intel-on-brooklyn-armed-forces-clothing.296896/>);

- a Reddit account with username yingling247 states, in relevant part, “I have a knock off massif jacket from Brooklyn Armed Forces. Looks just like the real one...” (https://www.reddit.com/r/AirForce/comments/zlvnox/massif_jacket/);
- Reddit account with username Droney-McPeaceprize asks, in relevant part, “Anyone know where to get the Brooklyn Armed Forces Light Weather Crewman jacket (Massif clone)?” (https://www.reddit.com/r/AirForce/comments/wvyr53/anyone_know_where_to_get_the_brooklyn_armed/); and
- a since-deleted Reddit account opines, in relevant part, “...looks damn near the same as the massif one i got...” (https://www.reddit.com/r/AirForce/comments/11gi3t/massif_elements_ocp_jacket/).

Copies of these relevant online posts on Bushcraft USA and Reddit are attached hereto as **Exhibit**

D.

18. Upon information and belief, Defendant has offered to sell the Accused Jackets to potential customers in this judicial district.

19. Upon information and belief, Defendant has sold the Accused Jackets in this judicial district and has shipped those products from, within, and into this judicial district.

20. Defendant is not licensed to make, use, sell, or offer to sell products incorporating the non-functional ornamental design for a military style jacket protected by the ‘641 Patent.

Massif’s Notice to Defendant

21. By letter dated November 14, 2022, sent by certified mail and email, counsel for Massif notified BAF that its Light Weather Jacket was infringing the ‘641 Patent (the “Notice Letter”).

22. On November 21, 2022, BAF principal John Panousopoulos responded. In relevant part, he stated that he had “informed SportsmansGuide to immediately take the picture down [on the website] and stop selling any of these particular jackets.” Mr. Panousopoulos also stated that BAF was “not planning to manufacture this style again.”

23. On January 16, 2023, counsel for Massif sent a follow-up email to BAF because the relevant web page had not been taken down and no further substantive communication had been received from BAF.

24. That same day, Mr. Panousopoulos replied stating, in relevant part, “we stopped selling or manufacturing the said object and told Sportsmansguide to pull it from the website!”

25. Since that exchange, the web page for the Light Weather Jacket has been removed from the Sportsman’s Guide website, but Defendant began, or continued, making, using, selling, and offering to sell the Crewman Jacket on the website.

26. Despite receiving multiple notices from Massif that the Accused Jackets infringe the ‘641 Patent, Defendant continues making, using, selling, and offering to sell the Accused Jackets and, upon information and belief, will continue to do so unless stopped by this Court.

Defendant’s False and Deceptive Representations

27. Massif’s “ELEMENTS JACKET – IWOL” (the “Massif IWOL Jacket”) is flame resistant, meets strict U.S. military specifications, and is authorized for use by the U.S. military as a flame-resistant environmental ensemble (FREE) garment. A copy of a technical data sheet for the Massif IWOL Jacket – IWOL stands for Intermediate Weather Outer Layer – is attached hereto as **Exhibit E**.

28. Meeting military specifications, so that an article of clothing is authorized for use by the U.S. military as a flame resistant (FR) article of clothing, is an involved, expensive, and demanding process. The U.S. military required that the Massif IWOL Jacket pass more than 25 separate tests, including several stringent tests for flame resistance, before it could be said to meet U.S. military specifications.

29. To meet strict military specifications, FREE garments must be manufactured with

specially knit flame-resistant fabrics designed to provide lightweight protection and safeguard soldiers from flames, wind and extreme temperatures. It is a clothing system developed for aviators and armored-vehicle crewmen who have a very high requirement for flame-resistant uniforms while also needing to keep warm and comfortable while operating in wet and cold weather environments.

30. The Massif IWOL Jacket, including its fabrics, is manufactured in the U.S. and meets all requirements specified by the U.S. military. The fabric used to produce the Massif IWOL Jacket utilizes a combination of proprietary flame resistant and flame retardant processes. The fabric utilized in the construction of the Massif IWOL Jacket is commonly referred to as a “three layer laminate”. This three layer laminate consists of an outer shell material that is chemically treated to be flame resistant and an inner layer that is flame retardant due to the molecular structure of the fibers used. The Massif IWOL Jacket has a one hundred percent (100%) nylon outer shell (i.e., exterior) and neither the exterior fabrics nor the interior fabrics of the Massif IWOL Jacket contain any polyester.

31. By contrast, the Defendant states that its Accused Jackets have a fleece-lined interior that is one hundred percent (100%) polyester, and a polyester blend outer shell (i.e., exterior) made of a combination of sixty-one percent (61%) polyester, twenty-nine percent (29%) cotton, and ten percent (10%) nylon. There are no known textile processes or techniques to produce a 100% polyester fleece that will not, at minimum, show occurrences of melting and dripping when tested in accordance with ASTM D6413 vertical flame testing, which is one of the several tests required by the U.S. military to meet its specifications. Moreover, the outer shell material contains a high synthetic (polyester and nylon) content that would be difficult if not impossible to make flame resistant or flame retardant with current known textile processes. Thus,

claiming that the Accused Jackets are flame resistant, flame retardant, FR, and/or FREE is clearly false and misleading.

32. Based upon at least the composition of fibers of the Accused Jackets and its foreign country of manufacture (China), the Accused Jackets are not flame resistant and do not meet the strict military specifications of the U.S. military.

33. Further, upon information and belief, Defendant has never tested the Accused Jackets to determine whether they are flame resistant.

34. Despite these facts, Defendant falsely and deceptively represents to its direct customers and indirect customers/general public that the Accused Jackets are always made “to strict military specifications” and that they are “Military spec, manufactured by government contractor.” *See* Ex. C (product pages from the Sportsman’s Guide website).

35. Defendants also misleads or confuses its direct and indirect customers by claiming that that it is “an experienced maker of military issue clothing used by the U.S. Armed Forces.” *See* Ex. C. Not only is this representation literally false – Defendant’s clothing is not “used by the U.S. Armed Forces” – but it misleads or confuses consumers into believing that the Accused Jackets are “military issue clothing” that meets U.S. military specifications, including meeting all flame resistance tests mandated by the U.S. military.

36. Defendant’s false and deceptive representations harm Massif because persons seeking to purchase a Massif IWOL Jacket buy an Accused Jacket instead, mistakenly believing the Accused Jacket is “the same as,” or a “clone” of, the Massif IWOL Jacket, containing all the same characteristics and qualities. *See* Ex. D (online posts). Defendant’s false and deceptive representations also harms Massif’s reputation by causing actual and potential purchasers to believe that the lower quality Accused Jackets are “the same as” Massif’s IWOL Jacket. *Id.*

37. Defendant sold the Accused Jackets under names such as “BAF SOFTSHELL ELEMENT JACKET”, the “ELEMENT CREWMAN JACKET”, the “BAF WTPRF SOFTSHELL ELEMENT JACKET OCP”, the “ABU ELEMENT CREWMAN JACKET”, the “FREE IWOL JACKET”, and the “SOFTSHELL ELEMENT JACKET OCP” which are very similar to the name of Massif’s “ELEMENTS JACKET – IWOL” and/or falsely represent the Accused Jackets as flame-resistant environmental ensemble (FREE) garments.

38. Defendant’s false and deceptive representations also pose potential danger to public health and safety as purchasers of the Accused Jackets believe them to be flame resistant and otherwise meet strict military specifications when they do not.

39. Upon information and belief, Defendant will continue to make these false and deceptive representations unless stopped by this Court.

40. Upon information and belief, Defendant will not correct its false and deceptive representations unless required to do so by this Court.

FIRST CAUSE OF ACTION

(Patent Infringement)

41. Plaintiff incorporates by reference paragraphs 1 through 40 above, as though fully set forth herein.

42. Defendant’s actions averred herein constitute patent infringement in violation of 35 U.S.C. § 271.

43. Defendant has been, and currently is, directly infringing the ‘641 Patent by making, using, selling and offering to sell the Accused Jackets in violation of 35 U.S.C. § 271(a).

44. Unless Defendant is enjoined, it will continue to infringe the ‘641 Patent directly and to induce its customers to infringe that patent.

45. Massif has been irreparably harmed by Defendant’s infringement. Unless enjoined,

Defendant will continue to irreparably harm Massif. Monetary damages alone cannot compensate for this harm.

46. Defendant's infringement has been willful and deliberate.

47. No later than November 14, 2022, the date it received the Notice Letter, BAF knew or had reason to know that Massif owned the rights to the '641 Patent and that the Accused Jackets infringed that patent.

48. Defendant nonetheless continued offering to sell and selling the Accused Jackets to its customers.

49. Massif is entitled to actual damages, including Defendant's profits realized by its unlawful activity, applicable interest, and the cost and effort involved in making Massif whole, under 35 U.S.C. § 284.

50. In addition, Defendant's deliberate infringement, without any reasonable justification, makes this an exceptional case, entitling Massif to an award of treble damages under 35 U.S.C. § 284 and an award of attorney fees under 35 U.S.C. § 285.

SECOND CAUSE OF ACTION

(False Advertising in Violation of the Lanham Act)

51. Plaintiff incorporates by reference paragraphs 1 through 50 above, as though fully set forth herein.

52. Among other things, the Lanham Act protects persons engaged in interstate commerce, like Plaintiff, from the unfair competition that results from false advertising, including the false material statements made by Defendant described and shown above.

53. Defendant has violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by falsely describing and placing into interstate commerce the Accused Jackets.

54. Defendant's material misrepresentations, described and shown above, are literally

false as to the nature, characteristics, and qualities of the Accused Jackets. Those material misrepresentations are also likely to mislead or confuse ordinary buyers of the Accused Jackets as to the nature, characteristics, and qualities of the Accused Jackets.

55. Defendant spread these false material representations with the intent to deceive.

56. Plaintiff has suffered economic and reputational injury flowing directly from, and proximately caused by, the deception wrought by Defendant's false material representations.

57. Defendant's false material representations have injured Plaintiff, entitling it to damages, treble damages, corrective advertising, and preliminary and permanent injunctive relief.

THIRD CAUSE OF ACTION

(Violation of New York General Business Law § 349)

58. Plaintiff incorporates by reference paragraphs 1 through 57 above, as though fully set forth herein.

59. Upon information and belief, Defendant is "conducting a business" or "furnishing a service" as those terms are defined in the New York General Business Law § 349, the New York Deceptive Business Practices Act ("NY GBL § 349").

60. Defendant violated NY GBL § 349 by engaging in acts and practices that were misleading in a material way, unfair, deceptive, and contrary to public policy and generally recognized standards of business.

61. These acts and practices include but are not limited to advertising the Accused Jackets in a manner that Defendant knew was false and/or fraudulent, and actively engaging in such false and/or fraudulent behavior to the detriment of Massif and the consumer public.

62. Defendant has demonstrated wanton dishonesty as to imply a criminal indifference to civil obligations and engaged in morally culpable conduct directed at the general public, as opposed to a mere private wrong.

63. Plaintiff suffered injury as the proximate result of Defendant's deceptive practices. Moreover, Defendant's deceptive practices have, and may continue to have, a broad, injurious impact on consumers and the public interest throughout New York State.

64. In undertaking these deceptive practices, Defendant acted willfully.

65. Based on the foregoing, Defendant is liable to Plaintiff for (a) actual damages; (b) punitive damages; and (c) costs and disbursements.

PRAYER FOR RELIEF

WHEREFORE, Massif prays for the following relief against Defendant:

- A. A judgment from this Court that U.S. Design Patent No. D641,137 is valid and enforceable.
- B. A judgment from this Court that Defendant has infringed U.S. Design Patent No. D641,137.
- C. Preliminary and permanent injunctive relief in the form of an order or orders requiring that Defendant and its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with them, be permanently enjoined and restrained from infringing U.S. Design Patent No. D641,137 or from disseminating any further false commercial representations regarding the qualities of its products.
- D. Relief in the form of an order or orders requiring that Defendant and its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with them, provide notice to purchasers of its products correcting the misimpressions and false understandings created, and intended to be created, by its false commercial representations.
- E. Permanent injunctive relief in the form of an order or orders requiring Defendant to turn over to Massif all infringing products in its possession, custody, or control, for destruction or other disposition as determined by Massif; and that Defendant permit an agent of Massif to inspect its premises to ensure compliance with the Court's order.
- F. An award of damages sufficient to compensate Massif for Defendant's past infringement of U.S. Design Patent No. D641,137 and false commercial representations, together with costs and pre-judgment interest.
- G. An award to Massif of treble damages.
- H. An award to Massif of its reasonable attorney's fees.

- I. An award to Massif of such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 16, 2023

Respectfully submitted,

/s/ Yoav M. Griver

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