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Counsel for Plaintiffs,  
Bob and Brad, LLC and  
Sichuan Qianli-Beoka Medical Technology Inc.,

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

Bob and Brad, LLC and Sichuan  
Qianli-Beoka Medical Technology Inc.,

Case No.:

Plaintiffs,

vs.

Hyper Ice, Inc. and Hyperice IP Subco,  
LLC,

**DECLARATORY JUDGMENT  
COMPLAINT**

Defendants.

1 Plaintiffs Bob and Brad, LLC (“B&B”) and Sichuan Qianli-Beoka Medical  
2 Technology Inc. (“Beoka”) for their Complaint against Defendants Hyper Ice, Inc.  
3 and Hyperice IP Subco, LLC (collectively, “HYPERICE”) allege:

#### 4 **NATURE OF THE ACTION**

5 1. This is a civil action arising under the Declaratory Judgment Act , 28  
6 U.S.C. § 2201 et seq. and the Patent Laws of the United States, 35 U.S.C. § 1 et  
7 seq. for declaratory judgment of non-infringement and invalidity of U.S. Patent  
8 No. 11,938,082 (“the ’082 Patent”—attached as Exhibit 1).

9 2. This case also is a civil action for unfair competition under Cal. Bus.  
10 & Prof. Code § 17200.

11 3. Plaintiffs bring this action in view of the actual controversy that  
12 HYPERICE has created under the ’082 Patent by asserting a patent infringement  
13 claim against B&B’s products with Amazon, which caused Amazon to remove  
14 B&B’s listing for those products on Amazon.com.

15 4. HYPERICE’s action have caused B&B to lose sales on Amazon, its  
16 primary sales platform, and has harmed B&B’s reputation and goodwill.

#### 17 **PARTIES**

18 5. B&B is a limited liability company organized under Minnesota law  
19 with its principal place of business at 66 Shady Oak Ct., Winona, MN 55987.

20 6. Beoka is a Chinese company, with a principal place of business at  
21 Longtan Industrial Park 2nd Sec., East 3rd Ring Road, Chenghua District,  
22 Chengdu, China.

23 7. Beoka manufactures certain massage guns, which it sells to various  
24 retailers including B&B.

1           8.     Upon information and belief, Hyper Ice, Inc. is a corporation  
2 organized under California law with its principal place of business at 525  
3 Technology Drive, Suite 100, Irvine, CA 92618.

4           9.     Upon information and belief, Hyperice IP Subco, LLC is a limited  
5 liability company organized under Delaware law.

6           10.    Upon information and belief, Hyperice IP Subco, LLC is a wholly-  
7 owned subsidiary of Hyper Ice, Inc.

8                               **JURISDICTION AND VENUE**

9           11.    The Court has subject matter jurisdiction over the patent claims in this  
10 action under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and under 28  
11 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the  
12 United States, Title 35 U.S.C. § 1 et seq.

13           12.    The Court has supplemental subject matter jurisdiction over the state  
14 law claim for unfair competition under 28 U.S.C. § 1367 because that claim arises  
15 under the same common nucleus of facts as the declaratory judgment patent  
16 claims.

17           13.    The Court has personal jurisdiction over Hyper Ice, Inc. because,  
18 upon information and belief, Hyper Ice, Inc. resides in California and in this  
19 judicial district.

20           14.    The Court has personal jurisdiction over Hyperice IP Subco, LLC  
21 because, upon information and belief, Hyperice IP Subco, LLC is wholly owned by  
22 Hyper Ice, Inc. and functions purely as a holding company for patents acquired by  
23 Hyper Ice, Inc.

24           15.    Upon information and belief, Hyper Ice, Inc. and Hyperice IP Subco,  
25 LLC have filed multiple patent enforcement lawsuits in various jurisdictions as  
26 joint co-plaintiffs.



1           25. Claim 1 requires:

2                   a drive mechanism that controls a predetermined stroke  
3                   length of the piston

4           ‘082 Patent at column 10, lines 4-5.

5           26. Claim 18 requires:

6                   providing a drive mechanism configured to control a  
7                   predetermined stroke length of the piston

8           ‘082 Patent at column 11, lines 10-11.

9           27. Accordingly, all claims in the ‘082 Patent require a drive mechanism  
10           that controls a predetermined stroke length of the piston.

11          28. Claim 1 also requires:

12                   a quick-connect system comprising the distal end of the  
13                   piston and a first massaging head, wherein the quick-  
14                   connect system is configured to have a proximal end of  
15                   the first massaging head inserted into or removed from  
16                   the bore while the piston reciprocates the predetermined  
17                   stroke length at the first speed.

18           ‘082 Patent at column 10, lines 6-11.

19          29. Claim 18 also requires:

20                   providing a quick-connect system comprising the distal  
21                   end of the piston and a first massaging head, wherein a  
22                   proximal end of the first massaging head is configured to  
23                   be inserted into or removed from the bore while the  
24                   piston reciprocates the predetermined stroke length at the  
25                   first speed.

26           ‘082 Patent at column 11, lines 12-17.

27          30. Accordingly, all claims in the ‘082 Patent require a quick-connect  
28           system at a distal end of the piston and a first massaging head.

29          31. The ‘082 Patent is a continuation of application No. 18/466,702,  
30           which is a continuation of U.S. Patent No. 11,857,482 (“the ‘482 Patent”).

1           32. The application for the ‘482 Patent was filed on February 25, 2022.  
2 The ‘482 Patent issued on January 2, 2024.

3           33. On January 3, 2024, the day after the ‘482 Patent issued, HYPERICE  
4 filed a complaint in the District of Minnesota asserting the ‘482 Patent against  
5 B&B.

6           34. The litigation HYPERICE initiated against B&B was transferred to  
7 this district, and is styled *Hyper Ice, Inc. and Hyperice IP Subco, LLC v. Bob and*  
8 *Brad, LLC*, Case No. 2:24-cv-03212-JWH-DFM.

9           35. Upon information and belief, on or around January 5, 2024, within  
10 days after the ‘482 Patent issued, HYPERICE submitted an infringement report  
11 with Amazon.com under the ‘482 Patent against certain B&B massager products.

12           36. Amazon has its own procedures through which patent owners may  
13 enforce their patent rights in the Amazon marketplace.

14           37. Under these procedures, a patent owner may file a patent infringement  
15 report with Amazon.

16           38. Amazon may then invite the patent owner and the accused Amazon  
17 seller to engage in a dispute resolution procedure involving an outside “neutral  
18 evaluator.”

19           39. Upon information and belief, HYPERICE submitted the infringement  
20 report with Amazon to try and initiate the dispute resolution procedure against  
21 B&B.

22           40. Upon information and belief, Amazon did not initiate the dispute  
23 resolution procedure against B&B because HYPERICE had already asserted the  
24 ‘482 Patent against B&B in district court.

1           41. Upon information and belief, HYPERICE has learned that it cannot  
2 initiate an Amazon dispute resolution procedure with a patent that is the subject of  
3 an on-going litigation.

4           42. Upon information and belief, sometime in March or April 2024,  
5 shortly after the '082 Patent issued, HYPERICE initiated an Amazon dispute  
6 resolution procedure under the '082 Patent against certain third-party (not B&B)  
7 massager products on Amazon.com.

8           43. Upon information and belief, HYPERICE obtained a decision in the  
9 dispute resolution procedure that it was likely to prove infringement under the '082  
10 Patent against the third-party massager products.

11           44. Upon information and belief, as a result of the decision from the  
12 dispute resolution procedure, the third-party massager products were delisted from  
13 Amazon.

14           45. Upon information and belief, because HYPERICE successfully  
15 delisted the third-party massager products, if HYPERICE submits an infringement  
16 report under the '082 Patent against any other massager products that are similar in  
17 relevant respects to the third-party delisted massager products, Amazon delists the  
18 product without first giving the accused seller an opportunity to present a non-  
19 infringement defense.

20           46. Upon information and belief, on or about June 19, 2024, HYPERICE  
21 submitted an infringement report under the '082 Patent against various B&B  
22 massager products ("Accused Massage Guns").

23           47. The Accused Massage Guns do not infringe the '082 Patent because  
24 they do not include a drive mechanism that controls a predetermined stroke length  
25 of the piston, as required by all of the '082 claims.

1           48. The Accused Massage Guns also do not infringe the ‘082 Patent  
2 because they do not include a quick-connect system at a distal end of the piston  
3 and a first massaging head, as required by all of the ‘082 claims.

4           49. HYPERICE submitted an Amazon infringement report under the ‘082  
5 and Patent even though the accused B&B massager products do not infringe any  
6 claim of that patent.

7           50. Prompted by HYPERICE’s infringement claims, Amazon removed the  
8 listings for the Accused Massage Guns before giving B&B a chance to present any  
9 arguments in its own defense.

10           51. Amazon’s delisting has the effect of enjoining B&B’s sales of the  
11 Accused Massage Guns.

12           52. Under the expedited Amazon de-listing process, B&B has not had a  
13 chance to present its defenses to a neutral arbiter in a judicial or quasi-judicial  
14 proceeding.

15           53. Moreover, Amazon’s IP enforcement procedures do not allow B&B in  
16 any event to assert the full range of patent infringement defenses that are available  
17 under federal law. For example, Amazon will not consider evidence that the ‘082  
18 Patent is invalid.

19           54. Further, Amazon typically will not enforce through its internal IP  
20 enforcement procedures patents that are the subject of district court litigation.

21           55. To sidestep that rule, Hyperice has exploited the Amazon delisting  
22 procedure against B&B (and many other massage gun sellers) using the ‘082  
23 Patent while pursuing district court patent litigation against B&B (and many other  
24 massage gun competitors) under the ‘482 patent, which is closely related to the  
25 ‘082 Patent (both derive from the same “parent” patent application) and which  
26 contains the same key claim limitations.





1           64. All claims of the ‘082 Patent are invalid under 35 U.S.C. § 102 and/or  
2 § 103 in view of at least one or more of the following references, alone or in  
3 combination:

4                   U.S. Patent No. 6,682,496  
5                   U.S. Patent No. 5,134,777  
6                   U.S. Patent Publication No. 2008/0243039  
7                   U.S. Patent Publication No. 2015/0374576  
8                   U.S. Patent No. 8,083,699  
9                   U.S. Patent No. 6,432,072  
10                  U.S. Patent No. 1,339,179

11           65. Plaintiffs seek a declaration that the ‘082 Patent claims are invalid.

12                                   **COUNT III**

13                                   **UNFAIR COMPETITION**

14                                   **CAL. BUS. & PROF. CODE §17200**

15           66. The allegations of each of the foregoing paragraphs are  
16 incorporated by reference as if fully set forth herein.

17           67. California statutory law prohibits acts of “unfair competition”  
18 including any “unlawful, unfair and fraudulent business act or practice.” Cal. Bus.  
19 & Prof. Code §17200.

20           68. Hyper Ice., Inc., acting in concert with its wholly-owned subsidiary,  
21 Hyperice IP Subco, LLC, has acted unlawfully and unfairly by manipulating  
22 Amazon’s IP enforcement procedures to procure, in effect, a wrongful injunction  
23 that prevents its competitor, B&B, from selling competing massage gun products  
24 on Amazon.com.

25           69. Hyper Ice., Inc., acting in concert with its wholly-owned subsidiary,  
26 Hyperice IP Subco, LLC, has exploited Amazon’s IP enforcement procedures by  
27 asserting the ‘082 to shut down B&B’s sales of the Accused Massage Gun products  
28

1 when it knows or reasonably should know that these products do not infringe any  
2 valid claim of the '082 Patent.

3 70. In effect, Hyper Ice, Inc., acting in concert with its wholly-owned  
4 subsidiary, Hyperice IP Subco, LLC, manipulated Amazon's IP enforcement  
5 procedures to wrongfully interfere with B&B's lawful sales on Amazon.com,  
6 which is the primary market through which B&B sells the Accused Massage Gun  
7 products.

8 71. Upon information and belief, HYPERICE is aware that Amazon  
9 typically will not allow patent owners to engage in Amazon's IP enforcement  
10 procedures to enforce a patent that is the subject of a federal district court patent  
11 litigation.

12 72. To circumvent this rule, HYPERICE obtained two patent from the  
13 U.S. Patent Office that are identical in all relevant respects, and launched a district  
14 court lawsuit with one (the '482 Patent) while asserting the second (the '082  
15 Patent) in an expedited Amazon enforcement action in which it knew that Amazon  
16 would delist the Accused Massage Gun products—effectively imposing a  
17 preliminary injunction against B&B's Amazon sales—without first offering B&B  
18 an opportunity to assert asserted any defenses and without allowing B&B to show  
19 that the '082 Patent is invalid.

20 73. HYPERICE has not sought a preliminary injunction in their district  
21 court action, which asserts claims under the nearly identical '482 Patent.

22 74. Had HYPERICE sought a preliminary injunction in their district court  
23 action, B&B would have been entitled to brief the infringement and validity issues  
24 and to present its defenses at an evidentiary hearing. HYPERICE also would have  
25 been required to post a bond to secure the damage claim to which B&B would be  
26  
27  
28

entitled if B&B later established that the preliminary injunction was wrongfully entered.

75. Knowing that they could not prove their case in a preliminary injunction hearing in district court, HYPERICE instead deprived B&B of its procedural protections and knowingly disrupted B&B's Amazon sales.

76. B&B has suffered substantial economic losses as well as reputational harms resulting from HYPERICE's actions.

77. HYPERICE's actions constitute unfair competition under Cal. Bus. & Prof. Code § 17200.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs B&B and Beoka ask this Court to:

- a. Find that none of B&B's Accused Massage Gun products infringe the '082 Patent;
- b. Find that the '082 Patent claims are invalid;
- c. Award Plaintiffs a permanent injunction enjoining HYPERICE from asserting the '082 Patent against B&B's Accused Massage Gun;
- d. Enter an injunction ordering HYPERICE to withdraw from Amazon.com its '082 Patent infringement claims against the Accused Massage Guns;
- e. Find that this case is an "exceptional case" under 35 U.S.C. § 285 and that B&B is entitled to its attorney fees;
- f. Award B&B actual damages caused by HYPERICE's tortious actions under the California unfair competition statute;
- g. Award B&B other and further relief as may be proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiffs B&B and Beoka request a trial by jury under Rule 38 of the Federal Rules of Civil Procedure of all issues that may be determined by a jury.

Dated: June 25, 2024

/s/Gary F. Wang

By: Gary F. Wang