

Gary F. Wang
Law Offices of Gary F. Wang
448 South Pasadena Avenue
Pasadena, California 91105-1838
garywang@gfwanglaw.com
(626) 585-8001

Martin J. Foley
Martin J. Foley, a PLC
601 S. Figueroa Street, Suite 2050
Los Angeles, California 90017
martin@mjfoleylaw.com
(213) 248-0577

Edward H. Rice (*pro hac vice*)
Marina N. Saito(*pro hac vice*)
Law Office of Edward H. Rice, LLC
555 Skokie Blvd., Suite 500
Northbrook, Illinois 60062
ed@edwardricelaw.com
marina@edwardricelaw.com
(312) 953-4566

Counsel for Plaintiffs,
Bob and Brad, LLC, Sichuan Qianli-Beoka Medical Technology Inc.,
Guangzhou Yunri Shangmao Co., Ltd., Huizhou Anchi Technology Co., Ltd.,
and Shenzhen Laige Technology Co., Ltd.

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

Bob and Brad, LLC, Sichuan
Qianli-Beoka Medical Technology Inc.,
Guangzhou Yunri Shangmao Co., Ltd.,
Huizhou Anchi Technology Co., Ltd.,
and Shenzhen Laige Technology Co.,
Ltd.,

Plaintiffs,

vs.

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

Defendants.

Case No.: 8:24-cv-01394

**FIRST AMENDED
DECLARATORY JUDGMENT
COMPLAINT**

1 Plaintiffs Bob and Brad, LLC (“B&B”), Sichuan Qianli-Beoka Medical
2 Technology Inc. (“Beoka”), Guangzhou Yunri Shangmao Co., Ltd. (“Yunri”),
3 Huizhou Anchi Technology Co., Ltd. (“Anchi”), and Shenzhen Laige Technology
4 Co., Ltd. (“Laige”), for their Complaint against Defendants Hyper Ice, Inc. and
5 Hyperice IP Subco, LLC (collectively, “HYPERICE”) allege:

6 **NATURE OF THE ACTION**

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

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

13 3. Plaintiffs bring this action in view of the actual controversy that
14 HYPERICE has created under the ‘082 Patent by asserting a patent infringement
15 claim with Amazon.com against certain B&B brand massage gun products.

16 4. The HYPERICE claim caused Amazon to remove the listings for
17 those B&B brand massage gun products on Amazon.com.

18 5. HYPERICE’s actions have caused the Plaintiffs to lose revenues from
19 lost sales on Amazon, the primary sales platform for B&B brand massage guns and
20 has harmed B&B’s reputation and goodwill.

21 **PARTIES**

22 6. B&B is a limited liability company organized under Minnesota law
23 with its principal place of business at 66 Shady Oak Ct., Winona, MN 55987.
24 B&B owns the rights to the “Bob and Brad” brand.

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

8. Beoka manufactures certain massage guns, which it sells to various retailers including Yunri, Anchi and Laige, which sell these massage guns under the B&B brand.

9. Yunri is a Chinese company with its principal place of business at Room 16, Building A, Hongdu Building, No. 81 Xianlie Middle Road, Yuexiu District, Guangzhou City, Guangdong Province 510000, China.

10. Yunri, under a business agreement with B&B, owns and operates an Amazon Storefront under the name “Bob and Brad Direct,” which sells B&B brand massage guns, among other things.

11. Anchi is a Chinese company with its principal place of business at Yaxuan Pavilion 1408, Huizhou City, Boluo County, Guangdong Province 516100, China.

12. Anchi, under a business agreement with B&B, owns and operates an Amazon Storefront under the name “Bob and Brad US,” which sells B&B brand massage guns, among other things.

13. Laige is a Chinese company with its principal place of business at Room 301, Building 2, Yunli Park, No. 3 Changfa Middle Road, Ban Street, Shenzhen, Longgang District, Guangdong Province 518129, China.

14. Laige, under a business agreement with B&B, owns and operates an Amazon Storefront under the name “Bob and Brad Fitness,” which sells B&B brand massage guns, among other things.

1 15. 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 16. Upon information and belief, Hyperice IP Subco, LLC is a limited
5 liability company organized under Delaware law.

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

8 **JURISDICTION AND VENUE**

9 18. 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 19. 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 20. 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 21. 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 22. 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 32. 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 33. 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 34. Accordingly, all claims in the ‘082 Patent require a drive mechanism
10 that controls a predetermined stroke length of the piston.

11 35. 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 36. 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 37. 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 38. 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 39. The application for the ‘482 Patent was filed on February 25, 2022.
2 The ‘482 Patent issued on January 2, 2024.

3 40. 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 41. 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 42. 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 massage gun
12 products.

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

15 44. Under these procedures, a patent owner may file a patent infringement
16 report with Amazon.

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

20 46. Upon information and belief, HYPERICE submitted the infringement
21 report with Amazon to try and initiate the dispute resolution procedure against the
22 Bob & Brad storefronts.

23 47. Upon information and belief, Amazon did not initiate the dispute
24 resolution procedure against the Bob & Brad storefronts because HYPERICE had
25 already asserted the ‘482 Patent against B&B in district court.
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1 48. 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 49. 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 massage gun
7 products on Amazon.com (not sold on under the Bob and Brad brand or on the Bob
8 and Brad storefronts).

9 50. Upon information and belief, HYPERICE obtained a decision in the
10 dispute resolution procedure that it was likely to prove infringement under the ‘082
11 Patent against the third-party massage gun products.

12 51. Upon information and belief, as a result of the decision from the
13 dispute resolution procedure, the third-party massage gun products were delisted
14 from Amazon.

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

21 53. Upon information and belief, on or about June 19, 2024, HYPERICE
22 submitted an Amazon infringement report under the ‘082 Patent against various
23 Bob and Brad branded massage gun products on the Bob and Brad storefronts
24 (“Accused Massage Guns”).

1 54. The Accused Massage Guns do not infringe the ‘082 Patent because
2 they do not include a drive mechanism that controls a predetermined stroke length
3 of the piston, as required by all of the ‘082 claims.

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

7 56. HYPERICE submitted an Amazon infringement report under the ‘082
8 Patent even though the Accused Massage Guns do not infringe any claim of that
9 patent.

10 57. Prompted by HYPERICE’s infringement claims, Amazon removed the
11 listings for the Accused Massage Guns before giving the Bob and Brad storefronts
12 a chance to present any arguments in their own defense.

13 58. Amazon’s delisting has the effect of enjoining sales of the Accused
14 Massage Guns.

15 59. Under the expedited Amazon de-listing process, the Bob & Brad
16 storefronts have not had a chance to present their defenses to a neutral arbiter in a
17 judicial or quasi-judicial proceeding.

18 60. Moreover, Amazon’s IP enforcement procedures do not allow accused
19 sellers in any event to assert the full range of patent infringement defenses that are
20 available under federal law. For example, Amazon will not consider evidence that
21 the ‘082 Patent is invalid.

22 61. Further, on information and belief, Amazon typically will not enforce
23 through its internal IP enforcement procedures patents that are the subject of
24 district court litigation.

25 62. To sidestep that rule, Hyperice has exploited the Amazon delisting
26 procedure against the Bob and Brad storefronts (and many other massage gun
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1 sellers) using the ‘082 Patent while pursuing district court patent litigation against
2 Bob and Brad (and many other massage gun competitors) under the ‘482 patent,
3 which is closely related to the ‘082 Patent (both derive from the same “parent”
4 patent application) and which contains the same key claim limitations.

5 63. Because the Accused Massage Guns are sold primarily through the
6 Bob and Brad storefronts on Amazon, HYPERICE’s manipulation of the Amazon
7 delisting procedure has wreaked havoc on the sales for these products, causing
8 extensive economic harm to all the Plaintiffs as well as causing reputational harm
9 to B&B.

10 64. HYPERICE’s baseless infringement claims are damaging the hard-
11 won reputation and good will that Bob and Brad built over more than a decade.

12 **COUNT I**

13 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT -**
14 **‘082 PATENT)**

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

17 66. An actual, justiciable, and continuing controversy exists between the
18 Plaintiffs and the Defendants concerning whether the Accused Massage Guns
19 infringe the ‘082 Patent.

20 67. The Accused Massage Guns do not infringe any claim of the ‘082
21 Patent.

22 68. Plaintiffs seek a declaration that the Accused Massage Guns do not
23 infringe any ‘082 Patent claims.

COUNT II

(INVALIDITY - '082 PATENT)

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

70. An actual, justiciable, and continuing controversy exists between the Plaintiffs and the Defendants concerning whether the claims of the '082 Patent are valid.

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

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

72. Plaintiffs seek a declaration that the '082 Patent claims are invalid.

COUNT III

UNFAIR COMPETITION

CAL. BUS. & PROF. CODE §17200

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

74. California statutory law prohibits acts of "unfair competition" including any "unlawful, unfair and fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

75. Hyper Ice., Inc., acting in concert with its wholly-owned subsidiary, Hyperice IP Subco, LLC, has acted unlawfully and unfairly by manipulating

1 Amazon's IP enforcement procedures to procure, in effect, a wrongful injunction
2 that bars sales of competing massage gun products on Amazon.com.

3 76. Hyper Ice, Inc., acting in concert with its wholly-owned subsidiary,
4 Hyperice IP Subco, LLC, has exploited Amazon's IP enforcement procedures by
5 asserting the '082 to shut down sales of the Accused Massage Gun products on the
6 Bob and Brad storefronts, when it knows or reasonably should know that these
7 products do not infringe any valid claim of the '082 Patent.

8 77. In effect, Hyper Ice, Inc., acting in concert with its wholly-owned
9 subsidiary, Hyperice IP Subco, LLC, manipulated Amazon's IP enforcement
10 procedures to wrongfully interfere with lawful sales of the Accused Massage Guns
11 on Amazon.com, which is the primary market through which Plaintiffs sell the
12 Accused Massage Gun products.

13 78. Upon information and belief, HYPERICE is aware that Amazon
14 typically will not allow patent owners to engage in Amazon's IP enforcement
15 procedures to enforce a patent that is the subject of a federal district court patent
16 litigation.

17 79. To circumvent this rule, HYPERICE obtained two patent from the
18 U.S. Patent Office that are identical in all relevant respects, and launched a district
19 court lawsuit with one (the '482 Patent) while asserting the second (the '082
20 Patent) in an expedited Amazon enforcement action in which it knew that Amazon
21 would delist the Accused Massage Gun products—effectively imposing a
22 preliminary injunction against the Bob and Brad storefronts—without first offering
23 B&B (or Yunrui, Anchi, and Laige) an opportunity to assert any defenses and
24 without allowing B&B to show that the '082 Patent is invalid.

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

1 81. Had HYPERICE sought a preliminary injunction in their district court
2 action, B&B would have been entitled to brief the infringement and validity issues
3 and to present its defenses at an evidentiary hearing. HYPERICE also would have
4 been required to post a bond to secure the damage claim to which B&B would be
5 entitled if B&B later established that the preliminary injunction was wrongfully
6 entered.

7 82. Knowing that they could not prove their case in a preliminary
8 injunction hearing in district court, HYPERICE instead deprived B&B of its
9 procedural protections and knowingly disrupted sales of the Accused Massage
10 Guns on the Bob and Brad storefronts.

11 83. Plaintiffs all have suffered substantial economic losses from
12 HYPERICE's actions and B&B has suffered reputational harms as well.

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

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiffs ask this Court to:

- 17 a. Find that none of the Accused Massage Gun products infringe the
18 '082 Patent;
- 19 b. Find that the '082 Patent claims are invalid;
- 20 c. Award Plaintiffs a permanent injunction enjoining HYPERICE from
21 asserting the '082 Patent against the Accused Massage Guns;
- 22 d. Find that this case is an "exceptional case" under 35 U.S.C. § 285 and
23 that Plaintiffs are entitled to their attorney fees;
- 24 e. Award Plaintiffs actual damages caused by HYPERICE's tortious
25 actions under the California unfair competition statute;
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1 f. Award Plaintiffs other and further relief as may be proper under the
2 circumstances.

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4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs request a trial by jury under Rule 38 of the Federal Rules of Civil
6 Procedure of all issues that may be determined by a jury.
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8 Dated: September 29, 2024

/s/ Marina N. Saito

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10 By: Marina N. Saito
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