

FILED

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2010 MAY -7 PM 1:15
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

8
9 Attorneys for Plaintiff,
10 SUN-MATE CORPORATION

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 SUN-MATE CORPORATION, a
15 California corporation

16 Plaintiff,

17 vs.

18 OFFICE DEPOT, INC., a Delaware
19 corporation; TIC TOC, THE
20 IMAGINATION COMPANY, a
21 Texas corporation, DOES 1 - X,
22 Inclusive,

23 Defendants.

CASE NO.

CV 10-3433 R (FFMx)

COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL DEMANDED

24
25 Comes now the plaintiff, SUN-MATE CORPORATION, and for causes of
26 action against defendants, and each of them,, complains and alleges as follows:
27
28

MAP-SUN-2766

JURISDICTION

1
2 1. This action arises under the patent laws of the United States, Title 35,
3 United States Code. This Court has jurisdiction over this claim under Title 35,
4 United States Code and 28 U.S.C. §1338(a).

PARTIES

5
6 2. Plaintiff, SUN-MATE CORPORATION, is a corporation organized
7 and doing business under the laws of the State of California having its principal
8 place of business in Chatsworth, California (hereinafter referred to as "Sun-
9 Mate").

10 3. Sun-Mate is informed and alleges that OFFICE DEPOT, INC., is a
11 Delaware corporation, having its principal place of business in Boca Raton,
12 Florida and does business throughout the United States in general and in the
13 Central District of California in particular (hereinafter referred to as "Office
14 Depot").

15 4. Sun-Mate is informed and believes and, based upon such information
16 and belief, alleges that defendant, TIC TOC, THE IMAGINATION COMPANY,
17 is a Texas corporation having its principal place of business in Dallas, Texas and
18 does business throughout the United States in general and in the Central District of
19 California in particular (hereinafter referred to as "Tic Toc").

20 5. The true names or capacities, whether individual, corporate, associate,
21 representative, or otherwise, of the defendants named herein as DOES I - X,
22 inclusive, are unknown to plaintiff who therefore, pursuant to Local Rule 19-1 of
23 this Court, sues said defendants by such fictitious names and plaintiff will amend
24 this Complaint to show their true names and capacities when the same have been
25 ascertained.

CLAIM FOR INFRINGEMENT OF
U.S. DESIGN PATENT NO. D-465,133

6. Sun-Mate repeats and incorporates Paragraphs 1 - 5, inclusive, of this Complaint as though set forth in full herein again.

7. On November 5, 2002, United States Letters Design Patent No. D-465,133 were duly and legally issued to Sun-Mate for a design in the portable cooler, and since that date, Sun-Mate has been and still is the owner of those Design Letters Patent, a copy thereof being attached hereto as Exhibit 1 (hereinafter referred to as the "'133 patent").

8. Defendant, Tic Toc, has been and is infringing the '133 patent by purchasing in the United States portable coolers embodying the design of the '133 patent from Go East Promotion and reselling same to Office Depot in the United States and will continue to do so unless enjoined by this Court.

9. Defendant, Office Depot, has been and is infringing the '133 patent by purchasing portable coolers embodying the design of the '133 patent from Tic Toc and reselling same to the public in the United States, and will continue to do so unless enjoined by this Court, a representative sample of an Office Depot advertisement offering the infringing product for sale being attached hereto as Exhibit 2.

10. Sun-Mate has placed the required statutory notice on all portable coolers manufactured and sold by it under the '133 patent and has given written notice to each of the defendants of its infringement.

11. The infringement of the '133 patent by Office Depot and Tic Toc, and each of them, has caused and will cause Sun-Mate irreparable harm for which there is no adequate remedy at law.

12. That Sun-Mate is informed and believes and, based upon such information and belief, alleges that defendants have earned profits for their infringing activities; that Sun-Mate has suffered damages as a result of the defen-

1 dants' acts, the amount of the profits earned by the defendants and the extent of
2 the damages to Sun-Mate by reason of the infringement of the '133 patent by
3 defendants is presently unknown to Sun-Mate; that plaintiff shall request leave to
4 amend its Complaint when the precise amount of damages is known.

5 **WHEREFORE**, Sun-Mate prays for judgment against defendant as
6 follows:

7 A. That defendants, Office Depot and Tic Toc, and each of them, their
8 agents, servants, employees, assigns, attorneys, representatives, successors in
9 business, confederates and those persons in active concert or participation with
10 them be enjoined during the pendency of this action and permanently from
11 making, using or selling any goods which infringe United States Letters Patent No.
12 D-465,133;

13 B. Award damages requiring defendants, Office Depot and Tic Toc, and
14 each of them, to account to and pay to Sun-Mate all damages caused by reason of
15 defendants' infringement of United States Letters Patent No. D-465,133, including
16 either defendant's total profits pursuant to 35 U.S.C. §289, or other compensation
17 pursuant to 35 U.S.C. §284, including enhanced damages under 35 U.S.C. §284;

18 C. Enter judgment pursuant to 35 U.S.C. §285 making this case excep-
19 tional and awarding plaintiff its attorneys' fees, costs and expenses.

20 D. Award such other and further relief as the Court may deem just and
21 proper.

22 **PLAINTIFF DEMAND A JURY TRIAL OF THIS MATTER.**

23 Respectfully submitted,

24 ISAACMAN, KAUFMAN & PAINTER

25
26 By:


Michael A. Painter
Attorneys for Plaintiff

27
28 Dated: May 7, 2010

EXHIBIT 1

(12) **United States Design Patent**
Ben-Moshe

(10) **Patent No.:** **US D465,133 S**
(45) **Date of Patent:** **** Nov. 5, 2002**

(54) **PORTABLE COOLER**

(75) **Inventor:** **Rami Ben-Moshe**, Canoga Park, CA
(US)

(73) **Assignee:** **Sun-Mate Corporation**, Canoga Park,
CA (US)

(**) **Term:** **14 Years**

(21) **Appl. No.:** **29/143,140**

(22) **Filed:** **Jun. 13, 2001**

(51) **LOC (7) Cl.** **07-01**

(52) **U.S. Cl.** **D7/605**

(58) **Field of Search** D7/605-607; D15/81;
62/457.1, 457.7, 457.9, 371, 372, 3.62,
426, 455; 220/915.1, 915.2, 592.2, 592.24,
592.25

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,069,869 A * 12/1962 Mueller 62/371

4,346,562 A * 8/1982 Beitner 62/3.62
4,379,391 A * 4/1983 Rhee 62/408
5,319,937 A * 6/1994 Costello 62/3.62

* cited by examiner

Primary Examiner—Terry A. Wallace

(74) *Attorney, Agent, or Firm*—Michael A. Painter

(57) **CLAIM**

The ornamental design for a portable cooler, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a portable cooler illustrating my new design;

FIG. 2 is a front elevation view thereof;

FIG. 3 is a right side elevation view thereof;

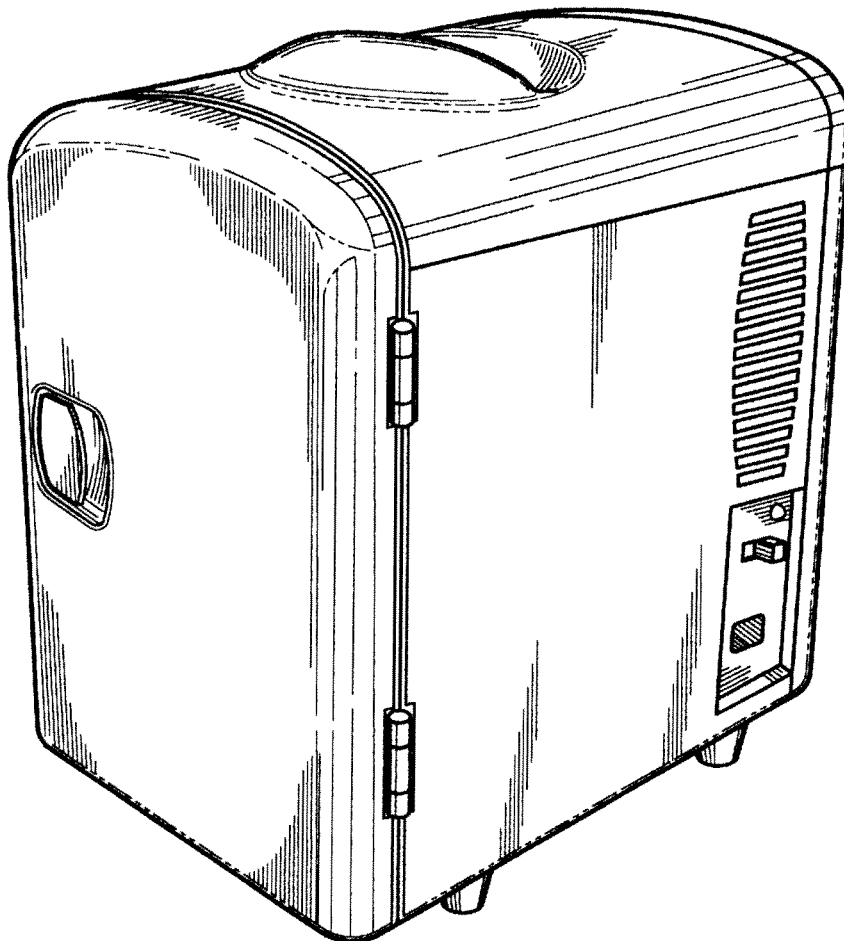
FIG. 4 is a left side elevation view thereof;

FIG. 5 is a rear elevation view thereof;

FIG. 6 is a top plan view thereof; and,

FIG. 7 is a bottom plan view thereof.

1 Claim, 3 Drawing Sheets



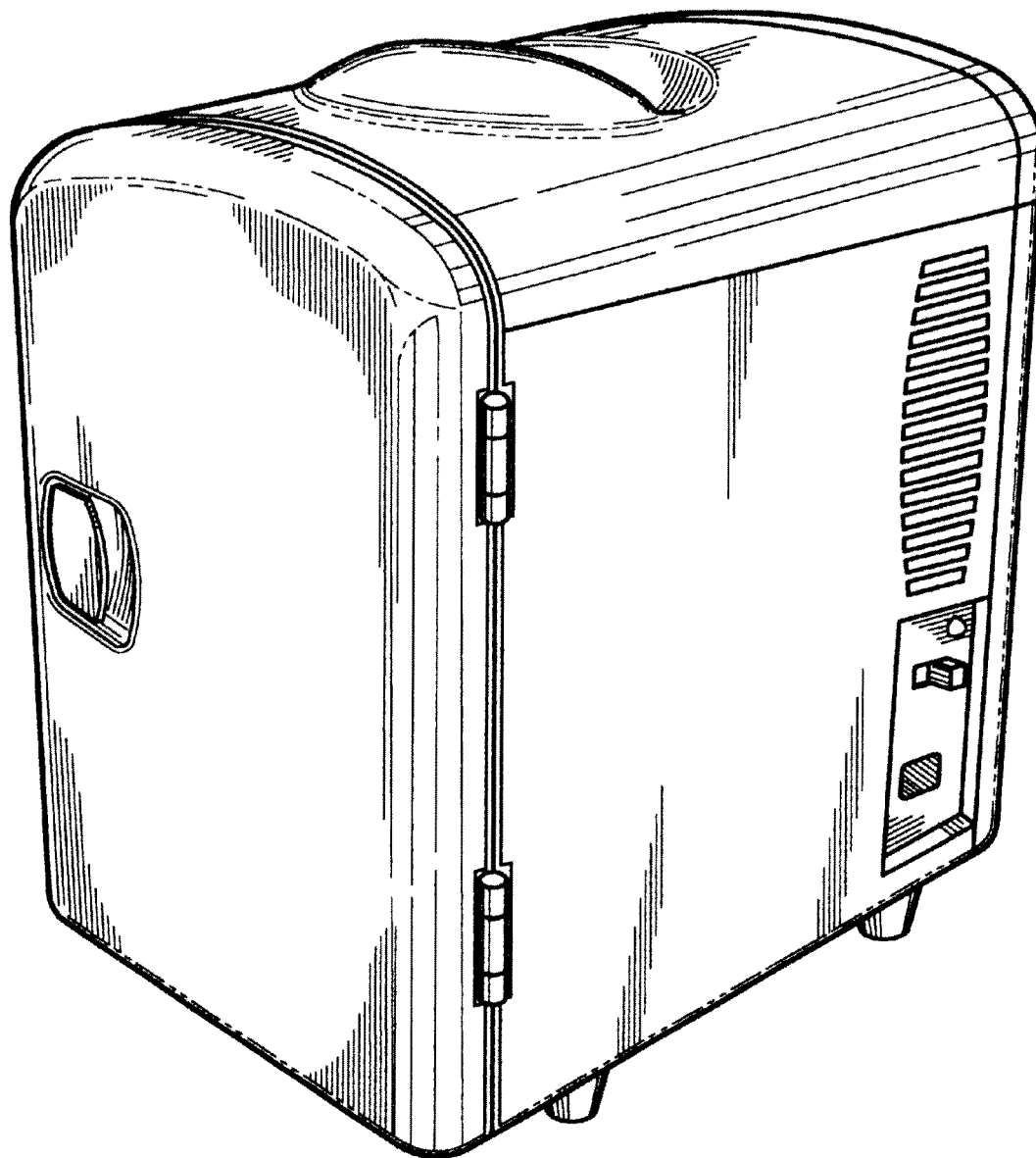


Fig. 1

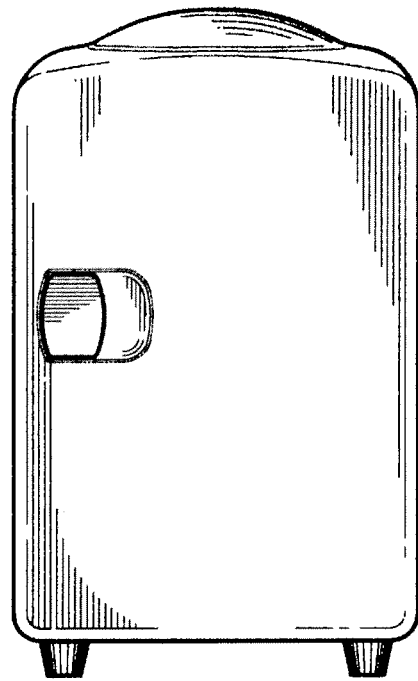


Fig. 2

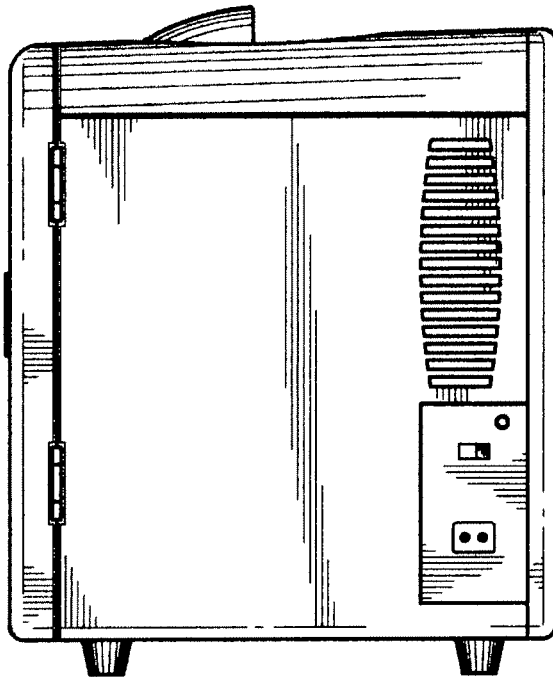


Fig. 3

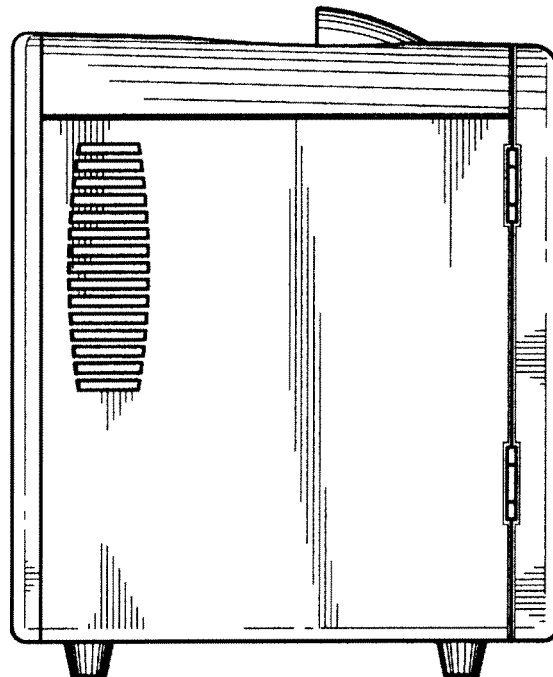


Fig. 4

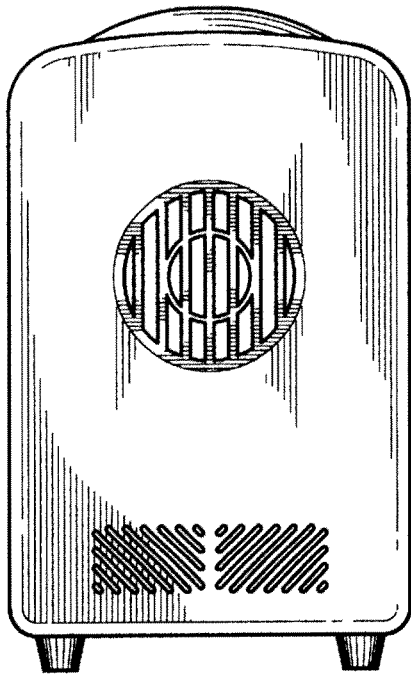


Fig. 5

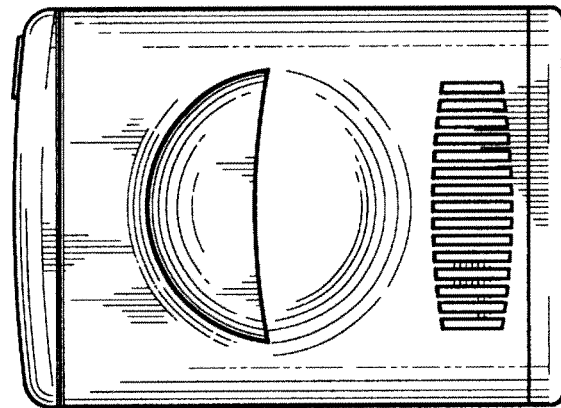


Fig. 6

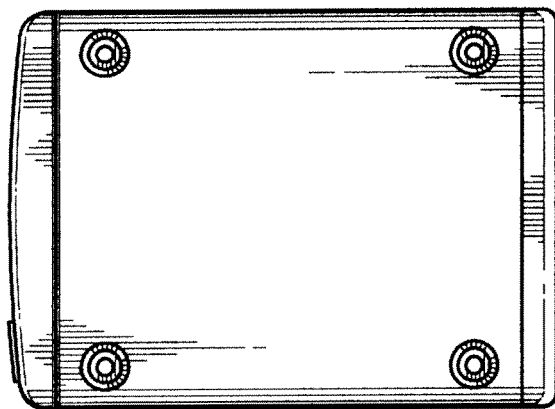


Fig. 7

EXHIBIT 2

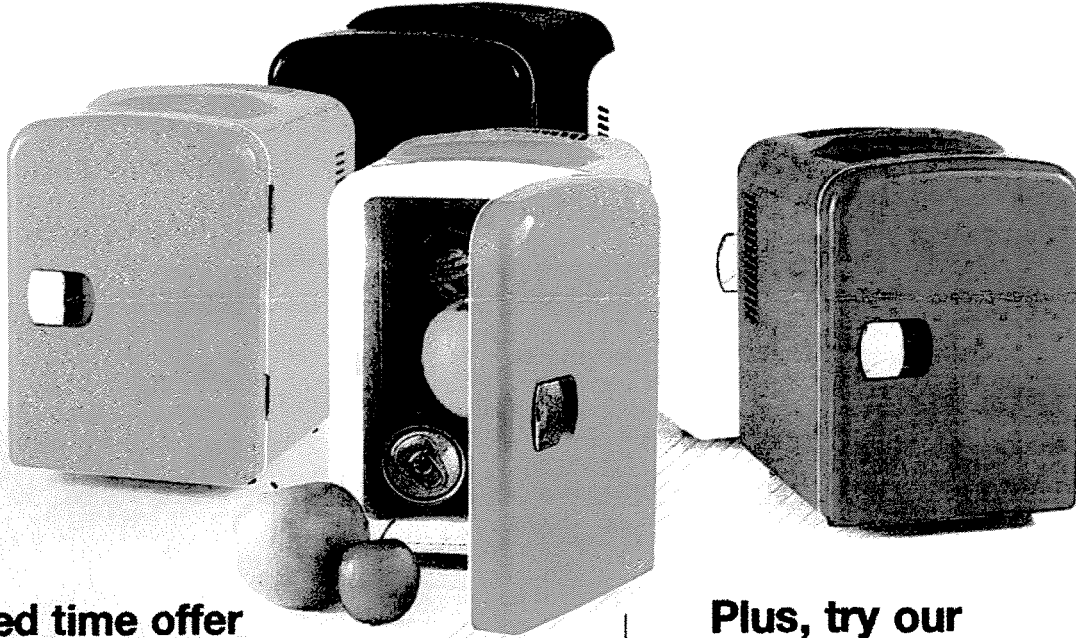
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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

BY FAX

I. (a) PLAINTIFFS (Check box if you are representing yourself) <input type="checkbox"/> SUN-MATE CORPORATION, a California corporation		DEFENDANTS OFFICE DEPOT, INC., a Delaware corporation; TIC TOC, THE IMAGINATION COMPANY, a Texas corporation; DOES 1 - X, inclusive																						
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Michael A. Painter, #43600, Isaacman, Kaufman & Painter 10250 Constellation Boulevard, Suite 2900 Los Angeles, California 90067 (310) 881-6800		Attorneys (If Known)																						
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table border="1"> <thead> <tr> <th></th> <th>Plt</th> <th>Def</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> </tr> <tr> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>			Plt	Def	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																								
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$																								
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Title 35, United States Code 28 U.S.C. §1338(a)																								
VII. NATURE OF SUIT (Place an X in one box only.)																								
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CDN. MAT. <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL INJURY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Americans with Disabilities - Employment <input type="checkbox"/> 446 Americans with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONERS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition PROSECUTION <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609																			

FOR OFFICE USE ONLY: Case Number: CV10-3433

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

CV-71 (05/08)

CIVIL COVER SHEET

Page 1 of 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Florida Texas

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date May 7, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address: Michael A. Painter, #43600
Isaacman, Kaufman & Painter
10250 Constellation Boulevard, Suite 2900
Los Angeles, California 90067
(310) 881-6800

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUN-MATE CORPORATION, a California
corporation

PLAINTIFF(S)

v.

OFFICE DEPOT, INC., a Delaware corporation; TIC
TOC, THE IMAGINATION COMPANY, a Texas
corporation; DOES I - X, Inclusive

DEFENDANT(S).

CASE NUMBER

CV10-3433 R (FFMx)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael A. Painter, Esq., whose address is 10250 Constellation Blvd., Suite 2900, Los Angeles, CA 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY - 7 2010

By: Natalia Gonzales
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Manuel Real and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV10 - 3433 R (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

Unless otherwise ordered, the United States District Judge assigned to this case will hear and determine all discovery related motions.

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.