

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:11-cv-01494-PAB-CBS

OTTER PRODUCTS, LLC, a Colorado  
Limited Liability Company,

Plaintiff,

v.

GLOBAL CELLULAR, INC., a Georgia  
Corporation, and  
CELLAIRIS FRANCHISE, INC., a  
Georgia corporation,

Defendants.

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**SECOND AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiff Otterbox Products, LLC (“Otterbox”), by and through its undersigned attorneys, amend its First Amended Complaint (CM-ECF Doc. No. 5) and respectfully file this Second Amended Complaint against Global Cellular, Inc. and Cellairis Franchise, Inc. (collectively “Cellairis”):

**PARTIES**

1. Plaintiff Otterbox is a Colorado limited liability company with its principal place of business at 209 South Meldrum Street, Fort Collins, Colorado

80521.

2. Upon information and belief, Defendant Global Cellular, Inc. (“Global”) is a corporation organized and existing under the laws of the State of Georgia, having a principal place of business at 6485 Shiloh Road, Building B-100, Alpharetta, Georgia 30005.

3. Upon information and belief, Defendant Cellairis Franchise, Inc. is a corporation organized and existing under the laws of the State of Georgia, having a principal place of business at 6485 Shiloh Road, Building B-100, Alpharetta, Georgia 30005.

4. Upon information and belief, at all relevant times Defendants Cellairis Franchise Inc. and Global (collectively, “Cellairis”) were the agent, affiliate, officer, director, manager, principal, alter-ego, co-conspirator, and/or employee of the other, and was at all times acting within the scope of such agency, affiliation, alter-ego relationship, conspiracy, and/or employment. Otterbox is informed and believes that both Cellairis Franchise, Inc. and Global actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged against both Cellairis Franchise, Inc. and Global in this Second Amended Complaint, with full knowledge of all facts and circumstances, including but not limited to, full knowledge of each and every violation of Otterbox’s rights and the damages to Otterbox.

### **JURISDICTION AND VENUE**

5. This is a civil action for patent infringement under the patent laws of

the United States, 35 U.S.C. § 101, *et seq.*, and trade dress infringement under the Trademark (“Lanham”) Act, 15 U.S.C. § 1051 *et seq.*

6. This court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400, because Defendants are engaged in the regular, continuous, and systematic transaction of business in this judicial district, including through the distribution, sale and or offer for sale of infringing cases, including the Air Rapture cases for the Apple iPhone 4, Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997 (collectively, “the Accused Cases”), through its website, and has committed acts of patent infringement, trademark and trade dress infringement, and unfair competition in this judicial district.

### **OTTERBOX’S INTELLECTUAL PROPERTY**

8. On May 17, 2011, United States Design Patent No. D638,005 (“the ’005 Patent”), entitled “Case,” was duly and legally issued to Curt Richardson, Jamie Johnson, Alan Morine, Stephen Willes, and Cameron Magness. A true and correct copy of the ’005 Patent is attached as **Exhibit A**.

9. The ’005 Patent is enforceable and, pursuant to 35 U.S.C. § 285, enjoys a statutory presumption of validity.

10. By assignment, Otterbox owns all rights, title, and interest in and to the ’005 Patent, including without limitation, the right to enforce this patent and

collect damages for past infringement.

11. On June 15, 2010, United States Design Patent No. D617,785 (“the ’785 Patent”), entitled “Case,” was duly and legally issued to Curt Richardson, John Loudenslager, Jamie L. Johnson, and Stephen Willes. A true and correct copy of the ’785 Patent is attached as **Exhibit B**.

12. The ’785 Patent is enforceable and, pursuant to 35 U.S.C. § 285, enjoys a statutory presumption of validity.

13. By assignment, Otterbox owns all rights, title, and interest in and to the ’785 Patent, including without limitation, the right to enforce this patent and collect damages for past infringement.

14. On August 10, 2010, United States Design Patent No. D621,394 (“the ’394 Patent”), entitled “Case,” was duly and legally issued to Curt Richardson, John Loudenslager, Jamie L. Johnson, and Stephen Willes. A true and correct copy of the ’394 Patent is attached as **Exhibit C**.

15. The ’394 Patent is enforceable and, pursuant to 35 U.S.C. § 285, enjoys a statutory presumption of validity.

16. By assignment, Otterbox owns all rights, title, and interest in and to the ’394 Patent, including without limitation, the right to enforce this patent and collect damages for past infringement.

**FIRST CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. D638,005)**

17. Otterbox incorporates by reference each and every allegation in

paragraphs 1 through 16 as if set forth in their entirety.

18. Defendants are making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture case for the Apple iPhone 4.

19. Defendants' activity in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture case constitutes direct infringement of the '005 Patent, in violation of 35 U.S.C. § 271(a).

20. On information and belief, Defendants' actions in infringing the '005 Patent have been, and are, willful, deliberate, and/or in conscious disregard of Otterbox's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Otterbox to treble damages and the award of its attorneys' fees.

21. Defendants' infringement of the '005 Patent has caused and will continue to cause damage to Otterbox in an amount to be determined at trial.

22. Defendants' infringement of the '005 Patent has caused and will continue to cause irreparable injury to Otterbox as to which there exists no adequate remedy at law. Defendants' infringement will continue unless enjoined by this court.

**SECOND CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. D617,785)**

23. Otterbox incorporates by reference each and every allegation in paragraphs 1 through 22 as if set forth in their entirety.

24. Defendants are making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture case for the Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997.

25. Defendants' activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture cases for the Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997 constitute direct infringement of the '785 Patent, in violation of 35 U.S.C. § 271(a).

26. On information and belief, Defendants' actions in infringing the '785 Patent have been, and are, willful, deliberate, and/or in conscious disregard of Otterbox's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Otterbox to treble damages and the award of its attorneys' fees.

27. Defendants' infringement of the '785 Patent has caused and will continue to cause damage to Otterbox in an amount to be determined at trial.

28. Defendants' infringement of the '785 Patent has caused and will continue to cause irreparable injury to Otterbox as to which there exists no adequate remedy at law. Defendants' infringement will continue unless enjoined by this court.

**THIRD CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. D621,394)**

29. Otterbox incorporates by reference each and every allegation in paragraphs 1 through 28 as if set forth in their entirety.

30. Defendants are making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture case for the Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997.

31. Defendants' activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Air Rapture cases for the Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997 constitute direct infringement of the '394 Patent, in violation of 35 U.S.C. § 271(a).

32. On information and belief, Defendants' actions in infringing the '394 Patent have been, and are, willful, deliberate, and/or in conscious disregard of Otterbox's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Otterbox to treble damages and the award of its attorneys' fees.

33. Defendants' infringement of the '394 Patent has caused and will continue to cause damage to Otterbox in an amount to be determined at trial.

34. Defendants' infringement of the '394 Patent has caused and will continue to cause irreparable injury to Otterbox as to which there exists no

adequate remedy at law. Defendants' infringement will continue unless enjoined by this court.

**FOURTH CLAIM FOR RELIEF**  
**(Trade Dress Infringement, 15 U.S.C. § 1125)**

35. Otterbox incorporates by reference each and every allegation in paragraphs 1 through 34 as if set forth in their entirety.

36. When designing, producing, and manufacturing the Commuter Series cases for the Apple iPhone, BlackBerry 8520/9300, and other phones, Otterbox has adopted a particular dress, design, and combination of features to produce a particular visual appearance for the purpose of presenting such goods to the public.

37. Defendants have attempted to imitate Otterbox's particular dress, design, and combination of features in such a way as to mislead the public as to the origin of the Air Rapture Series cases for the Apple iPhone 4, Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997.

38. Defendants' actions are intended and/or operate to confuse the public into believing that its products are produced, endorsed, licensed, or in some manner affiliated with or authorized by Otterbox, in violation of 15 U.S.C. § 1125.

39. Otterbox's sales of its own products are prejudiced by Defendants' imitation and copying of the Commuter Series product line, to Otterbox's irreparable damage.



**FIFTH CLAIM FOR RELIEF**  
**(Willful Trade Dress Infringement)**

40. Otterbox incorporates by reference each and every allegation in paragraphs 1 through 39 as if set forth in their entirety.

41. The mimicry of the aesthetic features of the Otterbox Commuter Series cases into the Air Rapture Series cases for the Apple iPhone 4, Blackberry 8520, BlackBerry 9900, HTC myTouch 4G, HTC Thunderbolt, HTC Incredible S, HTC Sensation 4G, Samsung T959, and Samsung i997 – excepting the omission of the “OtterboxBox™” logo from the back of the cases – evidences a conscious intent by Defendants to imitate and copy Otterbox and thereby confuse the public into believing its products are produced, endorsed, licensed, or in some other manner affiliated with or authorized by Otterbox.

42. Defendants’ willful infringement of Otterbox’s trade dress rights makes this an exceptional case under 15 U.S.C. § 1117, and entitled Otterbox to the award of attorneys’ fees and treble damages.

**DEMAND FOR JURY TRIAL**

43. Otterbox hereby requests a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Otterbox prays as follows on all claims:

A. For a preliminary and permanent injunctions enjoining and restraining Defendants, and all related entities or persons acting in concert with

them, from manufacturing, selling, or offering for sale the Accused Cases;

- B. For an award of Otterbox's damages as appropriate under the patent laws of the United States, comprising:
  - (i) Lost profits, in an amount to be ascertained at trial;
  - (ii) A reasonable royalty, in an amount to be ascertained at trial;
  - (iii) Treble damages;
- C. For an award of Otterbox's damages as appropriate under 15 U.S.C. § 1117 and the common law trademark laws of the United States, including:
  - (i) Defendants' profits, in an amount to be ascertained at trial;  
and
  - (ii) Damages sustained by Otterbox as a result of Defendants' trademark and trade dress infringement, in an amount to be proven at trial; and
  - (iii) Treble damages for Defendants' willful infringement of Otterbox's trademark and trade dress rights;
- D. For its reasonable attorneys' fees and costs; and
- E. For such other and further relief as the Court deems just and proper.

DATED: September 23, 2011

TURNER BOYD LLP

/s/ Karen I. Boyd

***Karen I. Boyd***

Rachael D. Lamkin

James W. Beard

boyd@turnerboyd.com

lamkin@turnerboyd.com

beard@turnerboyd.com

2570 W. El Camino Real, Suite 380

Mountain View, CA 94040

Telephone: (650) 521-5939

Facsimile: (650) 521-5931

Plaintiff's address:

Otterbox Products, LLC

209 South Meldrum Street,

Fort Collins, Colorado 80521

*Attorneys for Otterbox Products, LLC,*

*d/b/a Otterbox*

**EXHIBIT A**  
**U.S. Patent No. D638,005**

**EXHIBIT B**  
U.S. Patent No. D617,785

**EXHIBIT C**  
**U.S. Patent No. D621,394**