

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 **Esther A. L. Verbovszky,**)
325 N. Falmouth Drive) Case No.
5 Rocky River, Ohio 44116,)
6 and,) Judge
7) Magistrate
8 **Hug Me Joey, LLC,**)
325 N. Falmouth Drive)
9 Rocky River, Ohio 44116,) **COMPLAINT FOR PATENT**
Plaintiffs,) **INFRINGEMENT**
10 v.) *(Jury Demand Endorsed Hereon)*
11 **Britax Child Safety, Inc.,**)
13501 South Ridge Drive)
12 Charlotte, North Carolina 28273,)
14 Defendant.)

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16 NOW COME the Plaintiffs, *Esther A. L. Verbovszky* (hereinafter “EV”) and *Hug Me Joey,*
17 *LLC* (hereinafter “HMJ”) (collectively “Plaintiffs”), and for their Complaint against the Defendant
18 *Britax Child Safety, Inc.* (hereinafter “Britax” or “Defendant”) allege as follows:
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20 **THE PARTIES**

- 21 1. EV is an individual and is a resident of Rocky River, Ohio, which is in Cuyahoga County.
22 2. HMJ is a limited liability company organized under the laws of Ohio, and has its principal
23 place of business in Rocky River, Ohio, which is in Cuyahoga County.
24 3. Britax is a corporation organized under the laws of South Carolina, and has its principal place
25 of business in Charlotte, North Carolina, which is in Mecklenburg County.
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1 **JURISDICTION AND VENUE**

2 4. This is an action for patent infringement. The patent claims arise under the patent laws of the
3 United States, specifically 35 U.S.C. § 281. This Court has subject matter jurisdiction in this
4 matter pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because this action arises
5 under the patent laws of the United States.

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7 5. In addition or in the alternative to this Court’s federal question jurisdiction, this Court also
8 has subject matter jurisdiction pursuant to diversity of citizenship principles as the parties are
9 from different states and the amount in controversy exceeds \$75,000.

10 6. This Court has personal jurisdiction over the Defendant by virtue of their sale of products,
11 transaction of business, and solicitation of business within the State of Ohio, within this
12 judicial district and elsewhere.

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14 7. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
15 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims
16 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this
17 district, and infringement occurred within this judicial district.

18 **FACTUAL ALLEGATIONS**

19 8. Since 1998, the Plaintiffs have designed, produced, and marketed products to improve
20 breathing problems and decrease digestive troubles occurring in poorly-positioned infants.

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22 9. EV has dedicated extensive time to the understanding of breathing problems and digestive
23 troubles that are related to the positioning of infants.

24 10. Along with proper positioning, the Plaintiffs’ products help to make infants more
25 comfortable when being positioned, especially during transport.
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- 11. EV strives to develop truly unique and innovative products, and, in fact, EV is listed as an inventor in 10 Letters Patent.
- 12. EV is the founder and Chief Executive Officer of the HMJ Limited Liability Company.
- 13. On October 22, 2002, United States Letters Patent No. 6,467,840, entitled “Child’s Car Seat Insert” (hereinafter referred to as the ‘840 patent) duly and legally issued to EV, as joint inventor, for the aforementioned child’s car seat insert. (A true and accurate copy of the ‘840 patent as issued is attached hereto as “Exhibit 1.”)
- 14. At all relevant times, all rights to the ‘840 patent, including but not limited to, the right to recover for infringement thereunder, has been solely assigned to EV.
- 15. The Plaintiffs have manufactured and marketed a product in commerce that reads on the ‘840 patent, namely, the Plaintiffs’ Hug Me Joey child’s car seat insert (hereinafter “HMJ insert”).
- 16. The Plaintiffs’ insert has enjoyed sales success, but less success than should be but for the Defendant’s actions.
- 17. Upon information and belief, the Defendant, at all times relevant, had actual knowledge of the Plaintiffs’ HMJ insert and of the existence of the ‘840 patent.
- 18. The Defendant has been and is currently making, using, offering for sale, selling, and/or importing car inserts that infringe the ‘840 patent. The Defendant has infringed the Plaintiffs’ patent by, including but not limited to, making, using, offering for sale, selling, and importing their Britax Infant Positioning Insert (hereinafter “BIPI”). (See the Defendant’s product packaging of the infringing product attached hereto as “Exhibit 2.”)
- 19. The Defendant’s product infringes at least claims 1, 2, 3, 5, 6, 7, and 8 of the ‘840 patent. (See an infringement chart relative to the Defendant’s product compared to the ‘840 patent

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attached hereto as “Exhibit 3.”) (The attached claims chart is for illustrative purposes only and the Plaintiffs reserve the right to alter, amend, or modify their claims positions pursuant to the local patent rules.)

20. The ‘840 patent includes claims directed to a child’s car set insert for preventing slouching of a child adapted to be placed on the insert in a car seat in a travel position. The Defendant’s product is directed towards small infants to achieve a snug fit of the harness around the infants when placed in a car seat, which reads on the claims of the ‘840 patent.

21. The specimen sample of the Defendant’s infringing product as depicted in Exhibits 2 and 3 were sold and purchased in Ohio within this judicial district. (See a copy of the purchase order attached hereto as “Exhibit 4,” and delivery confirmation attached hereto as “Exhibit 5.”)

22. The aforementioned activities of the Defendant have injured and threaten future injury to the Plaintiffs. More specifically, the Defendant’s activities have diminished the Plaintiffs’ goodwill and caused the Plaintiffs to lose sales that they otherwise would have made but for the sales of the Defendant.

23. The Defendant is not authorized in any way to sell their infringing products or to use the ‘840 patent.

24. Plaintiffs are entitled to an award of damages against the Defendant for patent infringement.

CLAIM NO. 1
(Patent Infringement 35 U.S.C. § 271)

25. The Plaintiffs hereby incorporate by reference each statement, whether written above or below, as if each is fully re-written herein.

1 26. The Defendant has been and is currently making, using, offering for sale, selling, and/or
2 importing child safety products that infringe the '840 patent. (Ex. 3.)

3 27. The Defendant has sold its infringing product in this judicial district as demonstrated by the
4 purchase order and delivery confirmation within "Exhibit 4," and "Exhibit 5." (Ex. 4 and 5.)

5 28. The Defendant has infringed the '840 patent because the Defendant's accused article,
6 namely, the "Britax Infant Positioning Insert," reads on the claims of the '840 patent or any
7 equivalent thereof. (Ex. 3.)

8 29. The Defendant's conduct is an infringement of the '840 patent, and in violation of 35 U.S.C.
9 § 271 within this judicial district and elsewhere.

10 30. The Defendant will continue to make, use, offer for sale, sell, and/or import their infringing
11 products unless enjoined by this Court.

12 31. The Defendant further has been, and is, actively inducing infringement of the '840 patent.

13 32. The Defendant's infringement is, and at all times has been, deliberate, willful, with full
14 knowledge of the Plaintiffs' patent rights, and wanton, and as a result, the Plaintiffs are
15 entitled to treble damages pursuant to 35 U.S.C. § 284.

16 33. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
17 appropriate attorney's fees is justified.

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20 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

21 WHEREFORE, Plaintiffs pray that this Court enter an Order in favor of the Plaintiffs and
22 against the Defendant as follows:

23 A) A preliminary injunction enjoining the Defendant from making, using, or selling any product
24 that infringes upon the '840 patent;
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- 1 B) A permanent injunction enjoining the Defendant from making, using, or selling any product
2 that infringes upon the '840 patent;
- 3 C) An accounting for damages resulting from Defendant's patent infringement and contributory
4 infringement and the trebling of such damages because of the knowing, willful, and wanton
5 nature of the Defendant's conduct;
- 6 D) An assessment of interest on the damages so computed;
- 7 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;
- 8 F) Judgment against Defendant indemnifying the Plaintiffs from any claims brought against the
9 Plaintiffs for negligence, debts, malpractice, product liability, or other breaches of any duty
10 owed by the Defendant to any person who was confused as to some association between the
11 Plaintiffs and Defendant as alleged in this Complaint;
- 12 G) Judgment against Defendant for an accounting and monetary award in an amount to be
13 determined at trial;
- 14 H) Requiring Defendant to account to the Plaintiffs for all sales and purchases that have
15 occurred to date, and requiring the Defendant to disgorge any and all profits derived by
16 Defendant for selling infringing product;
- 17 I) Requiring Defendant to provide full disclosure of any and all information relating to its
18 supplier or suppliers of infringing product;
- 19 J) Requiring Defendant to provide the location of any and all manufacturing equipment,
20 including but not limited to, molds used to manufacture infringing product;
- 21 K) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture
22 infringing product or to deliver said equipment to the Plaintiffs;
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- 1 L) Ordering a product recall of infringing product for destruction;
- 2 M) Requiring Defendant to file with this Court and serve on the Plaintiffs within thirty (30) days
- 3 of this Court's order a report setting forth the manner in which they complied with the order;
- 4 N) Requiring Defendant to provide to Plaintiffs all sales records, including but not limited to,
- 5 email, mail, and advertising lists;
- 6 O) Damages according to each cause of action herein;
- 7 P) Prejudgment interest; and the Plaintiffs further request any other relief in law or equity that
- 8 this honorable Court deems just and appropriate.
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10 **JURY DEMAND**

11 WHEREFORE, the Plaintiffs request a trial by jury on all issues so triable.

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13 Most Respectfully Submitted,

14 /s/ David A. Welling

15 **DAVID A. WELLING (0075934)**

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