

1 Richard M. Wirtz (SBN 137812) (Pro Hac Vice pending)  
[rwirtz@wirtzlaw.com](mailto:rwirtz@wirtzlaw.com)

2 Erin K. Barns (SBN 286865) (Pro Hac Vice pending)  
[ebarns@wirtzlaw.com](mailto:ebarns@wirtzlaw.com)

3 WIRTZ LAW APC  
4365 Executive Drive, Suite 1460  
4 San Diego, California 92121  
voice: 858.259.5009

5 Thomas D. Foster (SBN 213414) (Pro Hac Vice pending)  
6 TD Foster - Intellectual Property Law  
12626 High Bluff Drive, Suite 150  
7 San Diego, CA 92130  
voice: 858.922.2170  
8 [foster@tdfoster.com](mailto:foster@tdfoster.com)

9 Attorneys for Plaintiff TUFF STUFF FITNESS EQUIPMENT INC.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 TUFF STUFF FITNESS EQUIPMENT INC.,  
14 a California Corporation,

15 Plaintiff,

16 v.

17 RONALD FRANK RHODES, an  
18 Individual; DOES 1-10,

19 Defendants.

Case Number:

**COMPLAINT FOR DECLARATORY  
RELIEF**

**DEMAND FOR JURY TRIAL**

20 Plaintiff TUFF STUFF FITNESS EQUIPMENT INC. ("Plaintiff" or "TuffStuff") alleges  
21 as follows:

- 22 1. This action seeks declaratory judgment pursuant to 28 U.S.C. §2201(a).  
23 2. Defendant is the record owner of a design patent issued by the United  
24 States Patent and Trademark Office ("USPTO"), namely, U.S. Patent No. D629,472 ("the  
25 patent"). A copy of the patent is attached as **Exhibit 1**. Plaintiff contends that its product,  
26 the TuffStuff CT8 Fitness Training System does not infringe the patent and further that the  
27 patent is invalid as functional.  
28

I.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 1338(a), 1331 and 2201.

4. This Court has personal jurisdiction over the Defendant as he is an individual and resident of this District.

5. Venue in this District is proper under 28 U.S.C. Section 1391 as this is the District where the Defendant resides.

II.

THE PARTIES

6. Plaintiff is a California Corporation and the producer of the Tuff Stuff CT8 Fitness Training System ("CT8 System"), drawings of which are attached as **Exhibit 2** of this Complaint and incorporated by this reference.

7. Defendant Ronald Rhodes is an individual and resident of Arizona, residing at 21293 North Sally Drive, Maricopa, AZ 85238. Defendant is record owner of U.S. Design Patent No. D629,472 ("the patent").

III.

GENERAL ALLEGATIONS

**A. Tuff Stuff Fitness Equipment Inc. and the CT8 Fitness System**

8. In 1967 Sherman Grider took a position as draftsman and proto-type welder and machinist for Marcy Gym Equipment Company working directly under Dr. Walter Marcyan. Mr. Grider's first drafting and design job was an eight sided, octagon shaped multi-station machine which was initially called the Circuit Trainer.

9. In 1971 Mr. Grider started Plaintiff Tuff Stuff Fitness Equipment Inc. TuffStuff is designs, develops and manufactures premium grade fitness equipment. TuffStuff's products range from commercial strength equipment for Health Clubs to dependable home gyms. Since 1971, TuffStuff has developed a reputation for building the most reliable strength equipment in the industry, which has garnered a loyal

1 following of fitness enthusiasts. TuffStuff maintains one of the largest American  
2 production lines in the fitness industry, and remains the only fitness company in the  
3 United States with the capability to manufacture any product it sells.

4 10. In the late 1990s Mike Ryser was hired as the Sales Manager at TuffStuff.  
5 He left in 1998 to join a competing company by the name of Star Trac Fitness and was  
6 there for 4 years. He then left the fitness industry to take a job in the mortgage industry  
7 in 2003. In January of 2012, Mr. Ryser returned to TuffStuff and the fitness industry in  
8 general. In March of 2012 Mr. Ryser attended the IHRSA (the 'International Health,  
9 Racquet & Sportsclub Association') Trade Show in Los Angeles, California, the world's  
10 largest trade show for commercial fitness equipment. IHRSA members represent health  
11 and fitness facilities, gyms, spas, sports clubs, and suppliers worldwide. Among the  
12 many fitness equipment products showcased at IHRSA were several multi-station "big  
13 rack/functional training" racks, including the Synrgy 360 made by TuffStuff's competitor,  
14 Life Fitness. Based on the high level of interest in this and other large multistation racks  
15 Mr. Ryser became convinced that TuffStuff needed to develop a similar but superior  
16 product.

17 11. Mr. Ryser immediately began preparing a Marketing Requirements  
18 Document (MRD) to present two separate business proposals to Sherman Grider and  
19 Donny Penado, general manager and chief operating officer of TuffStuff, respectively.  
20 In this document, Mr. Ryser listed 8 companies who had entered the target market  
21 segments and whom TuffStuff would be competing against with the product. Mr.  
22 Rhodes's company or product was not one of the listed companies. While Mr. Ryser did  
23 come across Mr. Rhodes's design, it was dismissed because it featured a fixed, rather  
24 then modular and customizable design. Mr. Ryser received approval and the budget to  
25 proceed with what is know called the CT8 fitness training system.

26 12. The CT8 System offers modular options, design elements and customization  
27 which gives personal trainers, studio owners and full service fitness facilities the ability  
28 to build custom exercise stations that best suit their individual and group fitness needs.

1 It is designed for clubs and studios looking to save cost and floor space, while  
2 maximizing their training options.

3 13. The CT8 System base trainer is the CT-8000B, a semi-circle shaped model  
4 which features six stations, monkey bars, fat grip chins, parallel suspension bars, an  
5 adjustable horizontal bar station, rings, a wooden pegboard/high re-bouncer and the  
6 client's choice of two CT-8200 Series Training Modules. Attached as **Exhibit 3** is a three  
7 dimensional drawing of the CT-8000 base trainer, which is incorporated here by  
8 reference. The CT-8100 E Elite Fitness Trainer converts the base trainer into a full circle  
9 shaped model with nine stations. Of the modules for clients to choose from are: the CT-  
10 8210 Medicine Ball Rebounder Training Module; the CT-8220 Adjustable Step-  
11 up/Stretch Training Module; the CT-8230 Battle Rope Training Module; the CT-8240  
12 Kettle Bell Training Module; and the CT-8250 Heavy Bag Training Module with CT-8350  
13 Synthetic Leather Heavy Bag. In addition, optional CT-8310 Squat/Press Racking Station,  
14 CT-8320 Multi-Strap Training Boom, CT-8330 Olympic Bar Landmine, and CT-8340 Dip  
15 Handles are also available. Attached as **Exhibit 2** and incorporated here by reference is  
16 a sheet consisting of drawings of all the products hereto described as well as three  
17 dimensional drawings of the CT-8100 E Elite Fitness Trainer from various angles.  
18 Attached as **Exhibit 4** are photographs of the CT-8100 E Elite Fitness Trainer.

19 14. As can be seen from the drawings and photographs of the CT8 System  
20 attached as Exhibit 2, 3, and 4, the design of the CT8 System features distinctive curved  
21 booms/arms with decorative circular cutouts and the TuffStuff Logo, cross members  
22 which include monkey/parallel suspension bars, vertical members which contact the  
23 floor rather than a fixed support element, a wooden peg board, Tri-Level Fat and Thin  
24 Grip Bars, an Adjustable Height Push/Pull Bar and the versatility to take the form of a six  
25 station or nine station training system with many possible combinations of training  
26 modules for a client to choose from to suit their needs.

27 15. TuffStuff began promoting its CT8 System in October of 2012 when it  
28 displayed the CT8 at the Mr. Olympia Show in Las Vegas, Nevada. It has sold and

1 shipped four complete units and have others on order.

2 **B. Defendant Rhodes's Claim of Infringement**

3 16. In September of 2009, Ronald Rhodes approached TuffStuff with his design.  
4 At the time his design patent was pending. On September 12, 2009, Mr. Rhodes  
5 emailed Sherman Grider describing his design and asking if TuffStuff would be interested  
6 in producing and selling it. On September 14, 2009, Mr. Grider emailed Mr. Rhodes  
7 telling him that TuffStuff did not have any interest in the design because (1) the foot print  
8 was very large, (2) TuffStuff already had a modular four stack, (3) he did not see an  
9 advantage in a fixed station multistation gym, and (4) Rhodes's design looked like  
10 something out of the past and it would be cost-prohibitive to give the design a "modern  
11 look."

12 17. Mr. Grider told Mr. Rhodes about his former employment with Marcy Gym  
13 Equipment and Mr. Marcyan's almost identical eight-sided machine and warned Mr.  
14 Rhodes to do intensive patent researching before spending a large amount of money on  
15 his patent application.

16 18. It was not until Mr. Ryser returned to TuffStuff three years later that the CT8  
17 design came into being.

18 19. On or about October 9, 2012, Plaintiff sent a select few of its dealers photos  
19 of the CT8 System, one of which dealer is Defendant Rhodes's employer. Rhodes  
20 responded that same day accusing Plaintiff of copying and threatening litigation in a  
21 thinly veiled matter ("I wonder what my lawyer will think when he reviews my patent  
22 for an Octagon Shaped Functional Training Station"). In November 2012 Rhodes told  
23 Donny Penado, COO of TuffStuff, that he had hired an attorney and was "ready to take  
24 any actions needed." Plaintiff therefore has a reasonable apprehension that it will face  
25 an infringement suit, particularly because Plaintiff intends to promote the CT8 design at  
26 the 2013 IHRS International Trade Show in Las Vegas Nevada, March 20th and 21st  
27 in the Mandalay Bay Convention Center.

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**FIRST CAUSE OF ACTION**

**Declaratory Relief**

**(28 U.S.C. § 2201)**

20. Plaintiff incorporates each of the foregoing paragraphs as though fully set forth at this point.

21. An actual and present controversy exists between Plaintiff and Defendant with respect to whether Plaintiff's CT8 System infringes upon Defendant's design patent.

22. Plaintiff contends that in the eyes of an ordinary observer, giving such attention as a purchaser usually gives, the two designs are substantially different. The design of Plaintiff's CT8 System features distinctive curved booms/arms with decorative circular cutouts and the TuffStuff Logo which do not resemble the Patent's straight arms which have no ornamental elements and which serve a purely function purpose. The CT8 System design features cross members which include monkey/parallel suspension bars while the Patented design lacks any cross members whatsoever. The CT8 system features vertical members which contact the floor while the patented design features a fixed support element. The CT8 System features a wooden peg board, Tri-Level Fat and Thin Grip Bars, an Adjustable Height Push/Pull Bar while the patented design does not. And finally, the CT8 System may be customized in a number of ways such that it may take the form of a six station or nine station training system with many possible combinations of training modules for a client to choose from to suit their needs while the patented design is fixed.

23. Even if the Court were to determine that Plaintiff's CT8 System is substantially the same as the patented design, Plaintiff further contends that any possible similarity of features is limited to non-novel and/or functional aspects of the patented design. The multi-sided design is primarily designed to serve a space saving function and is substantially the same as the that claimed in Design Patents Nos. D204,397, Des. 321,024, and D262,813 (attached hereto and incorporated by reference as **Exhibit 5**). The fact that the patented design is eight sided is a function of the desired number of



1 stations. The stations/modules of the patented design are purely functional and are  
2 substantially the same as various other utility patents.

3 24. Plaintiff further contends that the Design Patent is invalid, void and/or  
4 unenforceable because it is primarily functional and/or obvious.

5 25. Plaintiff is informed and believes that Defendant contests each of its  
6 contentions by virtue of his threats of infringement.

7 26. Plaintiff and Defendant's interests are adverse, and a judicial determination  
8 is necessary and appropriate to resolve the parties respective interests.

9 27. Plaintiff requests that this Court resolve the competing contentions of the  
10 parties and declare that:

- 11 a. Plaintiff's CT8 System does not infringe Design Patent No. D629,472; and
- 12 b. Any similarity of features between Plaintiff's CT8 System and Design Patent  
13 No. D629,472 is limited to non-novel and/or functional aspects of the  
14 patented design.
- 15 c. Design Patent No. D629,472 is invalid, void and/or unenforceable  
16 because it is primarily functional and/or obvious.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare that:
  - a. Plaintiff's CT8 System does not infringe Design Patent No. D629,472; and
  - b. Any similarity of features between Plaintiff's CT8 System and Design Patent No. D629,472 is limited to non-novel and/or functional aspects of the patented design. Award Plaintiff's attorney's fees and costs incurred in this action;
  - c. Design Patent No. D629,472 is invalid, void and/or unenforceable because it is primarily functional and/or obvious; and
2. Grant such additional relief as the court deems just and proper.

Respectfully Submitted,

**WIRTZ LAW APC**

By:



Erin K. Barns (Pro Hac Vice  
Pending)  
Richard M. Wirtz (Pro Hac Vice  
Pending)

**TD FOSTER - INTELLECTUAL PROPERTY  
LAW**

Thomas D. Foster (Pro Hac Vice  
Pending)

Attorneys for Plaintiff TUFF STUFF  
FITNESS EQUIPMENT INC.