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8 **Attorneys for Plaintiff**
Color Image Apparel, Inc.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 **COLOR IMAGE APPAREL, INC.**
14 **a California corporation,**

15 **Plaintiff,**

16 **v.**

17 **FITCAPRI, an Australian**
18 **corporation; DOES 1 through 10,**
19 **inclusive,**

20 **Defendants.**

No.

COMPLAINT FOR:

1. PATENT INFRINGEMENT

2. UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

21 Plaintiff Color Image Apparel, Inc. (“CIA”) alleges against defendants
22 FitCapri (“Defendant” or “FitCapri”) and Does 1 through 10, as follows:

23 **NATURE OF THE CASE**

24 1. This is an action at law and in equity for patent infringement and unfair
25 competition, arising under 35 U.S.C. section 271 *et seq.* and common law unfair
26 competition.

2. CIA is the creator of ALO® and ALO Yoga® (collectively, “ALO

1 Yoga”), a well-known and exceedingly popular line of athletic wear designed for
2 both athletic and non-athletic settings. This line includes, among other distinctive
3 designs, ALO Yoga’s Moto Legging (“Moto Legging”), which is at issue in this
4 case.

5 3. FitCapri, without authorization, is copying CIA’s distinctive Moto
6 Legging design and, as a result, is offering for sale and selling products that are
7 confusingly similar to the Moto Legging. Defendant’s products are not
8 manufactured by CIA and are not connected to or endorsed by CIA in any way. As
9 a result, Defendant is infringing CIA’s patent on the Moto Legging. In addition,
10 Defendant’s merchandise is likely to cause confusion in the marketplace and to
11 deceive consumers and the public regarding its source.

12 PARTIES

13 4. Plaintiff Color Image Apparel, Inc. is a California corporation with its
14 principal place of business at 6670 Flotilla Street, Commerce, California, 90040.

15 5. On information and belief, Defendant FitCapri is an Australian
16 corporation with its principal place of business at Meredith Avenue, Glengowrie,
17 South Australia, 5044.

18 6. The true names and capacities of defendants sued herein as Does 1
19 through 10, inclusive, are unknown to Plaintiff and Plaintiff therefore sues these
20 defendants by such fictitious names. Plaintiff will amend this complaint to allege
21 their true names and capacities when ascertained.

22 7. On information and belief, FitCapri has purposefully directed business
23 activities toward consumers residing in this judicial district, including but without
24 limitation by offering for sale, selling, and entering into sales contracts for their
25 infringing products with residents of this judicial district, and calculating and
26 collecting California sales tax on sales of the infringing products to residents of this

1 judicial district.

2 8. By engaging in the activities set forth herein, FitCapri has purposefully
3 availed themselves of the privilege of conducting activities in this forum, thereby
4 invoking the benefits and protections of the laws of the State of California, and of
5 this judicial district in particular.

6 **JURISDICTION AND VENUE**

7 9. This action arises under 35 U.S.C. section 271 *et seq.* and common law
8 unfair competition. This Court has subject matter jurisdiction over this action
9 pursuant to 28 U.S.C. sections 1331 and 1338, as CIA's claims arise under the
10 Patent Act. This Court has supplemental jurisdiction pursuant to 28 U.S.C. sections
11 1338(b) and 1367 over CIA's claims arising under the laws of the State of California.

12 10. This Court has personal jurisdiction over FitCapri as, on information
13 and belief, FitCapri is doing business in this judicial district through its website
14 (<https://www.fitcapri.com/>), through which it advertises and sells goods that
15 infringe CIA's design patent to consumers residing in this judicial district, thereby
16 invoking the benefits and protections of the laws of this judicial district.

17 11. Fit Capri has distributed or sold infringing merchandise within this
18 judicial district, has manufactured or distributed products used or consumed within
19 this judicial district in the ordinary course of trade, or has otherwise made or
20 established contacts within this judicial district sufficient to permit the exercise of
21 personal jurisdiction. Venue is proper in this judicial district under 28 U.S.C.
22 section 1391(b)(2) as, on information and belief, a substantial part of the events,
23 omissions and acts causing injury that are the subject matter of this action arise out
24 of or relate to Fit Capri's activities within this judicial district,

25 **FACTUAL ALLEGATIONS**

26 12. CIA's innovative concept of creating an exercise legging with

1 motorcycle pant stylings revolutionized the athletic wear market when it was first
2 marketed and quickly became one of the hallmarks of the ALO Yoga® brand,
3 known for its distinctive appearance and ornamental “moto” design.

4 13. On December 27, 2016, the United States Patent and Trademark Office
5 duly and legally issued United States Design Patent No. US D774,731 S (the “’731
6 Patent”), which covers products sold under ALO Yoga’s “Moto Legging”
7 collection. A true and correct copy of the ’731 Patent is attached hereto as **Exhibit**
8 **A**. CIA is the owner of the entire right, title, and interest in and to the ’731 Patent,
9 and owned the ’731 Patent throughout the period of Defendant’s infringing acts.
10 CIA still owns the ’731 Patent.

11 14. Certain FitCapri leggings marketed as “Racer Leggings” infringe the
12 ’731 Patent (the “Accused Product”). True and correct copies of photographs of
13 the infringing Accused Product as displayed on FitCapri’s website
14 (<https://www.fitcapri.com>) are attached hereto as **Exhibit B**.

15 15. The overall appearance and design of the invention embodied in the
16 ’731 Patent and the corresponding design of the infringing Accused Product are
17 substantially the same.

18 16. On information and belief, an ordinary observer will perceive the
19 overall appearance of the design of the invention embodied in the ’731 Patent and
20 the corresponding designs of Defendant’s infringing Accused Product to be
21 substantially the same.

22 17. Table 1, below, shows side-by-side comparisons of the ’731 Patent
23 design (left), with the infringing Racer Leggings (right). A copy of Table 1 is also
24 attached as **Exhibit C**.

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**Table 1: Comparison of '731 Patent
and Defendant's Infringing Racer Leggings**

'731 Patent Figures	Defendant's Infringing Leggings
 <p>Figure 1</p>	
 <p>Figure 2</p>	

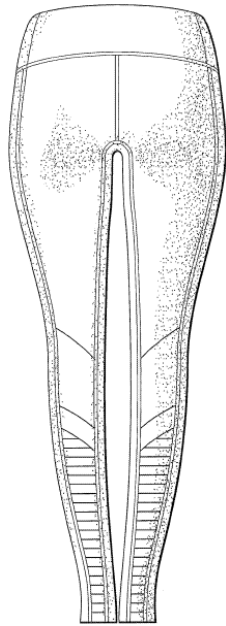


Figure 3

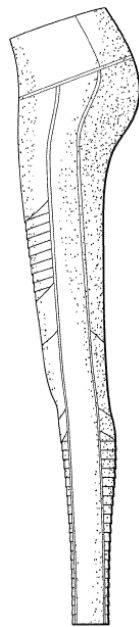


Figure 5



18. FitCapri offers for sale and sells the Accused Product to customers in the United States through its website and social media ads. Furthermore, FitCapri indirectly infringes the '731 Patent because its customers use the Accused Product.

1 19. Upon information and belief, FitCapri offers to sell and sells the
2 Accused Product to customers with the specific intent to induce infringement of the
3 '731 Patent.

4 20. Upon information and belief, FitCapri had knowledge that the Accused
5 Product is especially made or especially adapted for use in an infringement of the
6 '731 Patent and is not a staple article or commodity of commerce suitable for
7 substantial non-infringing use.

8 21. FitCapri has infringed and is still infringing, directly and indirectly, the
9 '731 Patent by making, using, offering to sell, selling and/or importing athletic
10 leggings that embody the '731 Patent including, but not limited to, the Accused
11 Product.

12 22. CIA has been manufacturing, advertising, and selling the Moto
13 Legging for both athletic and non-athletic use. The Moto Legging revolutionized
14 the area of sports leggings due to the total image and overall appearance of its
15 design, as it married the athletic nature of leggings with the aesthetic of more
16 motorcycle inspired pants with distinctive, non-functional attributes such as a flat
17 front panel at the top of the leggings and raised ridge panels at the thigh, shin and
18 back calves that give the appearance of "moto" leggings.

19 23. On information and belief, FitCapri is, and will continue to
20 manufacture, distribute, advertise, sell and offer for sale its unauthorized products
21 in this judicial district and throughout the United States unless enjoined by this
22 Court.

23 24. The products manufactured, distributed, offered for sale and sold by
24 FitCapri are not manufactured by CIA, nor is FitCapri associated or connected with
25 CIA, or licensed, authorized, endorsed or approved by CIA in any way.

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1 25. Upon information and belief, FitCapri became aware of the
2 infringement allegations and the '731 Patent at least as early as August 30, 2017
3 after a cease and desist letter was sent to FitCapri by CIA's counsel. A true and
4 correct copy of this letter is attached as **Exhibit D**.

5 26. After receiving no response from FitCapri to its August 30, 2017
6 letter, counsel for CIA sent a follow-up letter on November 7, 2017. A true and
7 correct copy of this letter is attached as **Exhibit E**.

8 27. As of the date of filing this Complaint, CIA has received no response
9 from FitCapri to either of its letters.

10 **FIRST CLAIM FOR RELIEF**

11 **(Patent Infringement – 35 U.S.C. § 271)**

12 28. CIA repeats and incorporates by this reference each and every
13 allegation contained in paragraphs 1 through 27 above, inclusive, as though set forth
14 in full.

15 29. FitCapri, without authorization from CIA, has made, used, offered for
16 sale, sold, and/or imported in or into the United States, and continues to make, use,
17 offer for sale, sell, and/or import in or into the United States, leggings having a
18 design that infringes the '731 Patent.

19 30. CIA has been and will continue to be irreparably harmed by FitCapri's
20 infringement of the '731 Patent.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Unfair Competition)**

3 31. CIA repeats and incorporates by this reference each and every
4 allegation contained in paragraphs 1 through 30 above, inclusive, as though set forth
5 in full.

6 32. FitCapri's unauthorized actions and conduct as alleged herein constitute
7 unfair competition under California common law, and have created and will continue
8 to create a likelihood of confusion and irreparable harm, damage, and injury to CIA,
9 including but not limited to injury to CIA's goodwill and business reputation, unless
10 restrained and enjoined by this Court.

11 33. On information and belief, FitCapri's unfair competition with CIA was,
12 and is, done with full knowledge of CIA's statutory and common law rights and
13 without regard to the likelihood of confusion to the public created by FitCapri's
14 activities.

15 34. FitCapri has caused and, unless restrained and enjoined by this Court,
16 will continue to cause irreparable harm, damage and injury to CIA, including but
17 not limited to injury to CIA's goodwill and business reputation.

18 35. As a result of FitCapri's acts, CIA has suffered, is suffering, and will
19 continue to suffer irreparable injury for which CIA has no adequate remedy at law.
20 CIA is therefore entitled to a permanent injunction against further infringing conduct
21 by FitCapri.

22 **PRAYER**

23 WHEREFORE, Plaintiff prays for an order and judgment against Defendant
24 and requests relief as follows:

25 1. A determination that this action is an exceptional case pursuant to the
26 Patent Act;

1 2. A determination that Defendant has infringed the ‘731 Patent;

2 3. That Defendant and its officers, directors, partners, agents, servants,
3 employees, attorneys, confederates, and all persons acting for, with, by, through or
4 under it, and any others within their control or supervision, and all others in active
5 concert or participation with the above, be enjoined during the pendency of this action
6 and permanently thereafter from infringing the ‘731 Patent in the manufacturing,
7 marketing, sales, distribution, promotion, advertising, identification, or in any other
8 manner in connection with apparel in the United States;

9 4. That Defendant, and each of its officers, directors, partners, agents,
10 servants, employees, attorneys, confederates, and all persons acting for, with, by,
11 through or under them, and any others within their control or supervision, and all
12 others in active concert or participation with the above, be enjoined during the
13 pendency of this action and permanently thereafter from representing to anyone,
14 either orally or in writing, that their business or goods are affiliated with CIA in any
15 way or are approved by CIA;

16 5. For an order requiring Defendant to cease offering for sale its infringing
17 products, and to destroy all patterns, stencils, molds, plates, masters, or means of
18 creating the infringing items;

19 6. For an order requiring Defendant to instruct, within thirty (30) days after
20 the entry of any preliminary or permanent injunction, any third-party website that
21 carries Defendant’s infringing products to cease selling those products at the earliest
22 possible date;

23 7. For an order requiring Defendant to file with the Clerk of this Court and
24 serve CIA, within thirty (30) days after the entry of any preliminary or permanent
25 injunction, a report in writing, under oath, setting forth in detail the manner and form
26 in which Defendant has complied with 1 through 7 above;

1 8. For an award of Defendant's profits and CIA's damages according to
2 proof at trial and as detailed in this Complaint;

3 9. For an award of three times CIA's damages or Defendant's profits in
4 view of the intentional and willful nature of Defendant's acts, pursuant to 35 U.S.C.
5 section 285 and as detailed in this Complaint;

6 10. For an order requiring Defendant to account for and pay to CIA all gains,
7 profits and advantages derived by Defendant from the unlawful activities alleged
8 herein, and/or as a result of unjust enrichment as detailed in this Complaint;

9 11. For an award of punitive damages according to proof;

10 12. For an award of CIA's attorneys' fees for bringing and prosecuting this
11 action pursuant to 35 U.S.C. section 285 and all applicable state statutes;

12 13. For an award of CIA's costs and expenses incurred in bringing and
13 prosecuting this action pursuant to 35 U.S.C. section 285 and all applicable state
14 statutes; and

15 14. For such further relief as this Court shall deem just and proper.

16 **JURY DEMAND**

17 Plaintiff Color Image Apparel, Inc. hereby demands trial by jury in the
18 above entitled action pursuant to Fed. R. Civ. P. 38(b).

19
20 Dated: March 15, 2018

THOITS LAW

21
22 By: /s/ Andrew P. Holland
23 **Andrew P. Holland**
24 **Attorneys for Plaintiff**
25 **Color Image Apparel, Inc.**
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