

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BOMBAS LLC,)	
)	
Plaintiff,)	Civil Action No. 1:18-cv-4412
)	
v.)	COMPLAINT FOR TRADEMARK
)	INFRINGEMENT; TRADE DRESS
)	INFRINGEMENT; UNFAIR
MAISON IMPECCABLE,)	COMPETITION AND FALSE
)	DESIGNATION OF ORIGIN; DESIGN
)	PATENT INFRINGEMENT
Defendant.)	
)	
)	JURY TRIAL DEMANDED
)	

BOMBAS LLC (“Bombas” or “Plaintiff”), by its attorneys Whitmyer IP Group, brings this Complaint against Defendant, Maison Impeccable (“MI” or “Defendant”) and alleges as follows:

Statement of the Case

1. This is an action by Plaintiff against Defendant for federal trademark infringement and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), common law trademark infringement, common law trade dress infringement, patent infringement of Plaintiff’s Design Patent No. D723,261 (the “D261 patent”) in violation of the Patent Act of the United States, and for substantial and related claims of unfair competition under the statutory and common laws of the State of New York, all arising from Defendant’s unauthorized use of Plaintiff’s trademark and

patented design in connection with the manufacture, advertising, promotion, and/or sale of Defendant's products, specifically socks ("the Infringing Socks").

2. Plaintiff seeks injunctive and monetary relief to retain control over the substantial goodwill associated with its trademarks, trade dress, and patented design, which are being unlawfully exploited by Defendant, and to avoid irretrievably lost sales.

Jurisdiction and Venue

3. Plaintiff's claims arise under 15 U.S.C. § 1051, *et seq.* (the Lanham Act), particularly 15 U.S.C. § 1125(a), and the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.*, and for injunctive relief and damages under 15 U.S.C. §§ 1116 and 1117 and 35 U.S.C. §§ 283 – 285. This Court has subject matter jurisdiction over the claims pursuant to the provisions of 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338 (any Act of Congress relating to patents or trademarks), 15 U.S.C. § 1121 (action arising under the Lanham Act), and 35 U.S.C. §§ 271 and 281.

4. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the claims arising under New York statutory and common law because these claims are so related to the federal claims as to form part of the same case or controversy and arise out of a common nucleus of operative facts shared with the federal causes of action.

5. This action arises from Defendant's use of, making, selling, offering to sell, and/or importing, marketing, and promoting the Infringing Socks, and conduct of activities, that infringe Plaintiff's intellectual property.

6. This Court has personal jurisdiction over Defendant because, *inter alia*, Defendant: (1) transacts business within this district; (2) contracts to supply goods to or services in this District; (3) has committed a tortious act within this District; (4) has committed a tortious act causing injury

to Plaintiff within this District; (5) regularly solicits business, or engages in other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this District; (6) expects or should reasonably expect its acts to have consequences in this District and derives substantial revenue from interstate or international commerce; (7) has systematic and continuous contacts with this District; (8) continues to transact and do business in this District; and (9) has websites and social media accounts that are accessible in this District, and through which Defendant transacts business. Defendant's acts form a substantial part of the events or omissions giving rise to Plaintiff's claims. For example, Defendant offers to sell and/or sells infringing products to consumers or retailers in this District.

7. Upon information and belief, Defendant sells its goods to consumers in New York through an interactive website, <https://www.impeccable.maison/>, on which the Infringing Socks are marketed and offered for sale, and through which consumers can contact Defendant to purchase Defendant's goods, among other things. Defendant is a sophisticated internet/marketer seller—its sales to consumers in New York are not isolated occurrences. Rather, Defendant's sales to New York customers are means for establishing regular business in New York, to operate commercial business in New York, and to sell substantial goods to New York consumers.

8. Defendant has committed acts of intellectual property infringement in New York, including this District, and has delivered Infringing Socks into the stream of commerce with the expectation that they will be used and/or purchased by consumers in the State of New York, including this District.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because a substantial part of the events giving rise to this action took place in this District,

Plaintiff's claims arise from the same nucleus of operative facts, and Plaintiff has suffered harm in this District and the Lanham Act provides that venue lies in the place of harm.

Parties

10. Plaintiff is a corporation duly organized and existing under the laws of the State of New York, having a principal place of business at 37 East 18th Street, 4th Floor, New York, NY 10003. Plaintiff is the owner of the intellectual property that is the subject of this Complaint.

11. Upon information and belief, Defendant is a corporation duly organized and existing under the laws of the State of California, having a principal place of business at 1120 Granville Ave., #102, Los Angeles, CA 90049. Upon information and belief, Defendant, without Plaintiff's authorization, is manufacturing, distributing, marketing, offering for sale and selling socks that infringe Plaintiff's intellectual property.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

12. Plaintiff was created to help those in need through the manufacture, distribution, and sale of high-quality socks. Plaintiff discovered that socks are one of the most requested clothing items at homeless shelters after hearing a statement from Major George Hood, Chief Officer for the Salvation Army: "Through our work with those in need, we know that socks are oftentimes the most requested clothing item in homeless shelters." From that day on, Plaintiff dedicated itself to building a business that donates one pair of socks to those in need for every pair of socks purchased.

13. To that end, Plaintiff began fundraising on the website www.indiegogo.com in April 2013. Plaintiff's initial fundraising goal was to raise \$15,000 between April and September 2013. Plaintiff surpassed its goal by approximately \$127,500 (850%). Over 2,700 purchasers backed Plaintiff's initial campaign. (See Exhibit A, a website screenshot from Plaintiff's Indiegogo campaign, which is incorporated herein by reference.)

14. Plaintiff grew rapidly after its Indiegogo campaign. Plaintiff soon found itself on the widely popular ABC television series *Shark Tank* negotiating a deal with Daymond John – an American entrepreneur best known as the founder and CEO of the “FUBU” fashion brand.



(See also Exhibit B, a website printout referencing Plaintiff’s *Shark Tank* appearance, which is incorporated herein by reference.)

15. Plaintiff also caught the eye of large, famous retailers, such as The Gap as a result of its constant growth and increasing sock donations (through partnerships with hundreds of charitable organizations, such as Hannah’s Socks and the Bowery Mission). Retailers not only wanted to support Plaintiff’s altruistic mission, but also knew Plaintiff’s goods are high in quality. To this end, The Gap in 2015 entered a co-branding deal with Plaintiff through which Plaintiff’s socks were sold at The Gap retail stores for the 2015 holiday season. The Gap honored Plaintiff’s ONE PAIR PURCHASED = ONE PAIR DONATED®¹ policy. This venture was widely popular and



¹ Registration No. 4,945,652.

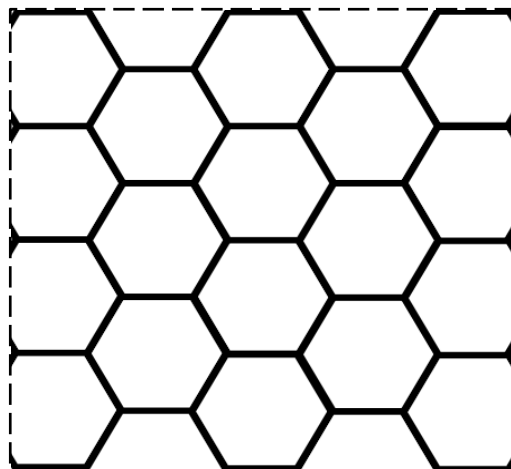
increased Plaintiff's recognition in the market. (See Exhibits C & D, webpage screenshots or press releases related to Plaintiff's partnership with The Gap, which are incorporated herein by reference.)

16. As a result of Plaintiff's success, to date Plaintiff has donated over 8.5 million pairs of socks to those in need.

Plaintiff's Well-Known Trademarks

17. Plaintiff is the registered owner of the BOMBAS® trademark. The term "bombas" is derived from the Latin word "bombus" meaning "bumblebee." The term "bombas" is particularly meaningful to Plaintiff because bees work together to make the hive a better place, which is precisely what Plaintiff aims to do with its business. Plaintiff's business is inspired by and emblematic of the way bumblebees work together.

18. Besides the use and ownership of the trademarks BOMBAS® (Reg. No. 4,492,577), ® (Reg. No. 4,492,579), BEE BETTER® (Reg. No. 5,323,994), and **BOMBAS** ® (Reg. No. 5,359,406), Plaintiff has also extensively and exclusively used, and is thus the owner of common law trademark rights in, the following trademark in relation to socks:



("Plaintiff's Mark".)

19. Plaintiff is the owner of the following U.S. trademark application covering Plaintiff's Mark: Application Ser. No. 87921290, filed May 15, 2018.

20. Plaintiff's Mark is always prominently displayed on Plaintiff's goods and packaging and in Plaintiff's marketing:





BOMBAS SOCK TECH



**HONEYCOMB
ARCH SUPPORT**

EXTRA SUPPORT
WHERE YOU NEED
IT MOST

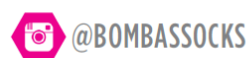


21. Plaintiff first used Plaintiff's Mark at least as early as July 24, 2013 and has continuously, extensively, and exclusively used Plaintiff's Mark in commerce in the U.S. since that time.

22. As a result of Plaintiff's continuous and exclusive use, and Plaintiff's substantial marketing and promotion (discussed in more detail below), Plaintiff's Mark has become a distinctive identifier of Plaintiff.

Plaintiff's Distinctive Trade Dress

23. Plaintiff has rights to the trade dress of its marketing, goods, and packaging. Plaintiff's trade dress includes an individual honeycomb used alone or in combination with other individual honeycomb pieces ("Plaintiff's Trade Dress" (Plaintiff's Mark and Plaintiff's Trade Dress are collectively referred to as "Plaintiff's Mark and Trade Dress")), which emphasize Plaintiff's bumblebee/hive theme. Examples of Plaintiff's Trade Dress have appeared on Plaintiff's website, www.bombas.com, and other marketing materials, as shown below:







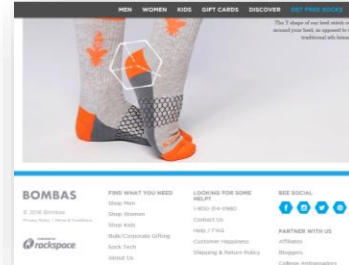
BOMBAS IN BULK

Bombas make great gifts and
play nice in big groups.



Whether you're buying Bombas for your wedding party,
your company softball team, or your naughty list, we'd like to
reward you with a discount for buying more than 25 pairs.
And remember, we'll donate a pair of Bombas to
someone in need for every pair you purchase.





24. Plaintiff was the first to introduce the features comprising Plaintiff's Trade Dress for socks into interstate commerce.

25. Plaintiff's Trade Dress is distinctive of Plaintiff.

26. Plaintiff's Trade Dress is inherently distinctive.

27. Plaintiff's Trade Dress has acquired distinctiveness, also known as secondary meaning.

28. Plaintiff's Trade Dress has acquired distinctiveness as demonstrated by, *inter alia*: Plaintiff's expenditure of millions of dollars promoting and popularizing Plaintiff's Trade Dress through advertising and product donations to those in need—to date Plaintiff has donated over 8.5 million pairs of socks to those in need; Plaintiff's participation on *Shark Tank*; unsolicited media coverage of Plaintiff's products and donation program; Plaintiff's sales success, having generated millions of dollars of revenue; having partnered with The Gap during the 2015 holiday shopping season; Plaintiff's extensive, exclusive use of Plaintiff's Trade Dress; the recognition of Plaintiff's Trade Dress and the good will associated therewith in the industry; and Defendant's plagiarism (described in more detail below), which trades off Plaintiff's Trade Dress and the goodwill and success associated therewith.

29. Plaintiff's Trade Dress is also non-functional.

30. Plaintiff's Trade Dress provides a unique ornamental and aesthetic appearance that was designed by Plaintiff.

31. Plaintiff's Trade Dress is not essential to the use of the purpose of Plaintiff's socks.

32. There are numerous alternative means to perform the function of promoting and selling goods and services without using Plaintiff's Trade Dress.

33. Plaintiff's Trade Dress has become associated with Plaintiff.

34. Since well before Plaintiff's official launch, Plaintiff has been devoted to bringing high-quality sock designs to the consuming public. Plaintiff has expended significant resources in research and development in the United States for its products.

35. Plaintiff's Mark and Trade Dress are inherently distinctive and strong when used in relation to socks.

36. Because of Plaintiff's extensive, exclusive use and promotion of Plaintiff's Mark and Trade Dress, and in light of the unsolicited media coverage and notoriety pertaining to Plaintiff's goods and Plaintiff's Mark and Trade Dress, the same have become distinctive of Plaintiff, indicate a single source of origin of Plaintiff's goods, and have acquired secondary meaning.

37. Plaintiff has used Plaintiff's Mark and Trade Dress continuously, exclusively, and extensively since at least July 24, 2013.

38. Plaintiff has used Plaintiff's Mark and Trade Dress extensively since its first use thereof, in connection with socks and t-shirts.

39. Plaintiff has advertised and otherwise promoted Plaintiff's Mark and Trade Dress extensively since its first use thereof, through the internet, social media outlets and by other means.

40. Plaintiff's products bearing Plaintiff's Mark and Trade Dress have been the subject of unsolicited media coverage. Major publications like the *New York Times* have written about Plaintiff. (See, e.g., Exhibit E (New York Times Article, March 16, 2016, "*Selling High-End Socks by Giving Them Away*," incorporated herein by reference), Exhibit F (online *Forbes* article, Feb. 6, 2017 "*Meet Bombas, The Social Impact Company That Gave 2 Million Pairs of Socks To The Homeless*," incorporated herein by reference) Exhibit G (online CNBC article, August 22, 2017, "*How Daymond John faced failure and ended up winning big*," incorporated herein by reference), and Exhibit H (online *Fast Company* article, May 11, 2018, "*Getting Startups Fired Up About Social Justice, One Sock At a Time*," incorporated herein by reference.)

41. Commentaries, blogs, and news articles, have created tremendous consumer recognition of and love for Plaintiff's Mark and Trade Dress. Consumers even travel the world and take photographs of their feet while wearing Plaintiff's socks and post those photographs to social media.

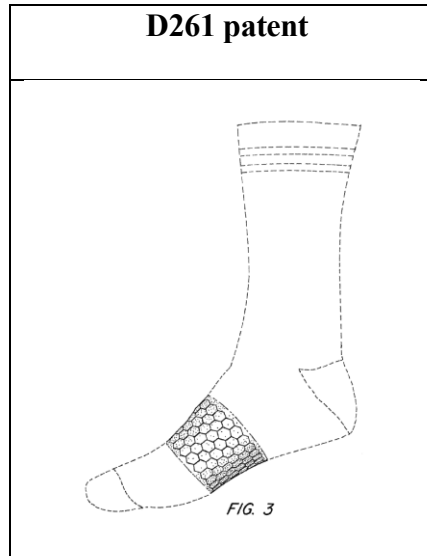
42. Plaintiff's products bearing Plaintiff's Mark and Trade Dress have been sold extensively.

43. By virtue of Plaintiff's use, advertising, promotion, and sale of goods bearing Plaintiff's Mark and Trade Dress, and the unsolicited media coverage featuring the same, Plaintiff's Mark and Trade Dress have become associated with Plaintiff.

44. Plaintiff has earned valuable and residual goodwill and reputation in the minds of consumers in the United States for being the sole of source goods bearing Plaintiff's Mark and Trade Dress.

Plaintiff's Design Patent

45. Plaintiff has protected its sock designs by a design patent. On March 3, 2015, the United States Patent and Trademark Office duly and lawfully issued United States Design Patent No. D723,261 titled, "Sock" ("the D261 Patent" (Plaintiff's Mark and Trade Dress and the D261 Patent are collectively referred to as "Plaintiff's Intellectual Property")):



Plaintiff is the owner of all right, title, and interest in the D261 Patent. A true and correct copy of the D261 Patent is attached hereto as Exhibit I, which is incorporated herein by reference.

46. As demonstrated above, Defendant manufactures, uses, sells, offers to sell, and/or imports into the United States socks that infringe Plaintiff's Intellectual Property, including the D261 Patent.

Defendant's Infringing Activities

47. Long after Plaintiff's adoption and first use of Plaintiff's Intellectual Property in connection with Plaintiff's socks, Defendant, without Plaintiff's authorization, began copying and using Plaintiff's Intellectual Property, or marks, trade dress, and designs substantially similar thereto, on Defendant's Infringing Socks.

48. In March 2016, Plaintiff discovered Defendant's Kickstarter campaign promoting and offering the Infringing Socks for sale. A screenshot from the Kickstarter campaign is attached hereto as Exhibit J, which is incorporated herein by reference.

49. On April 11, 2016, Plaintiff's attorneys sent a cease and desist letter to Defendant, which placed Defendant on notice of Plaintiff's Intellectual Property and requested that Defendant immediately cease all sales of the Infringing Socks and shut down its Kickstarter campaign.

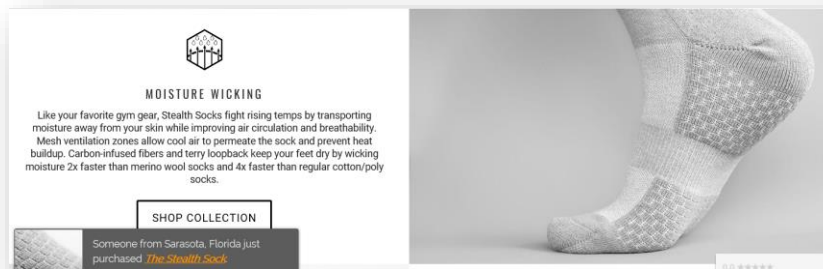
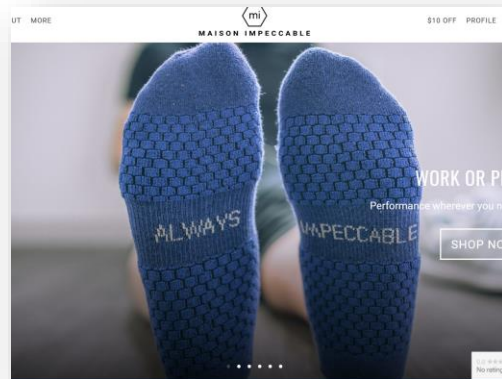
50. On April 18, 2016, Plaintiff's attorneys received a response from counsel to Defendant, which stated that Defendant disagreed with Plaintiff and would continue offering to sell and selling the Infringing Socks.

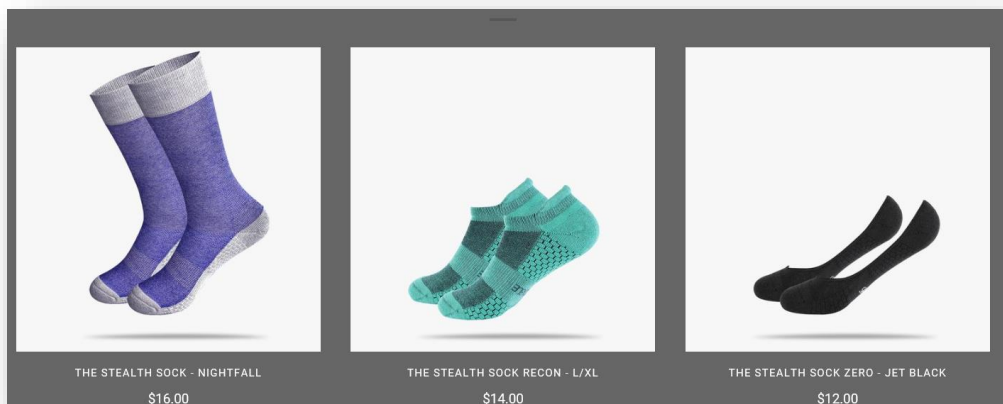
51. As of April 2016, Defendant's website was very simple and merely directed potential customers to its Kickstarter campaign. Upon recent investigation, however, Plaintiff has discovered that, after the Kickstarter campaign, Defendant altered its website to not only prominently display the Infringing Socks, but also mimic Plaintiff's Intellectual Property throughout the website without Plaintiff's authorization.

52. Plaintiff has also discovered that Defendant's business is growing despite being put on notice of its infringing activities.

53. Below are images from Defendant's current website and Kickstarter website, which provide non-limiting examples of Infringing Socks, infringing marks and trade dress that are confusingly similar to Plaintiff's Intellectual Property, and evidence showing the substantial similarities between the parties' websites and how Defendant has copied the look and feel of Plaintiff's Intellectual Property (screenshots of Defendant's current website are attached hereto as Exhibits K² and L, which are incorporated herein by reference):

² Notably, Exhibits K and L display a pop-up which respectively provide that "[s]omeone from Rochester, New York" and "Bedford Corners, New York" just "purchased The Stealth Sock."







54. As displayed above, to date, the Infringing Socks are still being promoted and offered for sale by Defendant.

55. Though Defendant has many patterns, shapes and arrangements to choose from, it copied and/or used marks, trade dress, and/or designs that are confusingly similar to Plaintiff's Intellectual Property and used the confusingly similar marks, trade dress, and/or designs in a way that is likely to confuse consumers.

56. Defendant has also copied Plaintiff's Trade Dress by copying the look and feel of Plaintiff's website.

57. Defendant's products, marketing, and trade dress are likely to confuse and mislead customers into believing that Defendant's goods originate from, are sponsored by, or are affiliated with Plaintiff.

58. During the term of the D261 Patent, Defendant has manufactured or had manufactured for it, and has offered for sale, sold, used, and/or imported articles embodying the patented design of the D261 Patent, and engaged in activities that infringe the D261 Patent.

59. Defendant's Infringing Socks include without limitation Defendant's "Stealth Sock."

60. Defendant's Infringing Socks infringe the single claim of the D261 Patent.

61. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design on the Infringing Socks and Plaintiff's patented design are substantially the same.

62. An ordinary observer would see the design on the Infringing Socks as making the same design impression, or as being the same design, as the patented design of the D261 Patent.

63. An ordinary observer would likewise consider the design on the Infringing Socks, in the context of any prior art, and giving such attention as a purchaser usually gives, to be the same as the patented design of the D261 Patent.

64. In the eye of the ordinary observer, giving such attention as a purchaser usually gives, the design on the Infringing Socks and Plaintiff's patented designs are substantially the same, with the resemblance being such as to deceive such an observer, inducing him to purchase one supposing it to be the other.

65. In fact, the design on the Infringing Socks is virtually identically, if not identical, to Plaintiff's patented design.

66. Defendant's bad-faith activities have caused and will continue to cause a likelihood of deception and confusion in the marketplace among consumers, and extensive damage to Plaintiff's business, goodwill, and reputation.

67. Defendant has illegally profited from its infringement of Plaintiff's Intellectual Property.

68. Defendant's acts have been without license or authority of Plaintiff.
69. Upon information and belief, Defendant deliberately set out to use Plaintiff's Intellectual Property to benefit from the recognition and substantial goodwill that Plaintiff has established in Plaintiff's Intellectual Property.
70. Defendant's Infringing Socks infringe Plaintiff's Intellectual Property, including the D261 Patent.
71. Defendant's continued use of Plaintiff's Intellectual Property, despite being put on notice of Plaintiff's rights therein, demonstrates Defendant's willful infringement and bad faith.
72. Defendant has no right to use Plaintiff's Intellectual Property. Defendant has no right to use Plaintiff's Intellectual Property on socks.
73. Defendant's use of Plaintiff's Intellectual Property in the manner described above tends to and does create confusion and the erroneous impression that Defendant's products emanate or originate from Plaintiff and/or that said products are authorized, sponsored, or approved by Plaintiff, even though they are not. This confusion causes irreparable and incalculable harm to not only Plaintiff, but those in need who receive Plaintiff's sock donations.
74. For every instance of confusion and each mistaken sale that goes to Defendant, a person in need does not receive a pair of socks.
75. The public is harmed by Defendant's infringement.
76. Defendant has been unjustly enriched by illegally using and misappropriating Plaintiff's Intellectual Property for its own financial gain. Furthermore, Defendant has unfairly benefited and profited from Plaintiff's outstanding reputation for high-quality socks, its mission to help those in need, and its significant advertising and promotion of Plaintiff's goods and Intellectual Property.

77. In addition to causing Plaintiff to suffer incalculable, irrecoverable, and irreparable lost sales, Defendant's manufacture, distribution, and sale of Infringing Socks will irreparably injure Plaintiff's reputation as Plaintiff is unable to control the quality of Defendant's goods and/or the materials and the manufacturing process used by Defendant.

78. Defendant's acts and ongoing activities, as set forth herein, are willful. Therefore, this case constitutes an exceptional case under 15 U.S.C. § 1117(a) and 35 U.S.C. § 285.

79. Upon information and belief, Defendant's conduct is continuing and will continue unless enjoined by this Court.

80. Plaintiff has no adequate remedy at law.

COUNT I
Federal Unfair Competition and False Designation of Origin
15 U.S.C. § 1125(a)

81. Plaintiff repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

82. Pursuant to 15 U.S.C. § 1125(a), a non-registered trademark owner may be granted injunctive relief to prevent or restrain infringement of its well-known mark and may petition the Court to award damages, disgorgement of profits, and attorneys' fees as a result of the trademark infringement.

83. Defendant's acts described above, including its use in commerce of marks and trade dress highly similar or identical to Plaintiff's Mark and Trade Dress, have caused or are likely to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods, and constitutes infringement of Plaintiff's Mark and Trade Dress and unfair competition in violation of the Lanham Act, and common law trademark and unfair competition laws. Further, Defendant's acts described above constitute materially false

representations of fact that are likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods, all in violation of 15 U.S.C. § 1125(a).

84. As stated above, Plaintiff's Mark and Trade Dress have become extremely well-known in the sock industry.

85. After Plaintiff's Mark and Trade Dress became well-known, Defendant started to use and continues to use Plaintiff's Mark and Trade Dress, or marks and trade dress identical or substantially similar to thereto, for commercial purposes and without Plaintiff's permission. Defendant's infringement of Plaintiff's Mark and Trade Dress is therefore willful.

86. Even after being placed on notice of Plaintiff's rights in April 2016, Defendant continues to use confusingly similar marks and trade dress in commerce.

87. Upon information and belief, Defendant is willfully offering for sale and selling socks that infringe Plaintiff's Mark and Trade Dress in order to benefit from Plaintiff's goodwill and reputation. Furthermore, Defendant is falsely creating an association between Defendant's goods and Plaintiff and Plaintiff's products.

88. Defendant's actions have damaged Plaintiff's business, reputation, and goodwill and have interfered with Plaintiff's own use of Plaintiff's Mark and Trade Dress.

89. Unless restrained and enjoined by this Court, Defendant will persist in its activities, causing irreparable harm and injury not only to Plaintiff, but to those in need who receive socks donated by Plaintiff.

90. Defendant should be preliminarily, and upon final hearing, permanently enjoined from using Plaintiff's Mark and Trade Dress, pursuant to 15 U.S.C. § 1116.

91. Plaintiff is entitled, under 15 U.S.C. § 1117(a), to recover from Defendant: (i) Defendant's profits in providing its goods using Plaintiff's Mark and Trade Dress; (ii) damages sustained by Plaintiff due to Defendant's providing its goods using marks and trade dress identical or confusingly similar to Plaintiff's Mark and Trade Dress; and (iii) the costs of this action.

92. Because this is an exceptional case, involving willful misconduct by Defendant, Plaintiff is also entitled, under 15 U.S.C. § 1117(a), to recover: (i) exceptional damages for intentional infringement, bad faith, and willful conduct equal to three times profits or damages, whichever is greater; and (ii) attorneys' fees.

93. Plaintiff has no adequate remedy at law and is suffering irreparable harm.

COUNT II
Common Law Trademark and Trade Dress Infringement

94. Plaintiff repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

95. Plaintiff is the owner of common-law trademark rights in Plaintiff's Mark and Trade Dress in New York and throughout the United States. These rights are senior and superior to any rights which Defendant may claim.

96. Defendant has used in commerce, without Plaintiff's consent, marks and trade dress that are identical or confusingly similar to Plaintiff's Mark and Trade Dress.

97. Defendant's use of Plaintiff's Mark and Trade Dress is likely to cause consumer confusion, deception, or mistake among consumers as to the origin, source, sponsorship, affiliation, or approval by Plaintiff of Defendant's goods, in violation of New York common law as preserved by New York General Business Law § 360-o.

98. Defendant's conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

99. Plaintiff has no adequate remedy at law inasmuch as money damages alone would not adequately compensate Plaintiff for the harm to its rights, goodwill, and business reputation, not to mention the extreme harm experienced by the public due to the fact that, for every lost sale of Plaintiff's, someone in need does not receive a donated pair of socks.

100. Defendant's acts described above greatly and irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

COUNT III
Common Law Unfair Competition

101. Plaintiff repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

102. Plaintiff is the owner of common law rights in Plaintiff's Mark and Trade Dress.

103. Plaintiff has invested substantial time, labor, skill, and money in the development of Plaintiff's Mark and Trade Dress.

104. Through its conduct described above, including the unauthorized use of Plaintiff's Mark and Trade Dress and making false or misleading representations of fact in connection with the sale of products confusingly similar to Plaintiff's, Defendant has passed off their products as those of Plaintiff or being in connection or affiliation with Plaintiff, and has intentionally misappropriated Plaintiff's labors, investments, and expenditures and intentionally exploited Plaintiff's Mark and Trade Dress and Plaintiff's reputation and goodwill associated therewith.

105. Defendant's conduct is intended and likely to cause confusion, deception, or mistake among consumers as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods by Plaintiff.

106. Defendant has used marks and trade dress that are confusingly similar to Plaintiff, in relation to identical or highly similar goods as Plaintiff's and in competition with Plaintiff, all of which provided and continues to provide Defendant an unfair advantage, because Defendant bore little or no burden of the expense of development and promotion of those goods.

107. Defendant's conduct was made in bad faith, with full knowledge of Plaintiff's ownership of and/or exclusive right to use and license Plaintiff's Mark and Trade Dress.

108. By knowingly competing against Plaintiff using confusingly similar marks and trade dress for identical or highly similar goods, Defendant has misappropriated a commercial advantage belonging to Plaintiff.

109. Defendant's conduct is illegal and actionable under the common laws of the State of New York.

110. Defendant's actions described above constitute unfair competition in violation of New York common law as preserved by New York General Business Law § 360-o.

111. Defendant's conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

112. Plaintiff has no adequate remedy at law inasmuch as money damages alone would not adequately compensate Plaintiff for the harm to its rights, goodwill, and business reputation, not to mention the extreme harm experienced by the public due to the fact that, for every lost sale, someone in need does not receive a donated pair of socks.

113. Defendant's acts described above greatly and irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

COUNT IV
Patent Infringement

114. Plaintiff repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

115. Defendant's acts herein constitute infringement of the D261 Patent.

116. Defendant's acts described herein constitute direct literal infringement, and/or infringement under the doctrine of equivalents, of Plaintiff's patented design.

117. Defendant's acts likewise constitute inducement of infringement.

118. Upon information and belief, Defendant is inducing third parties to engage in infringement of the D261 Patent.

119. Upon information and belief, Defendant has engaged or is engaging in an affirmative act to encourage a manufacturer(s) of the Infringing Socks to manufacture the same and thereby infringe the D261 Patent.

120. Upon information and belief, Defendant has and has had actual knowledge that the induced acts constitute patent infringement, or, has and has had willful blindness thereto.

121. Upon information and belief, Defendant has and has had specific intent to induce infringement of the D261 Patent.

122. Plaintiff provided actual notice to Defendant of its infringement of the D261 Patent at least as early as April 2016.

123. In spite of Plaintiff's notice, Defendant has engaged in a pattern of conduct demonstrating: Defendant's awareness of the D261 Patent, the objectively high likelihood that Defendant's actions constitute infringement of the D261 Patent, that the D261 Patent is valid and enforceable, and that Defendant knew or should have known the risk of using Plaintiff's patented design.

124. Defendant has infringed and continues to infringe the D261 Patent by making, using, promoting, marketing, offering to sell, and/or selling in the United States, including the state of New York and within this District, products that are substantially similar to the D261 Patent in violation of 35 U.S.C. § 271, including but not limited to Defendant's Infringing Socks.

125. Given the widespread popularity and recognition of Plaintiff's patented design and the patent notice provided by Plaintiff, Defendant had pre-suit knowledge of Plaintiff's rights in the D261 patent and has intentionally copied said design on Defendant's own products in an effort to pass them off as if they originated, are associated with, are affiliated with, are sponsored by, are authorized by, and/or are approved by Plaintiff.

126. Defendant's acts of infringement of the D261 Patent were undertaken without authority, permission, or license from Plaintiff. As such, Defendant's infringing activities violate 35 U.S.C. § 271.

127. Defendant's acts of infringement were and are willful and deliberate.

128. Defendant has profited from its infringing activities.

129. As a result of Defendant's conduct, Plaintiff has been substantially harmed. Plaintiff has suffered and continues to suffer substantial damages as a result of Defendant's bad faith activities. Plaintiff has also suffered actual damages, including lost profits, and has been forced to retain legal counsel and pay costs of court to bring this action.

130. The injury to Plaintiff will continue unless and until Defendant is enjoined from further infringement.

131. Plaintiff is entitled to a complete accounting of all revenue and profits derived by Defendant from the unlawful conduct alleged herein, including without limitation, Defendant's profits pursuant to 35 U.S.C. § 289.

132. Because Defendant has engaged and is engaged in willful and deliberate infringement of the D261 Patent, Defendant's willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of attorneys' fees pursuant to 35 U.S.C. § 285.

133. Plaintiff is entitled to a permanent injunction preventing Defendant from further infringing the D261 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Grant of a permanent injunction enjoining and restraining Defendant and its officers, agents, servants, employees, owners, representatives, and attorneys, and all those in active concert of participation with them, from:

a. Selling any products bearing and offering any services utilizing Plaintiff's Intellectual Property, or any variations thereof in or as part of any business, service or commercial activity;

b. Using Plaintiff's Intellectual Property or any variations thereof, in or as part of any business, service or commercial activity;

c. Using Plaintiff's Intellectual Property, or any other identical or similar mark, trade dress or design in relation to any products or services related to socks and t-shirts, or in any manner likely to cause confusion, mistake or deception;

d. Filing or pursuing any application for registration of Plaintiff's Intellectual Property as a trademark, service mark, trade dress or patented design in any jurisdiction in the U.S.;

e. Offering for sale, selling or marketing merchandise that tends in any way to deceive, mislead or confuse the public into believing that Defendant's merchandise in any way originates with, is sanctioned by, or is affiliated with Plaintiff;

f. Otherwise competing unfairly with Plaintiff;

g. Engaging in further acts of misrepresentation regarding Plaintiff or Plaintiff's goods;

h. Engaging in further acts infringing Plaintiff's rights under New York law;

B. Directing Defendant to:

a. Notify all customers, sellers, distributors, suppliers, manufactures, advertisers, and other persons involved in Defendant's offer of, or attempt to offer, goods under Plaintiff's Intellectual Property, that Plaintiff's Intellectual Property is owned and controlled exclusively by and for the benefit of Plaintiff;

b. Deliver to Plaintiff to be destroyed all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements in Defendant's possession or control and bearing and/or utilizing Plaintiff's Intellectual Property (or any other name, or other designation, description, or representation that violates 15 U.S.C. § 1125(a)) or the D261 Patent);

c. Within ten (10) days of judgment, take all steps necessary to remove from Defendant's place(s) of business and website(s), all references to Plaintiff's Intellectual Property, including but not limited to the offering for sale of products that infringe the same.

C. Ordering an accounting by Defendant of all revenues and profits derived from the providing of goods through the unauthorized use of Plaintiff's Intellectual Property;

D. Ordering Defendant to account for and pay over to Plaintiff any and all revenues and profits derived by it and all damages sustained by Plaintiff by reason of the acts complained of in

this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled pursuant Section 35 of the Lanham Act, 15 U.S.C. §1117, as well as 35 U.S.C. §§ 284 and 289, and all further applicable law;

E. Awarding Plaintiff Defendant's profits, awarding an amount equal to three times Plaintiff's actual damages, and awarding Plaintiff the costs of this action along with Plaintiff's reasonable attorneys' fees;

F. That each such award of damages be enhanced to the maximum available for each infringement in view of each of Defendant's willful infringements of Plaintiff's rights;

G. That Plaintiff be awarded punitive or exemplary damages under New York law because of the egregious, malicious, and tortious conduct of Defendant complained of herein;

H. That Plaintiff recover the costs of this action including its expenses and reasonable attorneys' fees pursuant to 15 U.S.C. §1117, 35 U.S.C. § 285 and all further applicable law, because of the deliberate and willful nature of the infringing activities of Defendant sought to be enjoined hereby, which make this an exceptional case warranting such an award;

I. That Plaintiff be awarded pre-judgment and post-judgment interest;

J. Enter an order for Judgment in favor of Plaintiff and against Defendant on each and every Claim of this Complaint, including by granting the following relief against Defendant:

a. That Defendant be adjudged to have engaged in federal unfair competition and trademark infringement under Section 43 of the Lanham Act, 15 U.S.C. § 1125 and unfair competition and trademark infringement under the common law and statutory laws of the State of New York;

b. That Defendant be adjudged to have infringed Plaintiff's Mark and Trade Dress by the acts complained of herein;

- c. That Defendant be adjudged to have engaged in patent infringement of Plaintiff's rights under the D261 Patent, under 35 U.S.C. § 101 *et seq.*;
- d. That the D261 Patent was duly and legally issued by the U.S. Patent Office, and is valid and enforceable;
- e. Requiring that Defendant, within thirty (30) days after service of notice of the entry of judgment, or an injunction pursuant thereto, file with the Court and serve on Plaintiff's counsel a written report under oath setting forth in detail the manner in which Defendant has complied with the Court's order;
- f. Awarding to Plaintiff such other and further relief as the Court may deem just and proper or otherwise provided by law.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Respectfully submitted,

Date: May 17, 2018

/s/ Michael J. Kosma

Michael J. Kosma (MK1979)

Benjamin N. Luehrs (*pro hac vice pending*)

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