

DICKINSON WRIGHT PLLC
Steven A. Caloiaro, Bar No. 284410
SCaloiaro@dickinsonwright.com
100 West Liberty Street, Suite 940
Reno, Nevada 89501-1991
Tel: (775) 343-7500

John S. Artz (*pro hac vice*)
JSArtz@dickinsonwright.com
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
Tel: (248) 433-7262

Michael D. Saunders, Bar No. 259692
MSaunders@dickinson-wright.com
607 W. 3rd Street, Suite 2500
Austin, TX 78701
Tel: (512) 770-4200
Fax: (844) 670-6009

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BESTWAY (USA), INC., AND
BESTWAY INFLATABLES &
MATERIAL CORP.,

Plaintiffs,

v.

INTEX RECREATION CORP., INTEX
DEVELOPMENT COMPANY LTD.,
INTEX MARKETING LTD., AND
INTEX INDUSTRIES (XIAMEN) CO.,
LTD.,

Defendants.

Case No.: 2:22-cv-00406-AB-AGR

**PLAINTIFF'S PRELIMINARY
INFRINGEMENT
CONTENTIONS**

Pursuant to the Court’s scheduling order, Plaintiffs Bestway (USA), Inc. (“Bestway USA”) and Bestway Inflatables & Material Corp. (“Bestway Inflatables”)(collectively, “Bestway”), by and through its undersigned counsel, provide the following preliminary infringement contentions to Defendants Intex Recreation Corp., (“IRC”), Intex Development Company Ltd. (“IDC”), Intex Marketing Ltd. (“IML”), and Intex Industries (Xiamen) Co. Ltd. (“Intex Xiamen”) (collectively, “Intex” or “Defendants”).

A. RESERVATION OF RIGHTS

Bestway’s investigation of Intex’s infringement is active and ongoing. Bestway’s preliminary infringement contentions therefore rely upon publicly available information and Bestway’s good faith beliefs regarding the Accused Products (as described in § C, below). Bestway’s preliminary infringement contentions should not be interpreted as conveying Bestway’s position on whether or how the Court should construe any term in any Asserted Claim (as defined in § B, below).

The attached infringement chart – Exhibit A – provides an example of the manner in which Defendants’ (individually and/or collectively) acts of making, using, selling, offering for sale, and/or importing the Accused Products infringe the Asserted Claims. Exhibit A consists of a claim chart applying the 24in Full Dura-Beam® Deluxe High-Rise Pillow Top Airbed accused product (the “High-Rise Model”) to the Asserted Claims. The High-Rise Model is representative of the currently known variant of the Accused Products, but may not encompass the full-scope of Accused Products. Certain differences between the High-Rise Model and other potential Accused Products (e.g., branding and product size) do not appear to be related to the limitations of the Asserted Claims. Currently, and for the most part, the High-Rise Model is representative of all known variants of the Accused Products and the application of the High-Rise Model to the Asserted Claims applies to all known variants of the Accused Products.

1 Bestway reserves its rights to supplement, modify, and/or amend these
2 preliminary contentions, including, without limitation, to add Asserted Claims,
3 Asserted Patents, or Accused Products as Bestway conducts discovery and ascertains
4 additional facts, as Intex provides its responses, arguments and contentions, and, if
5 applicable, the Court construes any claim terms.

6 Bestway provides the following disclosures subject to the foregoing
7 reservations and without waiving any of its rights under the Federal Rules of Civil
8 Procedures, the Local Rules, or the Court's standing orders.

9 **B. DISCLOSURE OF CLAIMS INTEX INFRINGES**

10 Bestway alleges that Intex is infringing, and has infringed, at least claims 1,
11 2, 16, 19, and 20 (the "Asserted Claims") of U.S. Patent No. 10,687,633 (the "'633
12 Patent" or "Asserted Patent").

13 Each Defendant has literally infringed and continues to literally infringe the
14 Asserted Claims. To the extent the Court determines any Defendant does not literally
15 infringe any Asserted Claim, Bestway asserts that those Defendant(s) infringe(s) the
16 Asserted Claims under the doctrine of equivalents on the basis that insubstantial
17 differences separate the Accused Products and the Asserted Claims.

18 Each Defendant individually, or as part of a joint enterprise or through the
19 exercise of direction and control over at least one other Defendant or third party, has
20 directly infringed and still is directly infringing the Asserted Claims by making,
21 using, selling, offering for sale, and/or importing into the United States the Accused
22 Products. *See* 35 U.S.C. § 271(a).

23 Each Defendant also has induced, and continues to actively induce,
24 infringement of the Asserted Claims. *See* 35 U.S.C. § 271(b). In particular, with
25 knowledge of the Asserted Patents, each Defendant has actively induced one or more
26 Defendants and/or third-party manufacturers, distributors, importers, agents,
27 contractors, retailers, and/or other third party individuals or entities to directly
28 infringe the Asserted Claims by, for example, directing, contracting or otherwise

1 causing them to market, sell, offer for sale, and/or import Accused Products, or by
2 distributing or otherwise making available instructions, designs, materials, or
3 manuals for manufacturing the Accused Products, providing technical support for
4 manufacturing the Accused Products, and/or providing instructions for making,
5 using, selling, offering for sale, and/or importing the Accused Products into the
6 United States. Each Defendant has committed and continues to commit these
7 infringing acts with knowledge of, or willful blindness to, the fact that the induced
8 acts infringe the Asserted Claims. Each Defendant intends to cause the other
9 Defendant(s), third-party manufacturers, distributors, importers, agents, contractors,
10 and/or other third party individuals or entities to infringe the Asserted Claims.

11 Each Defendant also has contributed, and continues to contribute, to
12 infringement of the Asserted Claims. *See* 35 U.S.C. § 271(c). In particular, with
13 knowledge of the Asserted Patent, each Defendant has provided, sold, offered to sell,
14 or otherwise distributed material, product, or apparatus that is a component used in
15 practicing the Asserted Claims, and each Defendant does so with knowledge that the
16 component was especially adapted for use in a manner that infringes the Asserted
17 Claims. Each Defendant also does so with knowledge that the component is not a
18 staple article or commodity of commerce suitable for substantial non-infringing
19 uses.

20 Intex was willfully infringing the Asserted Claims before Bestway filed its
21 initial complaint in this matter, and Intex is still willfully infringing the Asserted
22 Claims. (*See* ECF No. 1, Complaint at ¶¶ 11-17, 20-24, and 29-39). Given the early
23 stages of this litigation, Bestway reserves its right to present additional evidence
24 relating to Defendants' willful infringement.

25 **C. DEFENDANTS' ACCUSED PRODUCTS**

26 The "Accused Products" include, but are not limited to, the aforementioned
27 High-Rise Model:
28

- 54” x 75” x 24” Full Dura-Beam Deluxe High-Rise Pillow Top Airbed (SKU 64752WD)

Bestway’s identification of the Accused Products includes all products known to Bestway to include the accused functionality, components, and/or design, and should be understood to include any other products made, used, sold, offered for sale, and/or imported by Intex that have the same or reasonably similar functionality, components, and/or design as those set forth in the Asserted Claims of the Asserted Patent.

Bestway reserves the right to amend these disclosures, including to add additional Accused Products to these preliminary infringement contentions based on further investigation or other information discovered or otherwise provided during the course of this litigation.

D. CHARTS IDENTIFYING DEFENDANTS’ INFRINGEMENT

Exhibit A attached hereto discloses examples of how the Accused Products infringe the Asserted Claims. As explained above, each Defendant has literally infringed and continues to literally infringe the Asserted Claims (whether directly, jointly, by inducement, and/or contributorily). Although Bestway identifies at least one citation where each element of each asserted claim is found in the Accused Products, each and every disclosure of the same element in the Accused Products or in documentation or other information about the Accused Products is not necessarily identified. The lack of a citation for any element is not an admission that the element is not disclosed or is not inherent in the Accused Products. In an effort to focus the issues and avoid redundancy, Bestway identifies exemplary portions of the Accused Products and reserves its right to cite other portions of the Accused Products or documentation about them to support its claims.

To the extent any Defendant is deemed not to literally infringe any Asserted Claim, the Asserted Claims are infringed under the doctrine of equivalents. Specifically, the Accused Products perform substantially the same function as the

1 devices in the Asserted Claims, in substantially the same way, to achieve
2 substantially the same result.

3 As with the rest of this disclosure, Bestway's claim chart for the Asserted
4 Patent is preliminary and exemplary in nature. Limited discovery has been
5 exchanged in this matter. Bestway has prepared these charts based on the
6 information currently available to it and accordingly reserves its right to amend or
7 supplement these charts upon obtaining additional information during discovery or
8 as otherwise consistent with the Federal Rules, Local Rules, and the Court's orders.

9
10 Date: November 4, 2022

By: /s/ Steven A. Caloiaro
DICKINSON WRIGHT PLLC
Steven A. Caloiaro, Bar No. 284410
SCaloiaro@dickinsonwright.com
100 West Liberty Street, Suite 940
Reno, Nevada 89501-1991
Tel: (775) 343-7500
Fax: (844) 670-6009

John S. Artz (*pro hac vice*)
JSArtz@dickinsonwright.com
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
Tel: (248) 433-7262

Michael D. Saunders, Bar No. 259692
MSaunders@dickinson-wright.com
607 W. 3rd Street, Suite 2500
Austin, TX 78701
Tel: (512) 770-4200
Fax: (844) 670-6009

Attorneys for Plaintiffs

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R. Trevor Carter trevor.carter@faegredrinker.com	Andrew M. McCoy andrew.mccoy@faegredrinker.com
Reid E. Dodge reid.dodge@faegredrinker.com	Joshua DeAmicis joshua.deamicis@faegredrinker.com
Tarifa B. Laddon tarifa.laddon@faegredrinker.com	

Melinda Poehlmann