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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**

INTEX EX. 1059, Pg. 1
Intex Recreation v. Bestway Inflatables, IPR2023-00489

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.

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

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

B. DISCLOSURE OF CLAIMS INTEX INFRINGES

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

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

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

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

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

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

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

C. DEFENDANTS' ACCUSED PRODUCTS

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

- 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

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

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

Date: November 4, 2022

By: /s/ *Steven A. Caloiaro*

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CERTIFICATE OF SERVICE

The undersigned, Melinda Poehlmann, declares that I am over the age of eighteen years and not a party to the above-captioned action and that on November 4, 2022, I served a copy of the foregoing document via email to the persons at the email addresses listed below:

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DATE: November 4, 2022

Melinda Poehlmann

Melinda Poehlmann