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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

TROVE BRANDS, LLC, Plaintiff, vs. CAMELBAK PRODUCTS, LLC, and VISTA OUTDOOR INC., Defendants.	No.: 5:23-cv-4267-PCP **CAMELBAK PRODUCTS, LLC'S DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**
CAMELBAK PRODUCTS, LLC, Counterclaim Plaintiff, vs. TROVE BRANDS, LLC, Counterclaim Defendant.	

Pursuant to the Court's Case Management Order (DN 25) and N.D. Cal. Patent L.R. 3.1, Counterclaim Plaintiff CamelBak Products, LLC ("CamelBak") hereby discloses its preliminary assertion of patent claims and infringement contentions to Plaintiff and Counterclaim Defendant Trove Brands, LLC ("Trove").

I. PRELIMINARY STATEMENT

CamelBak makes these preliminary infringement contentions with only limited discovery in this action yet from Trove. For example, these contentions are made without knowledge of, or with limited knowledge of, Trove's confidential documents, designs, and schematics. CamelBak expressly reserves the right to amend or modify its identification of asserted claims, accused products and/or infringement contentions, if necessary, as permitted by the Court, and/or based on additional information obtained through formal discovery or other means. CamelBak further reserves the right to seek changes to the Court's Case Management Order or other scheduling orders in light of Trove's failure to produce in a timely manner sufficient documents or other discovery on which CamelBak might base its infringement contentions.

II. P.L.R. 3-1 DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

A. P.L.R. 3-1(a): Disclosure of Asserted Claims

Based on the information CamelBak currently has available to it, CamelBak discloses the following claims from each Asserted Patent that it contends are infringed by Trove (the "Asserted Claim(s)"):

Asserted Patent	Infringed Claims	Priority Date of Claims
8,905,252 ("the '252 Patent")	5, 6, 7, 19	Mar. 13, 2013
8,905,252 ("the '252 Patent")	16, 17, 18	July 29, 2013
9,463,911 ("the '911 patent")	14, 15, 16, 19, 37, 38	Apr. 11, 2005

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Asserted Patent	Infringed Claims	Priority Date of Claims
10,676,255 ("the '255 patent")	1, 3, 4, 5, 11, 13, 19	Apr. 11, 2005
10,676,255 ("the '255 patent")	9	Dec. 20, 2005
10,676,255 ("the '255 patent")	12	Aug. 8, 2005
11,242,178 (the "'178 Patent")	1, 2, 4, 5, 6, 11, 12, 14, 15, 16, 17, 20, 21, 22	Apr. 11, 2005
11,242,178 (the "'178 Patent")	10	Dec. 20, 2005
9,782,028 ("the '028 patent")	1, 2, 5, 6, 8, 9, 15, 16, 21	Jan. 21, 2009
10,165,879 ("the '879 patent")	1, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19	Jan. 21, 2009
11,684,187 ("the '187 patent")	1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19	Jan. 21, 2009
11,851,250 ("the '250 patent")	1, 2, 4, 5, 6	Apr. 11, 2005

CamelBak contends that Trove infringes each of the above-identified asserted claims directly under 35 U.S.C. § 271(a) and indirectly under 35 U.S.C. § 271(b) (inducement) and 35 U.S.C. § 271(c) (contributory infringement).

B. P.L.R. 3-1(b): Disclosure of Accused Products

The accused products include, without limitation, the following: Trove's Owala FreeSip, Owala Flip Kids, and Owala Flip families of water bottle products, including all component parts such as replacement lids, replacement bottles, Bottle Boot product, and other replacement components that can be combined to form an infringing product (collectively, the "Accused Products"). Images of representative samples of the lids of the Accused Products are provided below. Any Trove products that include the same or substantially the same lid structure, regardless of any differences in coloring scheme or changes to marketing name or model number, should be considered as the same Accused Product.

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1. FreeSip

2. Flip

3. Flip Kids

As set forth in the table below, for each Asserted Claim of each Asserted Patent, CamelBak identifies the Accused Products of which it currently is aware. For each Accused Product identified below, CamelBak's contentions apply to the Accused Product and any other similar past, present, or future products, as well as products incorporating the Accused Product or other products with the same or substantially similar features.

This identification of Accused Products is based upon CamelBak's investigation to date. CamelBak reserves the right to add, delete, substitute or otherwise amend this list of Accused

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Products based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court's rules, including the Patent Local Rules.

Asserted Patent	Infringed Claims	Accused Product	Chart
The '252 Patent	5, 6, 7, 16, 17, 18, 19	FreeSip	Ex. A-1
The '911 Patent	14, 15, 16, 19, 37, 38	Flip Kids	Ex. B-1
The '255 Patent	1, 3, 4, 5, 9, 11, 12, 13, 19	Flip Kids	Ex. C-1
The '178 Patent	1, 2, 4, 5, 6, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22	Flip Kids	Ex. D-1
The '178 Patent	11, 12, 14, 15, 16, 17, 20, 22	Flip	Ex. D-2
The '028 Patent	1, 2, 5, 6, 8, 9, 15, 16, 21	Flip Kids	Ex. E-1
The '879 Patent	1, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19	Flip Kids	Ex. F-1
The '879 Patent	1, 3, 11, 12, 13, 14, 15, 16, 17, 18, 19	Flip	Ex. F-2
The '187 Patent	1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19	Flip Kids	Ex. G-1
The '187 Patent	1, 3, 4, 19	Flip	Ex. G-2
The '250 Patent	1, 2, 4, 5, 6	Flip Kids	Ex. H-1
The '250 Patent	1, 2, 4, 5, 6	Flip	Ex. H-2

By making this identification of Accused Products pursuant to the Court's Case Management Order and Patent Local Rules, CamelBak does not waive or in any way limit its right to assert infringement of the Asserted Patents against additional Trove's products with similar functions and operations of which CamelBak may become aware during discovery in this litigation. CamelBak

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reserves the right to supplement or modify its disclosures and contentions as a matter of right, as the Court may permit, and/or in light of further discovery and investigation.

C. P.L.R. 3-1(c): Claim Charts

Please see attached Exhibits A1, B1, C1, D1-D2, E1, F1-F2, G1-G2, and H1-H2 for charts identifying specifically where and how each element of each Asserted Claim is found within each Accused Product. CamelBak reserves the right to supplement or modify these disclosures and claim charts to account for alternative proposed claim constructions and/or any claim construction order that may be issued in this matter. Also, CamelBak reserves the right to supplement or modify its disclosures and contentions as the Court may permit, and/or in light of further discovery and investigation.

D. P.L.R. 3-1(d): Claims of Indirect Infringement

Trove has directly infringed each asserted claim by, without authority, making, using, selling, offering for sale, and/or importing into the United States the Accused Products.

Trove has actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the Asserted Patents by making, using, offering for sale, importing, and/or selling the Accused Products, all with knowledge of the Asserted Patents and their claims; with knowledge that its customers and end users will use, market, sell, offer to sell, and/or import the Accused Products; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of those systems through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals, and/or technical materials.

Trove has also contributed to the infringement by others, including the end users of the Accused Products, and continues to contribute to infringement by others, by selling, offering to sell, and/or importing components of the Accused Products (e.g., stand-alone lids) into the United States,

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knowing that those components constitute a material part of the inventions of the Asserted Patents, knowing those components to be especially made or adapted for use in an infringement of the Asserted Patents, and knowing that those components are not staple articles or commodities of commerce suitable for substantial non-infringing use.

E. P.L.R. 3-1(e): Claim Elements Literally Present and/or Present Under the Doctrine of Equivalents

CamelBak alleges that each element of the Asserted Claims is found literally in the Accused Products.

CamelBak served on Trove an interrogatory seeking Trove's contentions on non-infringement (Interrogatory No. 1). Trove objected to this interrogatory as premature and thus far has declined to provide any substantive contentions on non-infringement. To the extent Trove contends in the future that any claim element of any Asserted Claim is not literally present in any Accused Product, CamelBak reserves the right to respond to any such contention by explaining why any such claim element would nonetheless be present under the doctrine of equivalents.

These assertions are based upon CamelBak's investigation to date. CamelBak reserves the right to add, delete, substitute or otherwise amend these infringement allegations based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court's rules, including the Local Patent Rules.

F. P.L.R. 3-1(f): Priority Date

The priority date to which each Asserted Claim of each Asserted Patent is entitled is provided above in Section II.A.

G. P.L.R. 3-1(g): Practicing Products

CamelBak identifies the following practicing products:

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Patent	Claims	CamelBak Practicing Product
The ’252 Patent	Practices at least claim 5, 19	CHUTE CHUTE MAG
The ’911 Patent	Practices at least claim 14, 37	BETTER BOTTLE EDDY BOTTLE EDDY + BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE KIDS BETTER BOTTLE GROOVE BOTTLE
The ’255 Patent	Practices at least claim 1	BETTER BOTTLE EDDY BOTTLE EDDY + BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE KIDS BETTER BOTTLE GROOVE BOTTLE
The ’178 Patent	Practices at least claim 1, 11	BETTER BOTTLE EDDY BOTTLE EDDY + BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE KIDS BETTER BOTTLE GROOVE BOTTLE
The ’028 Patent	Practices at least claim 1	KIDS BETTER BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE
The ’879 Patent	Practices at least claim 1	KIDS BETTER BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE
The ’187 Patent	Practices at least claim 1	BETTER BOTTLE EDDY BOTTLE EDDY + BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE KIDS BETTER BOTTLE GROOVE BOTTLE

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The '250 Patent	Practices at least claim 1	BETTER BOTTLE EDDY BOTTLE EDDY + BOTTLE EDDY KIDS BOTTLE EDDY+ KIDS BOTTLE KIDS BETTER BOTTLE GROOVE BOTTLE

H. P.L.R. 3-1(h): Timing of Infringement and Damages Period

Discovery into the timing of the point of first infringement and sales of the Accused Products is ongoing. Pursuant to 35 U.S.C. § 286, CamelBak identifies a damages period beginning on August 21, 2017. In any event, CamelBak provided actual notice to Trove of its infringement in a letter dated June 21, 2023.

I. P.L.R. 3-1(i): Basis for Claim of Willful Infringement

Trove's acts of infringement of the Asserted Patents have been willful and intentional under the standard of *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016). CamelBak provided written notice to Trove of the '252, '911, '255, '178, and '250 Asserted Patents on June 21, 2023 and written notice of other Asserted Patents thereafter. Moreover, CamelBak maintains a virtual patent marking webpage: https://www.camelbak.com/legal/patents/patents.html. Accordingly, since at least June 21, 2023, Trove has willfully infringed the Asserted Patents by refusing to take a license and continuing the infringement detailed in the attached charts.

III. P.L.R. 3-2 DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE

Pursuant to P.L.R. 3-2, CamelBak is producing the following documents:

A. P.L.R. 3-2(a): Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

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After a diligent search, CamelBak has not identified any documents that may be responsive to P.L.R. 3-2(a).

B. P.L.R. 3-2(b): All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3-1(f), whichever is earlier;

CamelBak is producing documents responsive to P.L.R. 3-2(b) at CB_0000001-CB_0003788, CB_0003810-CB_0003851, CB_0003899-CB_0009736, CB_0009739-CB_0009740, CB_0009743, CB_0009745, CB_0009751, CB_0009752, CB_0009770-CB_0009782, CB_FH_0000001-CB_FH_0002607.

C. P.L.R. 3-2(c): A copy of the file history for each patent in suit;

CamelBak is producing documents responsive to P.L.R. 3-2(c) at CB_FH_0000001-CB_FH_0002607.

D. P.L.R. 3-2(d): All documents evidencing ownership of the patent rights by the party asserting patent infringement;

CamelBak is producing documents responsive to P.L.R. 3-2(d) at CB_0009301-CB_0009736.

E. P.L.R. 3-2(e): If a party identifies instrumentalities pursuant to Patent L.R. 3-1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims;

As set forth above, CamelBak identifies the BETTER BOTTLE, EDDY BOTTLE, EDDY + BOTTLE, EDDY KIDS BOTTLE, EDDY+ KIDS BOTTLE, KIDS BETTER BOTTLE, GROOVE BOTTLE, CHUTE BOTTLE, and CHUTE MAG as practicing claims of the Asserted Patents (collectively the "Practicing Products"). CamelBak intends to rely on physical samples of these products to show operation of any aspects or elements of these products. These Practicing Products are or were widely available for purchase by Trove. To the extent Trove cannot purchase samples,

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CamelBak hereby agrees to make samples of the Practicing Products available for inspection at a time and location to be agreed upon by the parties.

In addition, CamelBak is producing documents responsive to P.L.R. 3-2(e) at CB_0003789-CB_0003809, CB_0003823-CB_0003847, CB_0003850, CB_0003856-CB_0003864, CB_0003900, CB_0003904-CB_0003906, CB_0003909, CB_0009737-CB_0009769.

F. P.L.R. 3-2(f): All agreements, including licenses, transferring an interest in any patent-in-suit;

CamelBak is producing documents responsive to P.L.R. 3-2(f) at CB_0009783-CB_0009797, CB_0009809-CB_0009813, CB_0009817-CB_0009829, CB_0009846-CB_0009857, CB_0009883-CB_0009891, CB_0009919-CB_0009932.

G. P.L.R. 3-2(g): All agreements that may be related to the accused instrumentality or may be comparable to a license that would result from a hypothetical reasonable royalty negotiation;

CamelBak is producing documents responsive to P.L.R. 3-2(g) at CB_0009783-CB_0009932.

H. P.L.R. 3-2(h): All agreements that otherwise may be used to support the party asserting infringement's damages case;

CamelBak is producing documents responsive to P.L.R. 3-2(h) at CB_0009783-CB_0009932.

I. P.L.R. 3-2(i): If a party identifies instrumentalities pursuant to Patent L.R. 3-1(g), documents sufficient to show marking of such embodying accused instrumentalities and if it wants to preserve the right to recover lost profits based on such products, sales, revenues, costs and profits of such embodying accused instrumentalities;

Pursuant to 35 U.S.C. § 287(a), CamelBak maintains a list of products covered by its patents at https://www.camelbak.com/patents. CamelBak also incorporates by reference its response in Section III.E, *supra*.

In addition, CamelBak is producing documents responsive to P.L.R. 3-2(i) at CB_0003852-CB_0003855, CB_0003865-CB_0003898.

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J. P.L.R. 3-2(j): All documents comprising or reflecting a F/RAND commitment or agreement with respect to the asserted patent(s).

After a diligent search, CamelBak has not identified any documents that may be responsive to P.L.R. 3-2(j).

DATE: December 21, 2023

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