UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

LERMAN CONTAINER CORP.,

Plaintiff,

v. Case No.

GREENLANE HOLDINGS, LLC and
POLLEN GEAR LLC,

Defendants.
_____/

COMPLAINT

Plaintiff LERMAN CONTAINER CORP. d/b/a EBOTTLES.COM ("Plaintiff" or "eBottles.com"), through its undersigned counsel, complains and alleges against defendants GREENLANE HOLDINGS, LLC ("Greenlane") and POLLEN GEAR LLC ("Pollen Gear") (collectively with Greenlane, "Defendants") as follows:

NATURE OF THE ACTION

1. Plaintiff is a leading manufacturer and distributor of, among other items, bottles and jars, including its Thick Wall Glass Concentrate Jar products ("Concentrate Jars"), the designs of which are protected by United States Design Patent No. D781,151 S (the "'151 Patent"). On information and belief, Defendants are distributing, marketing, offering for sale and selling jars virtually identical to Plaintiff's patented design in violation of 35 U.S.C. § 271.

THE PARTIES

2. Lerman Container Corp. is a corporation organized under the laws of the State of Florida, with a principal place of business of 4286 West Main Street, Jupiter, Florida 33458.

3. Greenlane Holdings, LLC is a limited liability company organized under the laws of Delaware, with its headquarters in this District at the street address 1095 Broken Sound Parkway NW, # 300, Boca Raton, Florida 33487.

4. On information and belief, Pollen Gear LLC is a limited liability company organized under the laws of Delaware, with its Principal Office at 1095 Broken Sound Parkway NW #300, Boca Raton, Florida 33487.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 as it arises under the patent laws of the United States.

6. On information and belief, Greenlane maintains its headquarters and has a regular and established physical place of business in this district.

7. On information and belief, Pollen Gear maintains its principal address in, and has a regular and established physical place of business in, this district.

8. On information and belief, Defendants have committed acts of infringement in this district.

9. Venue is properly established in this Court pursuant to 28 U.S.C. §§ 1391(b)-(c), and § 1400, because Defendants are subject to personal jurisdiction in this District, and because they have committed acts of infringement and have a regular and established place of business in this District.

FACTUAL BACKGROUND

A. EBOTTLES' Design Patent No. D781,151S

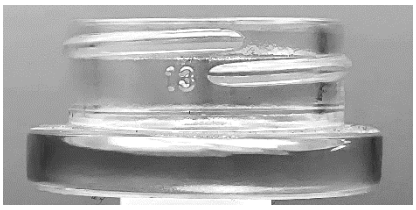
10. Plaintiff is a leading supplier of, *inter alia*, bottles, jars, tins, closures, pumps, sprayers, and shrink bands to companies located throughout the United States and around the world and has decades of experience serving the needs of consumer product companies.

11. Plaintiff supplies bottles and other items to companies across a wide spectrum of industries, including, among others, companies in the fields of medicine and pharmaceuticals, beauty and cosmetics, hospitality, engineering, entertainment, and restaurant services.

12. Among the products designed, marketed and sold by Plaintiff is its Concentrate Jar, an elegant, symmetrical jar designed for use with concentrates and other materials (the "eBottles Jar").

13. On March 14, 2017, the United States Patent and Trademark Office duly and lawfully issued United States Design Patent No. D781,151 S, entitled "JAR" that protects the ornamental design of a configuration of the eBottles Jar. A true and correct copy of the '151 Patent is attached hereto as Exhibit 1.

14. Photographs of a sample eBottles Jar are shown below:



15. Plaintiff is the owner by assignment of all right, title, and interest in the '151 Patent.

16. A request for *Ex Parte* Reexamination of the '151 Patent was submitted to the U.S. Patent Office by an anonymous party on February 11, 2019. The *Ex Parte* Reexamination request contended that the '151 patent was invalid in view of certain jar designs that predated the June 8, 2016 filing date of the '151 patent. The patentability of the claimed design was subsequently confirmed and an Ex Parte Reexamination Certificate No. US D781,151C1 was issued by the U.S. Patent Office on Nov. 30, 2021. A copy of the Reexamination Certificate is attached hereto as Exhibit 2.

17. Plaintiff is the exclusive authorized manufacturer and distributor of all commercial embodiments of '151 Patent in the United States.

18. The '151 Patent has been prominently and continuously marked on the base of the eBottles Jars.

19. Plaintiff sells its Concentrate Jars to its customers directly through its eBottles.com website, and through representatives of the company, among other channels.

20. Notice of Plaintiff's patent rights in its Concentrate Jars is also prominently displayed on its website.

B. Defendants' Infringing Activities

21. Greenlane markets and sells packaging, vaporization and lifestyle products and accessories throughout the United States.

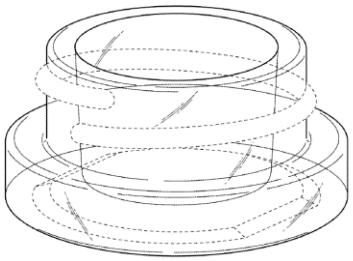
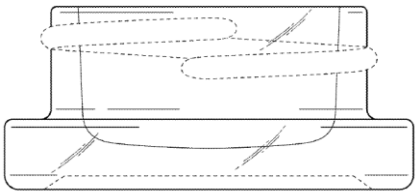
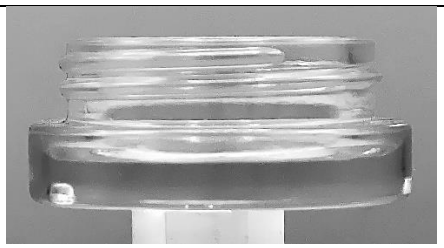
22. On or about January 14, 2019 Greenlane purchased Pollen Gear, a supplier of child-resistant packaging to the cannabis industry.

23. On information and belief, Pollen Gear is currently a wholly owned subsidiary of Greenlane.

24. On information and belief, prior to Greenlane acquisition of Pollen Gear, Greenlane was the exclusive global distributor of Pollen Gear products

25. Defendants offer for sale and sell in this judicial district and elsewhere throughout the United States jars that that are virtually identical to the patented design of the '151 Patent (the "Infringing Jars").

26. An exemplary LoPro 5ml Jar of Defendants is shown below in comparison to the '151 Patent:

'151 Patent	**LoPro Jar**
	
	

27. The LoPro Jar is nearly identical to the jar as claimed in Plaintiff's '151 Patent. The similarities between the '151 Patent and this jar are such that an ordinary observer would be deceived into thinking this jar is the jar depicted in the '151 Patent.

28. On information and belief Defendants are also offering for sale a jar called Pollen Gear's Ecliptic Concentrate Jar, pictures of which are shown below:

29. Greenlane's 2022 Wholesale Catalog is available through Greenlane's main webpage www.gnln.com. A true and correct copy of excerpts from Greenlane's 2022 Wholesale Catalog showing the Pollen Gear brand LoPro and Ecliptic jar products is attached as Exhibit 3.

30. LoPro jars are also advertised for sale on Pollen Gear's website, pollengear.com. A true and correct copy of printout of a LoPro Jars information page from Pollen Gear's website is attached as Exhibit 4.

31. Defendants' development, manufacture, exporting, importing, shipment, distribution, promotion, advertising, marketing, sale, and/or offering for sale of the Infringing Jars, or inducement of third parties to engage in these activities, infringes upon Plaintiff's valuable, exclusive rights in the '151 Patent.

32. On January 31, 2018, Plaintiff alerted Pollen Gear that its distribution and use of Infringing Jars violated Plaintiff's rights in the D '151 Patent and demanded that it cease and desist the infringement or enter into a license agreement.

33. On information and belief, Greenlane has been aware of the '151 patent since its acquisition of Pollen Gear and knew that it was selling jars that infringed the '151 patent. Greenlane also acquired knowledge of the '151 Patent no later than the filing of the present lawsuit.

34. Notwithstanding Defendants' knowledge of the '151 Patent and the infringement, Defendants have continued to promote, advertise, import, distribute, sell, and/or offer to sell products infringing the '151 Patent and to induce others to do the same.

35. Defendants are not now nor have they been at any time licensed under the '151 Patent.

36. Defendants' development, manufacture, exporting, importing, shipment, distribution, promotion, advertising, marketing, sale, and/or offering for sale of versions of the Infringing Jars, or inducement of third parties to engage in these activities, infringes upon Plaintiff's valuable, exclusive rights in the '151 Patent.

37. Defendants' acts have caused and continue to cause Plaintiff to suffer irreparable injury to its business.

38. Plaintiff has suffered and will continue to suffer substantial loss of goodwill and reputation unless and until Defendants are permanently enjoined from their infringement as set forth herein.

COUNT I

DIRECT PATENT INFRINGEMENT
Against All Defendants

39. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

40. Defendants are now, and have been, directly, contributorily and by inducement, infringing the '151 Patent. Defendants are violating 35 U.S.C. §271 by selling, offering to sell, making or using the Infringing Jars in the United States, and by actively inducing others to sell, offer to sell, make or use the Infringing Jars in the United States.

41. Defendants' acts of infringement of the '151 Patent were undertaken without permission or license from Plaintiff.

42. Defendants' direct infringement of the '151 Patent has been willful and with reckless disregard of Plaintiff's rights therein, as Defendants knew or should have known that their actions constituted infringement of the '151 Patent.

43. As a direct and proximate result of its infringement of the '151 Patent, Defendants have derived and received gains, profits, and advantages in an amount yet to be determined.

44. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendants' infringing acts and treble damages together with interests and costs as fixed by this Court.

45. Pursuant to 35 U.S.C. § 289, Plaintiff is entitled to Defendants' total profits from Defendants' infringing sales.

46. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

47. Due to Defendants' infringing acts, Plaintiff has suffered significant and irreparable injury for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests that it be granted the relief sought in its Prayer for Relief, below.

COUNT II

INDIRECT PATENT INFRINGEMENT
Against All Defendants

48. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 38 as if fully set forth herein.

49. Defendants are now, and have been, directly, contributorily and by inducement, infringing the '151 Patent. Defendants are violating 35 U.S.C. §271 by selling, offering to sell,

making or using the Infringing Jars in the United States, and by actively inducing others to sell, offer to sell, make or use the Infringing Jars in the United States.

50. On information and belief, Defendants provides the Infringing Jars to distributors or retailers around the United States.

51. On information and belief, the Infringing Jars utilized, offered for sale, and sold by the distributors or retailers are directly infringing or have infringed the '151 Patent.

52. Defendants intended for such distributors or retailers to offer to sell, sell, or use same in an infringing manner, despite Defendants' knowledge of the '151 Patent.

53. As a result, Defendant's actions constitute contributory infringement under 35 U.S.C. § 271(c) and induced infringement under 35 U.S.C. § 271(b).

54. Defendants' acts of infringement of the '151 Patent were undertaken without permission or license from Plaintiff.

55. Defendants' indirect infringement of the '151 Patent has been willful and with reckless disregard of Plaintiff's rights therein, as Defendants knew or should have known that their actions constituted infringement of the '151 Patent.

56. As a direct and proximate result of its infringement of the '151 Patent, Defendants have derived and received gains, profits, and advantages in an amount yet to be determined.

57. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendants' infringing acts and treble damages together with interests and costs as fixed by this Court.

58. Pursuant to 35 U.S.C. § 289, Plaintiff is entitled to Defendants' total profits from Defendants' infringing sales.

59. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

60. Due to Defendants' infringing acts, Plaintiff has suffered significant and irreparable injury for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests that it be granted the relief sought in its Prayer for Relief, below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lerman Container Corp. prays for entry of:

1) A **FINAL JUDGMENT** that

a. Defendants have infringed the '151 Patent directly and indirectly in violation of 35 U.S.C. § 271.

b. Defendants' infringement was willful.

2) An **ORDER** enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, from manufacturing, designing, exporting, importing, shipping, distributing, promoting, displaying, offering for sale, and/or selling the Infringing Jars.

3) An **ORDER** enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, from directly or indirectly infringing the '151 Patent.

4) An ORDER requiring Defendants to deliver up for impoundment and destruction all of the Infringing Jars currently in inventory along with molds for the manufacture of those jars.

5) A further **ORDER**

(a) requiring Defendants to account for any gains, profits, and advantages derived and accrued as a result of their infringement of the '151 Patent;

(b) assessing to Plaintiff an award of its actual damages, trebled, as well as all profits Defendants have derived from infringing the '151 Patent pursuant to 35 U.S.C. 284;

(c) finding that this case is exceptional and awarding to Plaintiff its attorneys' fees, expenses, and costs incurred in connection with this action as provided by 35 U.S.C. § 285;

(d) awarding to Plaintiff pre- and post-judgment interest and costs of this action against Defendants; and

(e) assessing such additional relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Lerman Container Corp. demands a trial by jury on all facts so triable.

Dated: November 3, 2022

Respectfully submitted,

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