IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

YONDR, INC., **Plaintiff,** **v.** **BE SMARTER, LLC,** **JAMES GUERRA** **Defendants.**	**Civil Action No. 2024 CV 1326** **JURY TRIAL**

COMPLAINT FOR (1) PATENT INFRINGEMENT; (2) TRADEMARK INFRINGEMENT; (3) VIOLATIONS OF THE LANHAM ACT; (4) TRADE LIBEL; AND (5) UNFAIR COMPETITION

Plaintiff Yondr, Inc. ("Yondr" or "Plaintiff") files this Complaint against Defendants Be Smarter LLC ("Be Smarter") and James Guerra ("Guerra") (collectively "Defendants") for infringement of U.S. Patent No. 9,819,788 (the "'788 Patent") and U.S. Patent No. 12,133,078 (the "'078 Patent) (collectively, the "Asserted Patents"), infringement of federally Registered Trademark No. 6,995,045 (the "Yondr Registered Product Configuration Mark"), and various acts of unfair competition. Yondr, on personal knowledge as to its own acts, and on information and belief as to all others based on its investigation, alleges as follows:

SUMMARY OF THE ACTION

1. This is an action for patent infringement, trademark infringement, and unfair competition relating to Defendants' unauthorized and unlicensed copying and use of the Asserted Patents and Yondr Registered Product Configuration Mark.

2. Yondr, founded in 2014, is the national leader in creating and facilitating phone-free spaces for schools, concerts, courthouses, and many other venues where mobile device use

has become an endemic distraction, a detriment to learning, and a vehicle for illicit reproduction of protected performances. Yondr's patented system comprises (and the Asserted Patents disclose) a case sized to receive a mobile device which has a locking mechanism to secure the device and render it unable to be accessed by the user until a predetermined condition is met (the "Yondr System").

3. Yondr's commitment to its System's quality has led to unprecedented levels of customer satisfaction. These satisfied customers include school districts, judiciaries, and entertainers including Dave Chapelle, Donald Glover, Madonna, Bruno Mars, Ali Wong, Joe Rogan, John Mayer, Chris Rock, Jennifer Lawrence, and Aziz Ansari.

4. Yondr's success has led to public recognition, with Yondr being featured in publications and broadcasts with international readership and viewership, including *The New York Times*, *The Wall Street Journal*, CNBC, *The Guardian*, *The Atlantic*, *Forbes*, *Cosmopolitan*, CBS, *Rolling Stone*, *The Washington Post*, and ABC News.

5. The recognition that Yondr has received for its innovations is backed by its tangible effectiveness. For example, across the thousands of schools throughout the globe which have utilized the Yondr System, 83% have seen an improvement in student engagement in the classroom; 74% have seen an overall improvement in student behavior; and 65% have seen an improvement in academic performance.

6. Unfortunately, Yondr's success has led to copycats and others who seek to capitalize on Yondr's novel approach to limiting uses of electronic devices. Defendants are one example. Defendant Guerra, the Manager and sole employee of Be Smarter, first offered for sale the accused product, CellockED, in 2024, which directly infringes Yondr's patents and trademark.

The CellockED product is marketed and sold on defendants' website, which includes at least one video falsely claiming the Yondr System does not function properly.

7. The present suit seeks to, among other things, prevent any further copying and infringement of Yondr's valuable intellectual property and disparagement of Yondr's System.

PARTIES

8. Plaintiff Yondr, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 12503 Venice Boulevard, Los Angeles, California.

9. Upon information and belief, and as demonstrated below, Defendant Be Smarter, LLC is a limited liability corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 605 E University Avenue, Suite 101, Georgetown, Texas.

Franchise Tax Details

Franchise Search Results | Public Information Report

As of : 09/19/2024 17:01:20

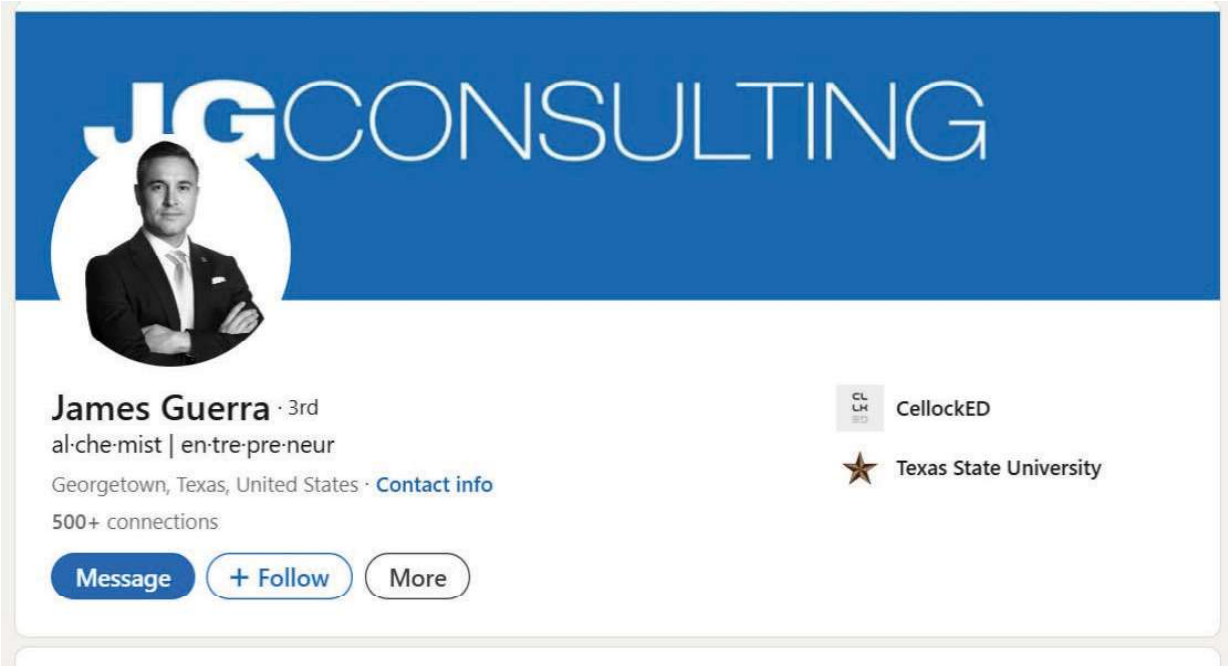
This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

Obtain a certification for filings with the Secretary of State.

BE SMARTER, LLC	
Texas Taxpayer Number	32086523860
Mailing Address	605 E UNIVERSITY AVE STE 101 GEORGETOWN, TX 78626-7179
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	09/28/2022
Texas SOS File Number	0804749554
Registered Agent Name	PALATIERE LAW FIRM
Registered Office Street Address	5700 TENNYSON PKWY. SUITE 300 PLANO, TX 75024

Close

10. Upon information and belief, and as shown below, defendant James Guerra is an individual residing in Georgetown, Texas.



https://www.linkedin.com/in/james-guerra-21a5434/

JURISDICTION AND VENUE

11. This is an action containing claims for patent infringement arising under the patent laws of the United States, Title 35, U.S.C. § 271, infringement of a registered product configuration trademark under 15 U.S.C. §1114, unfair competition under 15 U.S.C. §1125(a), and related state law unfair competition claims under the laws of Texas.

12. This Court has exclusive subject matter jurisdiction over those federal claims pursuant to 28 U.S.C. §§ 1331, 1332, and 1338. In addition, the Court has supplemental jurisdiction over the claims arising under the laws of the State of Texas, pursuant to 28 U.S.C. §1367(a), because the state law claims are so related to the federal subject-matter clams that they form part of the same case or controversy and derive from a common nucleus of operative fact.

13. This Court has personal jurisdiction over Be Smarter because Be Smarter resides in this District and conducts business in this District.

14. This Court also has personal jurisdiction over Be Smarter because Be Smarter has committed acts giving rise to the asserted claims within this Judicial District, and elsewhere in the United States, and has established minimum contacts with this Judicial District such that personal jurisdiction over Be Smarter would not offend traditional notions of fair play and substantial justice.

15. This Court has personal jurisdiction over Guerra because Guerra is domiciled in this Judicial District.

16. This Court also has personal jurisdiction over Guerra because Guerra has committed acts giving rise to the asserted claims within this Judicial District, and elsewhere in the United States, and has established minimum contacts with this Judicial District such that personal jurisdiction over Guerra would not offend traditional notions of fair play and substantial justice.

17. Venue is proper in this Judicial District as to Defendant Be Smarter under 28 U.S.C. §§ 1391 and 1400(b) at least because, Be Smarter has committed acts of infringement in this Judicial District and has a regular and established place of business in this Judicial District. Be Smarter is a corporation organized and existing under the laws of Texas.

18. Venue is proper in this Judicial District as to Defendant Guerra under 28 U.S.C. §§ 1391 and 1400(b) at least because Guerra has committed acts of infringement in this Judicial District and Guerra resides in this Judicial District.

FACTUAL ALLEGATIONS

A. The Patented Yondr System Is a Novel Solution to Effectively Limit the Use of Cell Phones and Create Phone Free Spaces.

19. Yondr was founded in California in 2014, during the tech boom. Founder, Graham Dugoni, sought to create protected places where creativity and productivity could flourish without the noise of technology. Dugoni hand sewed the original prototype for the Yondr System and began pitching his idea to California Bay Area schools and music venues.

20. Prior to Dugoni's invention described in the Asserted Patents, attempts to limit the use of mobile electronic devices were largely deficient because, for example, available methods prevented users from being notified of incoming notifications that may require their attention or had impractical geographic requirements. Additionally, many attempts to curb the use of electronic devices failed to gain traction because individuals ignored or resisted the mechanisms. For example, users of electronic devices often ignore signs with instructions to stop using their cell phones at concert venues, movie theaters, or even schools. Additionally, when venue staff attempt to collect cell phones before an event, participants frequently resisted, often out of fear their device or information on that device could be stolen. *See* the '788 Patent, attached as Exhibit A ("Ex. A"), at 1:66-2:24.

21. In order to effectively limit the use of cell phones and to create phone-free spaces, Dugoni invented and received a patent for "a case for selectively limiting a user's ability to control such user's own mobile electronic device." Ex. A, Abstract.

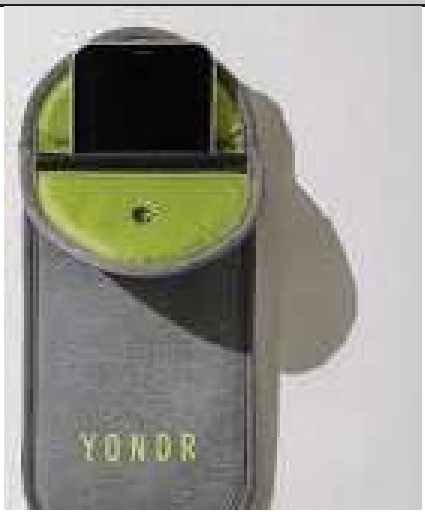
B. The Yondr System Has a Distinctive Appearance That Has Been Registered as a Trademark.

22. Yondr has, beginning in 2014 and continuing without interruption, expended much time, effort, and money into the promotion of its Yondr System, including the phone case (the "Yondr Pouch").

23. Based on its use in commerce of the Yondr System since at least as early as August 19, 2014, on December 13, 2021, Yondr filed a U.S. Trademark Application for the physical

appearance of the Yondr Pouch as embodied in its configuration. On March 7, 2023, the U.S. Patent and Trademark Office issued registration No. 6,995,045 (the "Yondr Registered Product Configuration Mark") for a "three-dimensional configuration of a pouch for mobile computing devices . . .featur[ing] tapered, opposing flaps extending upward from an opening; a knob located in the center of one of the tapered flaps; and decorative binding along the outer edge of the whole pouch"; the registration covers, in part, "cases adapted for mobile phones. The Yondr Registered Product Configuration Mark is shown below.

24. The Yondr Registered Product Configuration Mark covers the Yondr Pouch. A comparison is included below.

Yondr Pouch	Yondr U.S. TM Reg. No. 6,995,045
 	

25. The overall visual impression of the distinctive Yondr Pouch is created through a combination of elements.

26. As specified in Reg. No. 6,995,045, the Yondr Registered Product Configuration Mark includes, among other things, (i) tapered, opposing flaps extending upward from an opening; (ii) a knob located in the center of one of the tapered flaps; and (iii) decorative binding along the outer edge of the whole pouch. Images of the Yondr Pouch appear below.

27. These elements together create an overall visual impression distinct from other products on the market. With this distinctive look—and due to Yondr's distinct design, marketing efforts, media coverage, and market penetration—the Yondr Pouch has acquired distinctiveness in

the marketplace when applied to phone use limiting technology across various industries including education and entertainment. Today, the relevant consuming public has come to recognize and associate the phone-use limiting technology, embodying the Yondr Registered Product Configuration Mark, as high-quality goods connected with or offered by a single source. The Yondr Registered Product Configuration Mark thus embodies valuable goodwill and consumer recognition associated with the Yondr System and has come to symbolize Yondr's valuable goodwill and reputation.

28. The Yondr System features the Yondr Registered Product Configuration Mark with the overall look, feel, and image serving as a distinctive source identifier to the consuming public.

29. As discussed above, due to the striking similarity between the CellockED product and the Yondr System and Yondr Registered Product Configuration Mark, it is clear that Defendants copied the Yondr System and Mark. Such copying, among other things, is evidence that Defendants perceive the Mark to have secondary meaning and an established reputation with consumers.

C. The Yondr System Has Become Associated in the Public Mind as A System of The Highest Quality and Reputation.

30. Today, the Yondr System is used in countless spaces including, "sold out arenas, schools, weddings, film sets, court houses, and everywhere in between." https://www.overyondr.com/phone-free-spaces. Music artists such as Garth Brooks have implemented the Yondr System to provide a "phone-free experience" at their concerts. *See* https://www.fox17online.com/scrippsnews/garth-brooks-has-a-no-phone-policy-at-his-new-vegas-show. The Yondr System has gained widespread popularity and use.

31. The Yondr System has been recognized for its effectiveness and quality. At the end of 2023, the American Consortium for Equity in Education awarded Yondr the "Best Student

Engagement Solution" in their Excellence in Equity Awards. https://www.ace-ed.org/2023-excellence-in-equity-awards-industry-winners-announced/

32. Yondr's recognition has come with increased brand awareness and popularity. As of March 2024, Yondr has "over 3,000 school partners" in 21 countries. https://www.axios.com/2024/03/22/yondr-phone-pouch-schools-students. This number has increased in the 2024-2025 school year. Yondr's has district wide partnerships with Mobile County Public Schools, Cleveland Metro Schools, Killeen Independent School District, and partnerships with schools in major school districts such as the New York City Department of Education and the Los Angeles Unified School District.

33. Because of the Yondr System's massive success and popularity, consumers associate the Yondr System with high quality and with its source, Yondr.

D. Defendants' CellockED Product Infringes Yondr's Patented Technology and Trademark.

34. As shown below, James Guerra is the Manager of Be Smarter. He is also the sole employee of Be Smarter.

Franchise Search Results | Public Information Report

Public Information Report
BE SMARTER, LLC
Report Year :2024

Information on this site is obtained from the most recent Public Information Report (PIR) processed by the Secretary of State (SOS). PIRs filed with annual franchise tax reports are forwarded to the SOS. After processing, the SOS sends the Comptroller an electronic copy of the information, which is displayed on this web site. The information will be updated as changes are received from the SOS.

You may order a copy of a Public Information Report from open.records@cpa.texas.gov or Comptroller of Public Accounts, Open Records Section, PO Box 13528, Austin, Texas 78711.

Title	Name and Address
MANAGER	**JAMES A GUERRA** 605 E UNIVERSITY AVE STE 101 GEORGETOWN, TX 78626

35. In June 2024, James Guerra posted on his personal LinkedIn page about the launch of his new venture, CellockED. The post is shown below:

https://www.linkedin.com/posts/james-guerra-21a5434_i-am-excited-to-announce-our-newest-venture-activity-7209959899974258689-dwjq?utm_source=share&utm_medium=member_desktop

36. Defendants manufacture and sell the CellockED product and are the owners of the CellockED YouTube account (described below).

37. On June 27, 2024, a YouTube account called "CellockED – Focus on Education" posted a video with the caption, "[i]n today's digital age, managing student cell phone usage during school hours presents a significant challenge. The prevalence of cell phones in classrooms can be

a major distraction, impacting student focus and overall academic performance. To address this issue, we propose the adoption of a new cell phone pouch with a magnetic locking system, designed to safely secure students' cell phones during school hours."

38. The YouTube account, "CellockED – Focus on Education," is owned and operated by Defendants. The CellockED YouTube caption includes a link, https://cellockED.net. The link directs the user to a website marketing and offering for sale, "a new cell phone pouch with a magnetic locking system, designed to safely secure students' cell phones during school hours." The Copyright notice at the bottom of the webpage refers to Be Smarter LLC. *Id.* Additionally, the manager of Be Smarter, Guerra, promotes CellockED on his personal LinkedIn and, according to his LinkedIn profile, is the founder of CellockED.

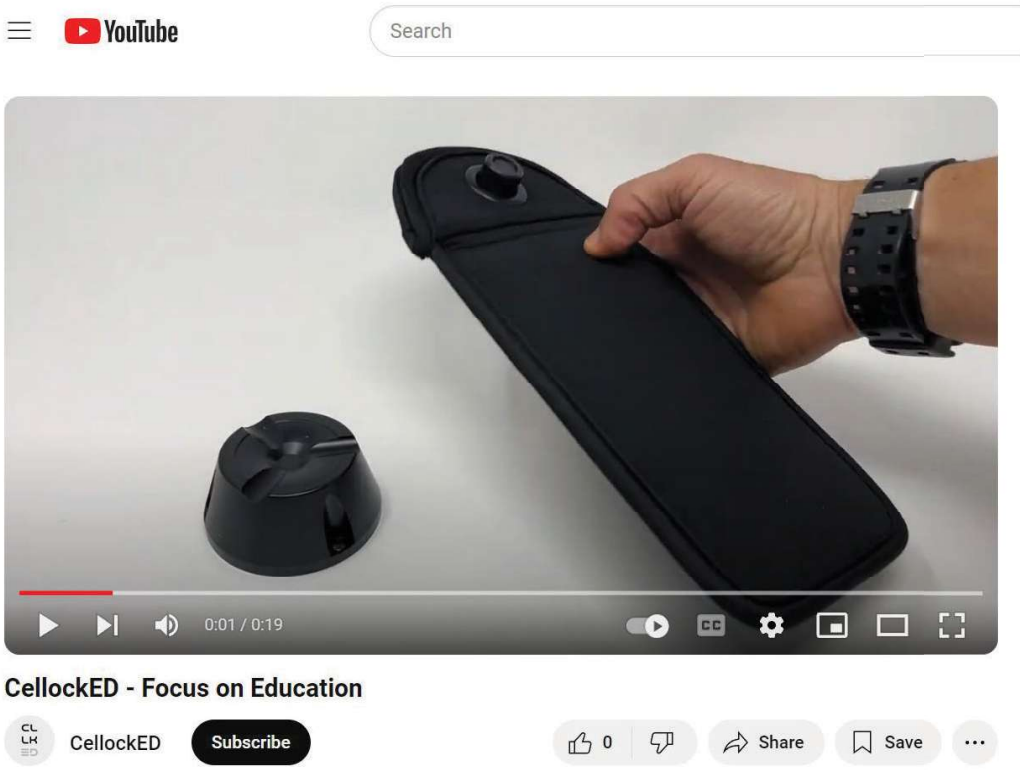
39. Defendants were aware of Yondr when they launched CellockED. As will be discussed further below, in August 2024, someone with access to the CellockED YouTube account posted a video to its page making a false claim about the Yondr System. Upon information and belief, before posting the misleading video, Defendants had visited the Yondr website. Yondr's website provides clear notice that the products displayed are covered by patents, including one of the Asserted Patents.

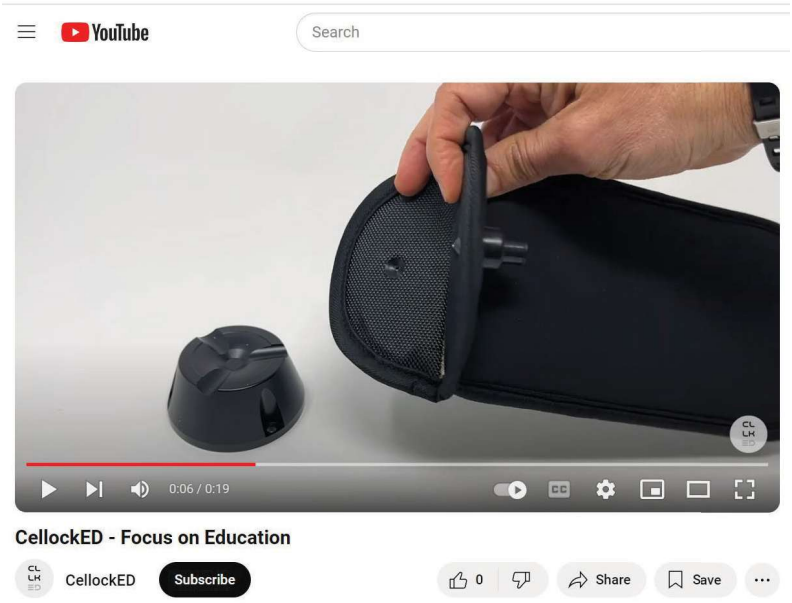
See https://www.overyondr.com/.

40. Defendants were aware of Yondr and the illegal activities alleged herein prior to the filing of this Complaint. On September 30, 2024, Mr. James Guerra received a letter placing

him and Be Smarter on notice of their illegal activities. Defendants confirmed receipt and responded to the letter on October 29, 2024.

41. Defendants demonstrate how the CellockED technology works in a video on the CellockED YouTube account. *See* CellockED - Focus on Education - YouTube; *see also* the YouTube Short demonstrating the CellockED locking mechanism at CellockED - Focused on Education (youtube.com) The images below show CellockED as represented on YouTube.





42. CellockED, just like the Yondr System, includes two pieces: a pouch and a locking/unlocking mechanism. As shown in the series of photos from the CellockED promotional YouTube video (above), when the pouch is locked, the user places the portion of the pouch on the tapered flap opposite the knob on the unlocking mechanism and the pouch unlocks.

1. <u>CellockED is covered by the ’788 Patent.</u>

43. Defendants have infringed the ’788 Patent by making, using, offering for sale, selling and/or importing the CellockED product. CellockED is a case for an electronic device having a magnetic locking system. CellockED includes a rear panel having first and second longitudinally opposed side edges and laterally opposed lower edges. The first, second, and lower edges of the case are secured together to define an opening for receiving an electronic device such as a mobile phone, and the case locks so that the user cannot access their own mobile electronic device contained in it until a predetermined condition is met.

44. Defendants promote CellockED as “designed to safely secure students’ cell phones during school hours.” https://cellocked.newschoolhero.org/about/. CellockED also includes a locking means that secures the opening of the case and an unlocking means. CellockED - Focused on Education (youtube.com).

45. Defendants’ CellockED technology has used, and is using the technology of the ’788 Patent. Upon information and belief, Defendants have derived revenue from their infringing activities. According to the CellockED website, Defendants have partnered with at least Denver Public Schools, Tulsa Public Schools, Taylor Independent School District, Taos Municipal Schools, and the Raymondville Independent School District. Upon information and belief, Defendants are profiting from these partnerships. An image of a portion of the infringing product is shown below in a photo included on Guerra’s personal LinkedIn page.

https://www.linkedin.com/posts/james-guerra-21a5434_thank-you-denver-public-schools-for-partnering-activity-7237904973856923650-QBuy?utm_source=share&utm_medium=member_desktop

2. CellockED is covered by the ’078 Patent

46. Defendants have infringed the ’078 Patent by making, using, offering for sale, selling and/or importing the CellockED product. CellockED is a case for a mobile device. CellockED has a shell defining a cavity sized to accommodate a mobile device. The CellockED shell has an opening to receive the mobile device. CellockED also includes a lock positioned proximate to the opening of the shell. The CellockED lock is configured to render the mobile device at least partially inaccessible upon the lock being locked with the mobile device within the

cavity of the shell. The CellockED lock is also configured to unlock to enable access to the mobile device based on a predetermined condition associated with a geographic region.

47. Defendants' CellockED technology has used, and is using, the technology of the '078 Patent. Upon information and belief, Defendants have derived revenue from their infringing activities. According to the CellockED website, Defendants have partnered with at least Denver Public Schools, Tulsa Public Schools, Taylor Independent School District, Taos Municipal Schools, and the Raymondville Independent School District. Upon information and belief, Defendants are profiting from these partnerships. An image of a portion of the infringing product is shown below in a photo included on Guerra's personal LinkedIn page.

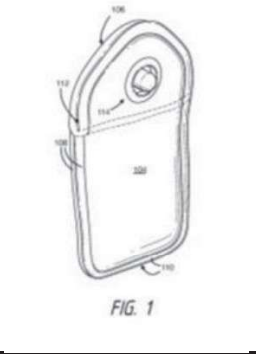
https://www.linkedin.com/posts/james-guerra-21a5434_thank-you-denver-public-schools-for-partnering-activity-7237904973856923650-QBuy?utm_source=share&utm_medium=member_desktop.

48. Defendants' CellockED technology is also covered by claims in allowed U.S. Patent Application 16/813,437. Defendants used, and are using the technology of U.S. Patent Application 16/813,437. Should Defendants contend that they did not have knowledge of this application, this Complaint serves as actual notice under 35 U.S.C. § 154(d). Yondr expects this application to issue into a patent soon and intends to amend this Complaint to add that patent at that time.

3. CellockED infringes Yondr's Trademark.

49. Defendants launched CellockED after Yondr's commercial success, seeking to trade in on the goodwill of the Yondr System by marketing obvious copycat products – phone locking cases indistinguishable from the Yondr Pouches. Defendants are not licensed or otherwise authorized to market or distribute products embodying the Yondr Registered Product Configuration Mark.

50. CellockED has the same distinctive configuration as the Yondr System including, but not limited to: (i) tapered, opposing flaps extending upward from an opening; (ii) a knob located in the center of one of the tapered flaps; and (iii) decorative binding along the outer edge of the whole pouch. Side by side comparisons of the Yondr and copycat CellockED cases plainly show the striking similarities:

Yondr Pouch	CellockED Pouch	Yondr U.S. Pat. No. 9,819,788	Yondr U.S. TM Reg. No. 6,995,045
			

51. Defendants were aware of the Yondr Registered Product Configuration Mark when they launched CellockED. Upon information and belief, Defendants intentionally infringed the Yondr Registered Product Configuration Mark.

52. Defendants' acts are causing and, unless restrained, will continue to cause damage and immediate irreparable harm to Yondr and to its valuable reputation and goodwill with the consuming public for which Yondr has no adequate remedy at law.

E. Defendants Make False and Misleading Claims About Yondr to Promote the CellockEd Product.

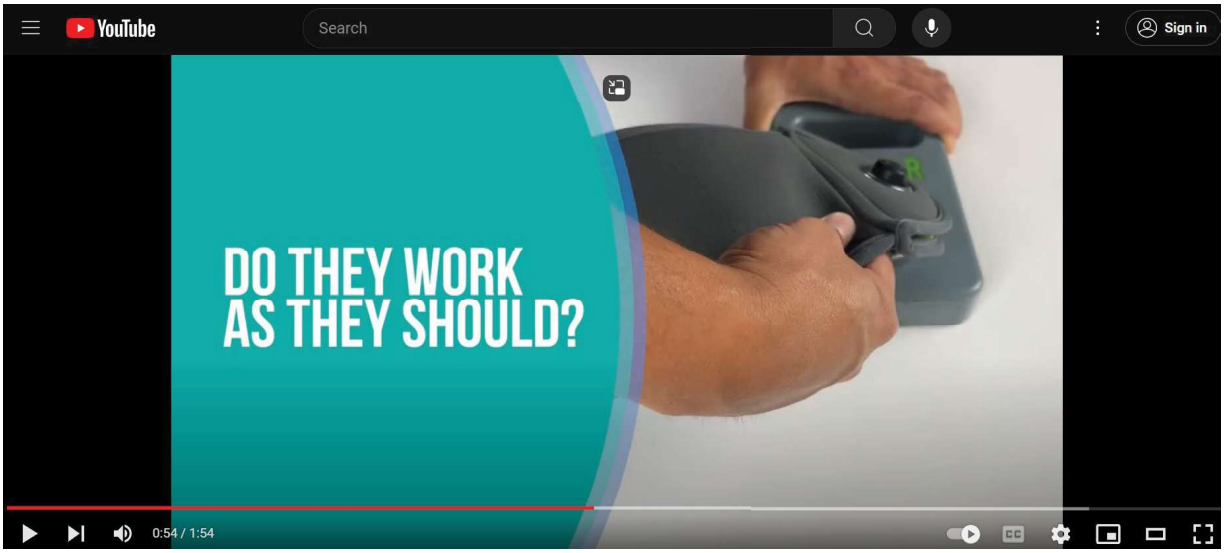
53. As stated above, the Defendants' CellockED website also includes a false and misleading YouTube video criticizing the Yondr System.

54. Upon information and belief, potential customers have accessed and will continue to access the video either on Defendants' CellockED website or the CellockED YouTube page.

55. Defendants' misleading YouTube video spends nearly a minute discussing Yondr, including making a false and misleading claim about the Yondr System's functionality. During the video the screen is split in two with one side having the text "Do they (Yondr Systems) work as they should?" and is followed by a video of Yondr Pouches not opening when placed on the magnetic unlocking means.

56. The misleading YouTube video was meant to, and does, cast unjustified doubt on the quality of Yondr and the Yondr System.

57. The misleading YouTube video has intentionally misled and continues to mislead Yondr's potential customers about the quality of the Yondr System. The video intentionally misleads viewers to think that the Yondr System does not work as it should when the video's actor is not using it properly. As stated above, the video includes the text "Do they (the Yondr Pouches) work as they should?" and is followed by a video of Yondr pouches not opening when placed on the magnetic unlocking means. The actor in the video is not using the Yondr System properly. Upon information and belief, Defendants intentionally had the actor incorrectly use the Yondr System to mislead viewers and convince them that Yondr's quality is less than what it is. The Yondr Pouch did not unlock in CellockED's YouTube video upon the actor placing it on the magnetic unlocking mechanism. That said, the Yondr Pouch is not *supposed to* unlock just by placing it on the magnetic unlocking mechanism. In reality, to unlock the Yondr Pouch, users are instructed to click the "button" on the Pouch once it is held to the magnetic unlocking mechanism. Therefore, the actor in the CellockED video is misusing and misleading consumers into believing the Yondr Pouch does not function properly. Had the actor in CellockED's video clicked the button on the Yondr Pouch, the Pouch would have unlocked, as it always does.



58. Defendants knowingly made these and, upon information and belief, other false statements about Yondr. Upon further information and belief, Defendants expect and know their defamatory statements could harm and have harmed Yondr, but included those statements anyway.

59. Upon information and belief, Yondr has lost business due to Defendants' defamatory statements including an opportunity to partner with and sell its system to various school districts.

60. Defendants' acts are causing and, unless restrained, will continue to cause damage and immediate irreparable harm to Yondr and to its valuable reputation and goodwill with the consuming public for which Yondr has no adequate remedy at law.

F. Defendant Guerra's Personal Liability

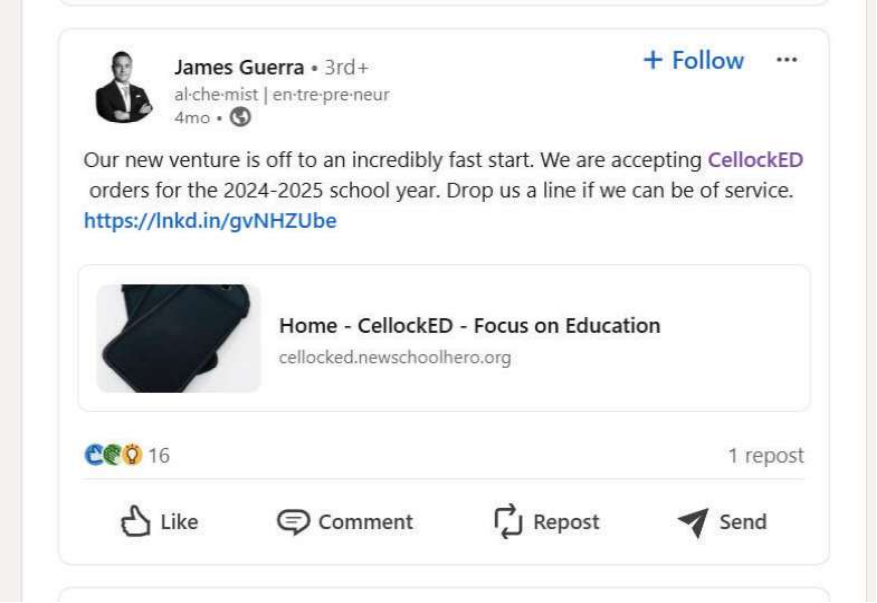
61. Defendant Guerra is the manager and sole employee of Defendant Be Smarter.

62. Upon information and belief, as the Manager and sole employee of Defendant Be Smarter, Defendant Guerra will control this litigation.

63. Upon information and belief, Defendant Guerra provided all the capital to form Defendant Be Smarter.

64. Upon information and belief, Defendant Guerra is responsible for the sales and marketing of Defendant Be Smarter.

65. Upon information and belief, Defendant Guerra is responsible for the sales and marketing of Defendant Be Smarter's CellockED product. This is demonstrated by, for example, some of the CellockED related LinkedIn posts from Guerra's personal LinkedIn account, shown below.



https://www.linkedin.com/in/james-guerra-21a5434/recent-activity/all/.

66. Upon information and belief, as the Manger and sole employee of Defendant Be Smarter, Defendant Guerra controls and makes all of Defendant Be Smarter's decisions.

67. Upon information and belief, as the Manger and sole employee of Defendant Be Smarter, Defendant Guerra has full responsibility for Defendant Be Smarter's business.

68. As the Manger and sole employee of Defendant Be Smarter, Defendant Guerra stands to benefit personally from the business of Defendant Be Smarter.

69. Defendant Guerra holds himself out as the Manager and person who controls Defendant Be Smarter and makes all of Be Smarter's decisions.

70. Defendant Guerra willfully, knowingly and/or actively participated in and supervised the illegal and willfully infringing activities of Defendant Be Smarter, and used Defendant Be Smarter to carry out his illegal and willfully infringing activities.

71. Defendant Guerra's active participation in and supervision of Defendant Be Smarter's wrongful misconduct was intentional, unjustified, and/or malicious, and done to purposefully harm Yondr and Yondr's products.

72. As the Manger and sole employee of Defendant Be Smarter, Defendant Guerra is the individual at Be Smarter with the responsibility for deliberately choosing to trade on the goodwill established by Yondr by intentionally infringing the Yondr Registered Product Configuration Mark to falsely suggest Yondr's products were somehow associated with Defendant Be Smarter and/or to falsely suggest CellockED originated with Yondr.

73. Upon information and belief, Defendant Guerra made the decision to go forward with the infringing use of Yondr's Registered Product Configuration Mark.

74. Defendant Guerra stood to benefit personally and profit from the decision to use Yondr's Registered Product Configuration Mark without authorization.

75. Upon information and belief, Defendant Guerra willfully, knowingly and/or actively participated in and supervised Defendant Be Smarter in making the false and misleading claims about Yondr, and used Defendant Be Smarter to make his false and misleading claims.

76. Upon information and belief, as the Manager and sole employee of Be Smarter, Defendant Guerra is responsible for and chose to create the false and misleading YouTube videos concerning Yondr.

77. Upon information and belief, Defendant Guerra stood to benefit personally and profit from the public's reaction to the false and misleading YouTube videos concerning Yondr.

78. Defendant Guerra is also personally liable for the acts of Defendant Be Smarter because the corporate veil of Be Smarter should be pierced and/or because Defendant Guerra is the alter ego of Defendant Be Smarter. A unity of interest and ownership causes any separate personalities of Defendant Be Smarter and Defendant Guerra to no longer exist. Further, circumstances exist such that adherence to the fiction of a separate corporate existence would sanction a fraud or promote injustice. More specifically, upon information and belief: (1) Defendant Guerra used Defendant Be Smarter to commit fraud or perpetrate a serious wrong, including intentional misrepresentation, concealment, or reckless misstatement of material facts; (2) Defendant Be Smarter was inadequately capitalized; and/or (3) Defendant Be Smarter is a mere façade for the operations of Defendant Guerra.

COUNT 1: INFRINGEMENT OF THE '788 PATENT

79. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

80. Yondr's technology for limiting functionality of personal electronic devices is protected by the '788 Patent.

81. The '788 Patent is valid and enforceable under the United States' Patent Laws.

82. Yondr owns, by assignment, all right, title, and interest in and to the ’788 Patent, including the right to collect for past damages.

83. A copy of the ’788 Patent is attached as Ex. A.

A. The ’788 Patent

84. The ’788 Patent is entitled “System and Apparatus for Selectively Limiting User Control of an Electronic Device.” It was filed on April 21, 2015. The U.S. Patent and Trademark Office issued the ’788 Patent on November 14, 2017. The technology disclosed and claimed in the ’788 Patent was invented by Graham Dugoni.

85. Embodiments of the novel system invented by Graham Dugoni and assigned to Yondr are reflected in exemplary claims 3, 7, 8 and 9 of the ’788 Patent which recite:

> 3. A system for selectively limiting a user’s control of such user’s own electronic device, comprising:
>
> a case sized to receive the user’s mobile electronic device having
>
> a front and a rear panel each having first and second longitudinally opposed side edges and laterally opposed lower edges,
>
> the first, second, and lower edges being secured together to define an opening for receiving a mobile electronic device, the case operative to become locked so that the user is unable to access his own mobile electronic device contained therein until a predetermined condition is met;
>
> a locking means for at least partially securing the opening; and
>
> means for unlocking the case.

Ex. A, Claim 3.

> 7. The case of claim 3, wherein the predetermined condition is physical presence outside of a defined geographical region.

Ex. A, Claim 7.

> 8. The case of claim 3, wherein the predetermined condition is the passage of time.

Ex. A, Claim 8.

> 9. The system of claim 3, wherein the mobile electronic device is operative to receive instructions to disable one or more coded functions of the mobile electronic device.

Ex. A, Claim 9.

B. '788 Patent Infringement Allegations

86. Defendants' CellockED product infringes the '788 Patent. *See* Exhibit C ("Ex. C").

87. Defendants' CellockED website describes CellockED as "a new cell phone pouch with a magnetic locking system, designed to safely secure students' cell phones during school hours." https://cellocked.newschoolhero.org/about/.

88. CellockED "features a unique cell phone pouch equipped with a retractable locking pin that unlocks only with a specialized magnetic detacher." https://www.prnewswire.com/news-releases/cellocked-launches-signal-blocking-cell-phone-device-for-improving-focus-and-productivity-in-schools-302193646.html (article announcing the launch of CellockED, "a secure and unique solution for minimizing distractions during instructional time.").

89. CellockED is covered by one or more claims of the '788 Patent. *See* Ex. C.

90. Defendants have infringed, and will continue to infringe, the '788 Patent by making, using, selling, or offering for sale in the United States, or importing into the United States, including within this Judicial District, the product sold under the name CellockED, in violation of 35 U.S.C. § 271(a).

91. Defendants have been and are continuing to induce the infringement of the '788 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, or import CellockED which embodies the invention claimed in the '788 Patent, in violation of 35 U.S.C. § 271(b).

92. Yondr is entitled to recover from Defendants all damages that Yondr has sustained as a result of Defendants' infringement of the '788 Patent, including, without limitation, lost profits and/or not less than a reasonable royalty.

93. Defendants have knowledge of the '788 Patent.

94. Upon information and belief, Defendants' infringement of the '788 Patent has been, and continues to be, knowing, intentional, and willful, entitling Yondr to enhanced damages and attorneys' fees pursuant to 35 U.S.C. § 284.

95. Yondr has been damaged by Defendants' infringement of the '788 Patent and will continue to be damaged unless Defendants are enjoined by this Court pursuant to 35 U.S.C. § 283. Yondr has suffered and continues to suffer irreparable injury for which there is no adequate remedy at law. The balance of hardships favors Yondr, and public interest is not disserved by an injunction.

96. Defendants' infringement of the '788 Patent is exceptional and entitles Yondr to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT 2: INFRINGEMENT OF THE '078 PATENT

97. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

98. Yondr's technology for limiting functionality of personal electronic devices is protected by the '078 Patent.

99. The '078 Patent is valid and enforceable under the United States' Patent Laws.

100. Yondr owns, by assignment, all right, title, and interest in and to the '078 Patent, including the right to collect for past damages.

101. A copy of the '078 Patent is attached as Exhibit B ("Ex.B").

A. The '078 Patent

102. The ’078 Patent is entitled “System and Apparatus for Selectively Limiting User Control of an Electronic Device.” It was filed on March 14, 2024. The U.S. Patent and Trademark Office issued the ’078 Patent on October 29, 2024. The technology disclosed and claimed in the ’078 Patent was invented by Graham Dugoni.

103. An embodiment of the ’078 Patent’s novel system invented by Graham Dugoni and assigned to Yondr is reflected in exemplary claim 1 of the ’078 Patent which recites:

> 1. A case comprising:
>
> a shell defining a cavity sized to accommodate a mobile device, the shell having an opening to receive the mobile device; and
>
> a lock positioned proximate to the opening of the shell, the lock configured to render the mobile device at least partially inaccessible upon the lock being locked with the mobile device within the cavity of the shell, the lock further configured to unlock to enable access to the mobile device based on a predetermined condition associated with a geographic region.

Ex. B, Claim 1.

B. ’078 Patent Infringement Allegations

104. Defendants’ CellockED product infringes the ’078 Patent. *See* Exhibit D (“Ex. D”).

105. Defendants’ CellockED website describes CellockED as “a new cell phone pouch with a magnetic locking system, designed to safely secure students’ cell phones during school hours.” https://cellocked.newschoolhero.org/about/.

106. CellockED “features a unique cell phone pouch equipped with a retractable locking pin that unlocks only with a specialized magnetic detacher.” https://www.prnewswire.com/news-releases/cellocked-launches-signal-blocking-cell-phone-device-for-improving-focus-and-productivity-in-schools-302193646.html (article announcing the launch of CellockED, “a secure and unique solution for minimizing distractions during instructional time.”).

107. CellockED is covered by one or more claims of the ’078 Patent. *See* Ex. D.

108. Defendants have infringed, and will continue to infringe, the ’078 Patent by making, using, selling, or offering for sale in the United States, or importing into the United States, including within this Judicial District, the product sold under the name CellockED, in violation of 35 U.S.C. § 271(a).

109. Defendants have been and are continuing to induce the infringement of the ’078 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, or import CellockED which embodies the invention claimed in the ’078 Patent, in violation of 35 U.S.C. § 271(b).

110. Yondr is entitled to recover from Defendants all damages that Yondr has sustained as a result of Defendants’ infringement of the ’078 Patent, including, without limitation, lost profits and/or not less than a reasonable royalty.

111. Defendants have knowledge of the ’078 Patent.

112. Upon information and belief, Defendants’ infringement of the ’078 Patent has been, and continues to be, knowing, intentional, and willful, entitling Yondr to enhanced damages and attorneys’ fees pursuant to 35 U.S.C. § 284.

113. Yondr has been damaged by Defendants’ infringement of the ’078 Patent and will continue to be damaged unless Defendants are enjoined by this Court pursuant to 35 U.S.C. § 283. Yondr has suffered and continues to suffer irreparable injury for which there is no adequate remedy at law. The balance of hardships favors Yondr, and public interest is not disserved by an injunction.

114. Defendants’ infringement of the ’078 Patent is exceptional and entitles Yondr to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT 3: TRADEMARK INFRINGEMENT, 15 USC §1114

115. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

116. Yondr owns the Yondr Registered Product Configuration Mark and owns valid registration in the Yondr Registered Product Configuration Mark on the Principal Register. *See* Exhibit E ("Ex. E").

117. Defendants are using an infringing mark that is identical to or indistinguishable from the genuine Yondr Registered Product Configuration Mark. Defendants' infringing mark is incorporated into CellockED and is used in the promotion of their CellockED product, including in infringing advertisements on LinkedIn, in the infringing CellockED Webpage, and in the Product images on the CellockED YouTube, without Yondr's approval, authorization, or consent.

118. Defendants' use of the Yondr Registered Product Configuration Mark is likely to cause confusion in the minds of the public, leading the public to falsely believe that Defendants' CellockED product originates from Yondr, and/or that Yondr has approved, sponsored, or otherwise associated itself with the goods offered for sale and/or distributed by Defendants.

119. Upon information and belief, Defendants' conduct is intended to exploit the strong reputation and goodwill that is exclusively associated with the Yondr Registered Product Configuration Mark and to take unfair competitive advantage of the Yondr Registered Product Configuration Mark's goodwill.

120. Yondr has no control of the quality of the goods marketed and/or sold by Defendants. Because of the likelihood of confusion as to the source of Defendants' goods, or as to whether Defendants' goods are sponsored or endorsed by, or are affiliated with, Yondr, in view of at least Defendants' infringing advertisements on LinkedIn, the infringing CellockED Webpage, and the infringing product images on the CellockED YouTube account, Yondr's valuable goodwill

in the Yondr Registered Product Configuration Mark is at the mercy of, and is being irreparably harmed by Defendants.

121. Defendants' infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

122. Yondr has no adequate remedy at law.

123. As a result of Defendants' actions, Yondr has suffered, and will continue to suffer, money damages in an amount to be determined at trial.

124. Therefore, under 15 U.S.C. § 1117, Yondr is entitled to recover its actual damages and Defendants' profits attributable to their infringement of Yondr's federally registered Yondr Registered Product Configuration Mark.

125. Furthermore, this case is exceptional under 15 U.S.C. § 1117, and Yondr is entitled to recover its reasonable attorneys' fees.

COUNT 4: UNFAIR COMPETITION, 15 U.S.C. § 1125

126. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

127. As set forth above, Defendants have intentionally and unlawfully engaged in various acts of unfair competition, including by making false misleading statements in their commercial advertising and promotional materials which misrepresent the characteristics and qualities of Yondr's product.

128. Defendants made false statements in interstate marketing materials to Yondr's actual and prospective customers to influence those customers to instead purchase Defendants' product, CellockED.

129. Upon information and belief, Defendants' false statements were material in that they influenced the purchasing decisions of Yondr's actual and prospective customers, directly

and proximately causing Yondr to lose and/or make valuable concessions to actual and prospective customers.

130. Upon information and belief, Defendants knew that the statements were false, or acted in reckless disregard of their truth or falsity.

131. As a direct and proximate result of Defendants' false statements, Yondr has suffered and will continue to suffer monetary and non-monetary damages, including, without limitation, lost profits.

132. Yondr therefore seeks judgment in its favor to recover from Defendants all damages that Yondr has sustained as a result of Defendants' false statements in violation of 15 U.S.C. § 1125, including punitive and treble damages, Defendants' profits or gains resulting from willful acts of unfair competition, and interest, attorney's fees, costs and disbursements, and all other relief permitted by law that this Court deems appropriate.

COUNT 5: TRADEMARK INFRINGEMENT UNDER TEXAS COMMON LAW

133. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

134. Yondr owns the Yondr Registered Product Configuration Mark and a valid registration in the Yondr Registered Product Configuration Mark on the Principal Register. *See* Ex. E.

135. Defendants are using an infringing mark that is identical to or indistinguishable from the genuine Yondr Registered Product Configuration Mark, both incorporated into the CellockED product, and for the promotion of CellockED without Yondr's approval, authorization, or consent.

136. Defendants' use of the Yondr Registered Product Configuration Mark is likely to cause confusion in the minds of the public, leading the public to falsely believe that Defendants'

CellockED product originates from Yondr, and/or that Yondr has approved, sponsored, or otherwise associated itself with the goods offered for sale and/or distributed by Defendants.

137. Defendants' conduct is intended to exploit the strong reputation and goodwill that is exclusively associated with the Yondr Registered Product Configuration Mark, to take unfair competitive advantage of the Yondr Registered Product Configuration Mark's goodwill without any expenditure of Defendants' own resources.

138. Yondr has no control of the quality of the goods marketed and/or sold by Defendants. Because of the likelihood of confusion as to the source of Defendants' goods, or as to whether Defendants' goods are sponsored or endorsed by, or affiliated with, Yondr, in view of at least the Defendants' infringing advertisements on LinkedIn, the infringing CellockED Webpage, and the infringing Product images on the CellockED YouTube account, Yondr's valuable goodwill in the Yondr Registered Product Configuration Mark is at the mercy of, and being irreparably harmed, by Defendants.

139. Defendants' infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

140. Yondr has no adequate remedy at law.

141. As a result of Defendants' actions, Yondr has suffered, and will continue to suffer, money damages in an amount to be determined at trial.

142. Therefore, under Texas Common Law, Yondr is entitled to recover its actual damages and Defendants' profits attributable to their infringement the Yondr Registered Product Configuration Mark.

143. Yondr therefore seeks judgment in its favor and to recover from Defendants all damages that Yondr has sustained as a result of Defendants' trademark infringement in violation

Texas's Common Law prohibition of trademark infringement including an award of actual and special damages, as permitted by law, including punitive and treble damages, Defendants' profits or gains resulting from its infringement, and interest, attorney's fees, costs and disbursements, and all other relief permitted by law that this Court deems appropriate.

COUNT 6: TRADE LIBEL UNDER TEXAS COMMON LAW

144. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

145. Defendants published a video that contained false information about Yondr.

146. Upon information and belief, Defendants acted with malice when they published a video that contained false information about Yondr.

147. Upon information and belief, Defendants' false and misleading statements about Yondr influenced the purchasing decisions of Yondr's actual and prospective customers, directly and proximately causing Yondr to lose and/or make valuable concessions to actual and prospective customers.

148. Defendants caused special damages to Yondr, in the form of loss of trade when, upon information and belief, Defendants induced actual and prospective customers not to deal with Yondr. Upon further information and belief, Yondr has lost business opportunities as a result of Defendants' actions.

149. Yondr therefore seeks judgment in its favor and to recover from Defendants all damages that Yondr has sustained as a result of Defendants' false statements in violation Texas's Common Law prohibition of trade disparagement and trade libel including an award of actual and special damages, as permitted by law, including punitive and treble damages, Defendants' profits or gains resulting from its trade libel, and interest, attorney's fees, costs and disbursements, and all other relief permitted by law that this Court deems appropriate.

COUNT 7: COMMON LAW UNFAIR COMPETITION UNDER TEXAS LAW

150. Yondr incorporates by reference the preceding paragraphs, as if set forth herein.

151. Defendants have made and distributed, in interstate commerce and in this District, statements that contain false or misleading statements of fact about Yondr and its product.

152. Yondr's System is sold within the State of Texas and Defendants' statements were made from within Texas and reached Texas consumers.

153. Defendants have and continue to commit unlawful acts, as pleaded above, including, but not limited to, trademark infringement and trade libel. Defendants have committed these unlawful acts maliciously and with the specific intent, to interfere with Yondr's ability to conduct its own business.

154. Defendants have and will continue to cause immediate and irreparable injury to Yondr, including injury to its business, reputation, and goodwill, for which there is no adequate remedy at law. Yondr consequently is entitled to an injunction restraining Defendants, their agents, employees, representatives, and all persons acting in concert with it from engaging in further acts of unfair competition and ordering removal of all Defendants' false statements.

155. Yondr is entitled to recover from Defendants the damages Yondr has sustained as a result of Defendants' acts constituting unfair competition. Yondr will prove the full extent of the monetary damages it has suffered because of Defendants' acts through this action.

156. Yondr therefore seeks judgment in its favor and to recover from Defendants all damages that Yondr has sustained as a result of Defendants' actions in violation Texas's Common Law prohibition of unfair trade practices including an award of actual and special damages, as permitted by law, including punitive and treble damages, Defendants' profits or gains resulting

from its unfair trade practices, and interest, attorney's fees, costs and disbursements, and all other relief permitted by law that this Court deems appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Yondr respectfully requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

Yondr respectfully requests that this Court enter judgment in its favor and against Defendants and respectfully requests the following relief:

1. A judgment that Defendants infringed and continue to infringe the Asserted Patents;

2. A judgment and order requiring Defendants to pay Yondr's monetary damages sufficient to compensate Yondr for Defendants' infringement of the Asserted Patents, but in no event less than a reasonable royalty under 35 U.S.C. § 284;

3. An award of enhanced damages pursuant to 35 U.S.C. § 284;

4. An award of treble damages for Defendants' willful infringement of the Asserted Patents;

5. A judgment and order finding this to be an exceptional case under 35 U.S.C. § 285 and requiring Defendants to pay costs of this action and attorneys' fees;

6. A permanent injunction against all of Defendants' products found to infringe the Asserted Patents;

7. In lieu of an injunction, an award of a compulsory forward royalty;

8. A judgment that Defendants infringed and continue to infringe the Yondr Registered Product Configuration Mark;

9. An award of damages sustained as a consequence of Defendants' infringement of the Registered Product Configuration Mark and trebling of those damages under 15 U.S.C. § 1117;

10. A judgment that Defendants disparaged and committed trade libel against Yondr, infringed the Yondr Registered Product Configuration Mark and engaged in trade practices in violation Texas's Common Law prohibition of unfair trade practices.

11. An entry of a preliminary and permanent injunction against Defendants, enjoining Defendants from making false statements regarding Yondr, its System and/or its personnel;

12. An entry of a preliminary and permanent injunction requiring Defendants to remove the defamatory and unlawful statements it has already made and issue a correction regarding same;

13. An award of compensatory, incidental, and consequential damages, in an amount to be determined, for harms Yondr has and continues to suffer by Defendants' unlawful conduct, including harm to Yondr's reputation and goodwill as well negative effect on Yondr's sales and business value;

14. A judgment and order requiring Defendants to pay Yondr's pre-judgement and post-judgment interest on the damages award, to the full extent allowed under the law, as well as its costs;

15. An order for an accounting of damages;

16. An award of such further relief as the Court may deem appropriate and just under the circumstances.

Dated: 10/31/2024

Respectfully submitted,

By: */s/ Joshua L. Raskin*

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