

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

YONDR, INC.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 1:24-cv-01326
	§	
BE SMARTER, LLC AND	§	
JAMES GUERRA,	§	
	§	
Defendants.	§	

Defendant Be Smarter's First Amended Counterclaims

Defendant/Counterclaim-Plaintiff Be Smarter, LLC ("Be Smarter") alleges the following counterclaims against Plaintiff/Counterclaim-Defendant Yondr, Inc. ("Yondr") pursuant to Federal Rules of Civil Procedure 13 and 15(a)(1).

Nature of the Action

1. Yondr filed this patent infringement action on October 31, 2024 (Dkt. 1), with full knowledge that its asserted patents and trademark are invalid and unenforceable. Indeed, just two days before-hand, Be Smarter provided Yondr with an exemplary invalidity chart explaining in detail how all elements of the only asserted independent claim of the '788 Patent are taught by two prior art references. A true and correct copy of Be Smarter's invalidity letter is attached to these Amended Counterclaims as Exhibit A.

2. Moreover, Yondr is aware of its own misrepresentations to the Trademark Office in order to induce the Trademark Office to register the asserted '045 Mark. In short, when the Trademark Office examining attorney asked Yondr whether its claimed

product configuration trade dress was the subject of any patents or pending patent applications in order to assess whether the claimed product configuration trade dress was functional because functional designs are not eligible for trade dress protection, Yondr knowingly misled the examining attorney by not disclosing its '788 Patent and its pending '437 Patent Application.

3. In addition, Yondr has repeatedly and continuously used its meritless allegations to mislead and discourage Be Smarter's customers, even after receiving Be Smarter's October 29 letter explaining invalidity. The product at issue in this case is a pouch for preventing cell phone use at inappropriate times, such as in school. Yondr apparently believes this is a growing market as educators decide the distractions posed by unlimited cellphone access in school outweighs any potential benefits. Yondr seeks to exploit this market by selling its cell phone pouch on an annual subscription basis to schools throughout the United States of America. As can be seen from Yondr's images of its own product, this is nothing more than a soft pouch with a locking lid:



(Complaint, Dkt. 1 at 24.) That is, Yondr is using its invalid patents and unenforceable trade dress to extract annual payments from cash-strapped public schools for a simple

pouch.

4. Unsurprisingly, Yondr is not pleased to be faced with a competitive product. Be Smarter also sells a cell-phone pouch, known as CellockED, to schools albeit with a number of differences. For example, Be Smarter's pouch not only houses cell phones in a locked pouch, but its pouch is made of polyester fiber infused with metallic copper and nickel that blocks cell phone signals thereby preventing disturbing rings or notifications even when locked away. Neither Yondr's patents nor its product include this feature. Also, Be Smarter sells its pouch for a reasonable one-time payment rather than an annual subscription renewal fee. That is, unlike Yondr, Be Smarter is not trying to extract an annual, recurring fee from public schools for such a simple device.

5. As a result, Yondr filed this suit, and Be Smarter answered, denying that it is infringing any valid patents or trademarks. (Dkt. 18.) Be Smarter also filed counterclaims which it now amends and reasserts. (*Id.*) First, Be Smarter seeks declaratory judgment of invalidity of U.S. Patent Nos. 9, 819, 788 ("the '788 Patent") and 12,133,078 ("the '078 Patent") (collectively the "Asserted Patents") pursuant to the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, damages, and such other relief as the Court deems just and proper.

6. Next, Be Smarter seeks declaratory judgment of invalidity or unenforceability of Federal Trademark Registration Number 6,995,045 ("the '045 Mark") pursuant to the Trademark Laws of the United States, 15 U.S.C. § 1064 and 15 U.S.C. § 1119. Accordingly, Be Smarter requests the Court enter an order cancelling the '045 Mark and award Be Smarter damages, and such other relief as the Court deems just and

proper.

7. Third, Be Smarter asks the Court to declare the '045 Mark is unenforceable and cancel the '045 Mark based on the functionality of the claimed product-configuration trade dress.

8. Finally, Be Smarter seeks damages for Yondr's bad faith accusations and efforts to mislead and discourage customers based on patents and trade dress that it knows are invalid and unenforceable.

9. Yondr's false accusations have placed a cloud over Be Smarter and its cell-phone pouch business. Be Smarter believes Yondr's allegations lack merit and thus respectfully asks this Court to declare the legal rights of Be Smarter so that Be Smarter is afforded relief from the uncertainty and delay regarding its rights caused by Yondr's allegations.

Parties

10. Be Smarter is a limited liability company organized and existing under the laws of Texas with its principal place of business at 605 E. University Ave. Ste. 101, Georgetown, Texas.

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

Jurisdiction and Venue

12. This action arises under the Patent Laws of the United States, Title 35 of the United States Code (35 U.S.C. § 1 *et seq.*), the Trademark Laws of the United States, Title

15 of the United States Code (15 U.S.C. §§ 1064, 1119, and 1121(a)), the Federal Declaratory Judgment act (28 U.S.C. §§ 2201 and 2202), and Texas common law.

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (actions arising under an Act of Congress relating to patents or trademarks), 15 U.S.C. § 1121(a) (action arising under an Act of Congress related to trademarks), and 28 U.S.C. § 1367(a) (supplemental jurisdiction over other claims so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy).

14. This Court has personal jurisdiction over Yondr because it submitted itself to the jurisdiction of this Court by filing its Complaint (Dkt. 1).

15. Venue is proper over Yondr because it has conceded to venue in this District by way of its Complaint (Dkt. 1).

The Asserted Patents

16. The '788 Patent lists Graham Dugoni as inventor, is entitled "System and Apparatus for Selectively Limiting User Control of an Electronic Device," and issued on or about November 14, 2017. The application for the '788 Patent was filed on or about April 21, 2015.

17. On information and belief, the '788 Patent is assigned to Yondr.

18. The '078 Patent lists Graham Dugoni as inventor, is entitled "System and Apparatus for Selectively Limiting User Control of an Electronic Device," and issued on or about October 29, 2024. The application for the '078 Patent was filed on or about March 14, 2024.

19. On information and belief, the '078 Patent is assigned to Yondr.

The '045 Mark

20. The '045 Mark lists Yondr as the owner, is of the international class 009, and has a registration date of March 7, 2023. The application for the '045 Mark was filed on or about December 13, 2021.

21. On information and belief, the '045 Mark is owned by Yondr.

Presence of an Actual Controversy

22. The presence of an actual controversy between the parties is at least in part shown by the filing of the Complaint by Yondr.

23. In its Complaint, Yondr alleges that Be Smarter's CellockED product infringes the Asserted Patents and the '045 Mark. (Dkt. 1.)

24. Thus, there is a substantial controversy of sufficient immediacy and relativity between Be Smarter and Yondr to warrant issuance of a declaratory judgment.

25. Be Smarter believes the infringement allegations as to the Asserted Patents lack merit and the Asserted Patents are invalid. Similarly, Be Smarter believes the infringement allegations as to the '045 Mark lack merit and that the '045 Mark is invalid or unenforceable. Therefore, Be Smarter seeks relief declaring the legal rights of Be Smarter – namely, that Be Smarter does not infringe any valid and enforceable claim of the Asserted Patents, that each asserted claim of the Asserted Patents is invalid, that Be Smarter does not infringe the '045 Mark, and that the '045 Mark is invalid or unenforceable. Without such declaration, Yondr's infringement allegations will continue to negatively impact Be Smarter's business at least with respect to its CellockED product.

In general, Be Smarter's CellockED product is a significant component of Be Smarter's overall business, success, and market reputation. Accordingly, there is a substantial controversy of sufficient immediacy and reality between Be Smarter and Yondr to warrant issue of a declaratory judgment.

26. Be Smarter denies that it infringes any valid and enforceable claim of the Asserted Patents and further denies that any claim of the Asserted Patents is valid. Additionally, Be Smarter denies that it infringes the '045 Mark and further denies that the '045 Mark is valid or enforceable.

Count I
Declaratory Judgment of Invalidity of U.S. Patent No. 9,819,788

27. The allegations set forth in Paragraphs 1 through 26 of Be Smarter's Counterclaims are incorporated by reference as if fully set forth herein.

28. As a result of the acts described in the foregoing Paragraphs, there exists an actual and justiciable controversy between Be Smarter and Yondr regarding the validity of the '788 Patent.

29. The claims of the '788 Patent are invalid for failure to meet the conditions for patentability or otherwise comply with the requirements of 35 U.S.C. § 101 *et seq.*, including but not limited to §§ 101, 102, 103, and 112.

30. For example, the asserted claims of the '788 Patent are invalid as anticipated or obvious in view of the prior art, including but not limited to U.S. Patent Application No. 13/011,356 to Stewart and U.S. Patent No. 9,928,387 to Simpson.

31. Contrary to 35 U.S.C. § 101, the claims of the '788 Patent do not claim patentable subject matter. *See Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). For

example, the Patent Office issued the '788, at least in part, based on the claimed novelty of not being able to access a mobile electronic device until a predetermined condition is satisfied. Such an abstract idea lacks any inventive concept and, thus, is not patentable under 35 U.S.C. § 101.

32. The '788 Patent fails to inform with reasonable certainty those skilled in the art of the scope of the invention contrary to 35 U.S.C. § 112. For example, claims 1 and 2 of the '788 Patent refer to unlocking the case when "the predetermined condition" is satisfied. ('788 Patent, Col. 10, lines 54-55 and 66-67.) There, however, is no antecedent basis for "the predetermined condition," rendering these claims indefinite under 35 U.S.C. § 112.

33. Therefore, a judicial declaration of invalidity is necessary and appropriate to resolve this controversy and prevent Yondr from continuing to allege validity of the '788 Patent.

Count II
Declaratory Judgment of Invalidity of U.S. Patent No. 12,133,078

34. The allegations set forth in Paragraphs 1 through 26 of Be Smarter's Counterclaims are incorporated by reference as if fully set forth herein.

35. As a result of the acts described in the foregoing Paragraphs, there exists an actual and justiciable controversy between Be Smarter and Yondr regarding the validity of the '078 Patent.

36. The claims of the '078 Patent are invalid for failure to meet the conditions for patentability or otherwise comply with the requirements of 35 U.S.C. § 101 *et seq.*, including but not limited to §§ 101, 102, 103, and 112.

37. For example, the asserted claims of the '078 Patent are invalid as anticipated or obvious in view of the prior art, including but not limited to U.S. Patent Application No. 13/011356 to Stewart and U.S. Patent No. 9,928,387 to Simpson.

38. Contrary to 35 U.S.C. § 101, the claims of the '078 Patent do not claim patentable subject matter. *See Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). For example, the Patent Office issued the '078, at least in part, based on the claimed novelty of not being able to access a mobile electronic device until a predetermined condition is satisfied. Such an abstract idea lacks any inventive concept and, thus, is not patentable under 35 U.S.C. § 101.

39. Therefore, a judicial declaration of invalidity is necessary and appropriate to resolve this controversy and prevent Yondr from continuing to allege validity of the '078 Patent.

Count III
Declaratory Judgment of Invalidity or Unenforceability
of Registered Trademark No. 6,995,045

40. The allegations set forth in Paragraphs 1 through 26 of Be Smarter's Counterclaims are incorporated by reference as if fully set forth herein.

41. As a result of the acts described in the foregoing Paragraphs, there exists an actual and justiciable controversy between Be Smarter and Yondr regarding the validity and enforceability of the '045 Mark.

42. The '045 Mark is invalid or unenforceable due to inequitable conduct before the United States Trademark Office in the preparation and prosecution of the '045 Mark.

43. The Yondr Applicants filed the application leading to registration of the

'045 Mark on or about December 13, 2021. Yondr's trade dress application purported to cover the product configuration of its Yondr cell-phone pouch.

44. On or about October 6, 2022, the Trademark Office's examining attorney specifically asked Yondr whether the applied-for product configuration trade dress was the subject of any issued or applied for patents: "Applicant must provide the following information and documentation regarding the applied-for three-dimensional configuration mark: (1) A written statement as to whether the applied-for mark, or any feature(s) thereof, is or has been the subject of a design or utility patent or patent application,...." The trademark examiner posed this important, *i.e.*, material, question because a party cannot acquire trade dress rights over a functional product configuration. *See* 15 U.S.C. §§1052(e)(5), 1091(c), 1115(b)(8); TMEP § 1202.02(a)(iii)(A).

45. A true and correct copy of the Trademark Office's October 6, 2022, Office Action is attached to these Amended Counterclaims as Exhibit B.

46. U.S. Patent No. 9,819,788 issued on or about November 14, 2017. Yondr claims its "Yondr System" (as defined in Paragraph 2 of the Complaint (Dkt. 1)) embodies at least one claim of the '788 Patent.

47. The Yondr Applicants filed U.S. Patent Application No. 16,813,437 on or about March 9, 2020. On or about October 29, 2024, United States Patent No. 12, 133,074 issued from U.S. Patent Application No. 16,813,437.

48. That is, at the time the Trademark Office examining attorney posed his or her question, Yondr had obtained the '788 patent and applied for what is now the '074 patent.

49. Yondr claims its “Yondr System” (as defined in Paragraph 2 of its Complaint) embodies at least one claim of the ‘788 Patent. Yondr alleges that “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”). (Dkt. 1 at 2.) Yondr also states in its Complaint “The Yondr Registered Product Configuration Mark covers the Yondr Pouch.” (Dkt. 1 at 24.) In its letters to Be Smarter Customers accusing Be Smarter of infringing intellectual property rights, Yondr asserts, “the distinctive design of Yondr’s pouches is covered by Yondr’s federally Registered Trademark No. 6,996,045. See Exhibits D and E.

50. Nevertheless, in response to the Trademark Office examining attorney’s question, Yondr and its attorneys (referred to as the “Yondr Applicants”) failed to disclose Yondr’s ‘788 Patent or its ‘437 Patent Application.

51. On or about November 11, 2022, the Yondr Applicants affirmatively stated to the Trademark Office examining attorney: “Examiner requested further information. In response, 1) the applied-for trademark design has not been claimed in any US or foreign patent filings; ...”

52. A true and correct copy of Yondr’s Response to Office Action dated November 11, 2022, is attached to these Amended Counterclaims as Exhibit C.

53. The Yondr Applicants failed to inform the Trademark Office examining attorney who was examining the application that led to registration of the ‘045 Mark that their purported trade dress was the subject of a patent or patent application in response

to the specific question posed by the examining attorney despite knowing Yondr's U.S. Patent No. 9,819,788 had issued and U.S. Patent Application No. 16,813,437 was pending at that time.

54. The Yondr Applicants knowingly and intentionally failed to disclose this material information because they knew Yondr's issued and pending utility patents demonstrated the functionality of their claimed product configuration trade dress. The Yondr Applicants knew such functionality would cause the Trademark Office to reject their effort to register such functional product configuration trade dress. That is, Yondr is well aware that a product design cannot be covered by both a utility patent, demonstrating there is some novel invention or functionality, and product configuration trade dress, as such functionality precludes trade dress protection. Therefore, the Yondr Applicants knowingly misled the Trademark Office in their effort to register the '045 Mark.

55. The Yondr Applicants failed to disclose specific uses of the trademark in violation of 15 U.S.C. § 1064, and other applicable statutes, regulations, rules, or procedures.

56. In light of the Yondr Applicants failing to disclose their '788 Patent and '437 Patent Application demonstrating the functionality of the claimed product configuration trade dress, the Trademark Office reasonably relied on the Yondr Applicants' false representations that they had no applicable patents or patent applications and registered the product configuration trade dress covered by the '045 Mark.

57. Yondr is now asserting its '045 Mark against Be Smarter in this action and seeking damages for Defendants' alleged infringement. Yondr also is citing its '045 Mark in correspondence and conversations with Be Smarter's actual and potential customers in order to mislead and discourage those customers from doing business with Be Smarter. See Exhibits D, E, and F attached to these Amended Counterclaims. Yondr's bad faith actions have caused at least one customer to cancel its orders from Be Smarter thereby damaging Be Smarter.

58. In summary, Yondr's representation to the Trademark Office examining attorney that it had no applicable patents or patent applications was a false representation of a material fact. Yondr knew its representation was false. Yondr made this knowing false representation in order to deceive the Trademark Office and induce the Trademark Office to wrongfully register its claimed trade dress. The Trademark Office reasonably relied on Yondr's false representation as evidenced by the Trademark Office registering the '045 Mark. Be Smarter is being damaged by this false statement by virtue of Yondr asserting its '045 Mark against Be Smarter in this action and using its '045 Mark to mislead and discourage Be Smarter's actual and potential customers.

59. The Yondr Applicants purposely engaged in a pattern and practice of deception and otherwise improper conduct in connection with their prosecution of the '045 Mark which renders the '045 Mark unenforceable.

60. A judicial declaration of invalidity and unenforceability is necessary and appropriate to resolve this controversy and prevent Yondr from continuing to allege validity of and enforce the '045 Mark.

Count IV
Cancellation of the '045 Mark

61. The allegations set forth in Paragraphs 1 through 26 of Be Smarter's Counterclaims are incorporated by reference as if fully set forth herein.

62. The Yondr Applicants filed the application leading to registration of the '045 Mark on or about December 13, 2021. Yondr's trade dress application purported to cover the product configuration of its Yondr cell-phone pouch.

63. On or about October 6, 2022, the Trademark Office's examining attorney specifically asked Yondr whether the applied-for product configuration trade dress was the subject of any issued or applied for patents: "Applicant must provide the following information and documentation regarding the applied-for three-dimensional configuration mark: (1) A written statement as to whether the applied-for mark, or any feature(s) thereof, is or has been the subject of a design or utility patent or patent application,...." The trademark examiner posed this question because a party cannot acquire trade dress rights over a functional product configuration. *See* 15 U.S.C. §§1052(e)(5), 1091(c), 1115(b)(8); TMEP § 1202.02(a)(iii)(A).

64. Yondr claims that its '045 Mark "covers the Yondr Pouch." (Dkt. 1 at 45.)

65. Yondr also claims that its Yondr Pouch is covered by its Asserted Patents. (Dkt. 1 at 2; Exhibits D and E to these Amended Counterclaims.)

66. For example, the '788 Patent describes an embodiment of the claimed inventions as follows: "In an embodiment, the apparatus may be a case sized to receive a mobile electronic device, the case having a locking means to at least partially secure an opening thereof." ('788 Patent, Abstract.) "When engaged, the locking means may be

physically impenetrable by the user of the mobile electronic device and may further be configured to engage and disengage in the presence of one or more pre-determined conditions.” (*Id.*)

67. In other words, the ‘788 Patent claims that any cell-phone pouch with a lock that disengages upon satisfying a pre-determined condition practices the claimed invention. Such an invention, if validly patentable, would cover the product-configuration trade dress also purportedly covered by the ‘045 Mark, thereby demonstrating the functionality of Yondr’s claimed product-configuration trade dress.

68. In other words, Yondr is asserting trademark rights in a product configuration that it also claims is functional, making such product-configuration ineligible for trademark protection.

69. Yondr also obtained the ‘045 Mark via inequitable conduct and fraud before the United States Trademark Office in the preparation and prosecution of the ‘045 Mark as described in Count III of these Amended Counterclaims, which is incorporated by reference into this Count IV.

70. Therefore, this Court should cancel the ‘045 Mark as it improperly covers a functional product-configuration and was fraudulently obtained, pursuant to 15 U.S.C. §§ 1052(e)(5), 1064, 1115(b)(1) and (8), and 1119.

Count V
Tortious Interference with Business Relations and Prospective Business Relations

71. The allegations set forth in Paragraphs 1 through 26 of Be Smarter’s Counterclaims are incorporated by reference as if fully set forth herein.

72. As of September 2024, Be Smarter had reached agreements to sell its accused CellockED to a number of customers including the Denver Public Schools and the Taylor, Texas Independent School District. Be Smarter reasonably expected to make considerable sales of its CellockED products to the Denver Public Schools and the Taylor, Texas, Independent School District. Be Smarter also had ongoing business relationships with Tulsa Public Schools, Taos Public Schools, and the Raymondville Texas Independent School District, among others. Be Smarter reasonably expected to make considerable sales of its CellockED products to these and other school districts across the country.

73. As of September 2024, Yondr was aware of Be Smarter's contract with Denver Public Schools. Yondr was aware of Be Smarter's business relationship with Denver Public Schools. As of September 2024, Yondr was aware of Be Smarter's contract with the Taylor, Texas Independent School District. Yondr was aware of Be Smarter's business relationships with the Taylor, Texas Independent School District. Yondr also was aware of Be Smarter's business relationships with Tulsa Public Schools, Taos Public Schools, and the Raymondville, Texas Independent School District.

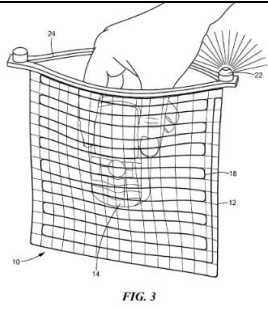
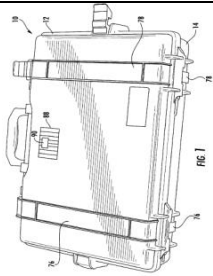
74. Yondr alleges in its Complaint in this case that Be Smarter has "partnered" with its customers. (Dkt. 1 at ¶ 45.) Yonder alleges in its Complaint in this case that Be Smarter is profiting from its "partnerships" with its customers. (*Id.*) Therefore, Yondr cannot deny knowing of or being aware of at least some of Be Smarter's customers for its accused CellockED product. Yondr cannot deny being aware of Be Smarter's business relationships with school districts across the country.

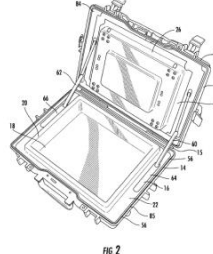
75. On information and belief, on or about September 30, 2024, Yondr sent letters to Be Smarter's Customers accusing Be Smarter and its customers of infringing the '788 Patent and the '045 Mark and threatening Be Smarter's customers with infringement litigation if they did not terminate their arrangements with Be Smarter.

76. A true and correct copy of Yondr's letter to the Taylor, Texas Independent School District dated September 30, 2024, is attached to these Amended Counterclaims as Exhibit D.

77. A true and correct copy of Yondr's letter to the Denver Public Schools dated September 30, 2024, is attached to these Amended Counterclaims as Exhibit E.

78. On or about October 29, 2024, Be Smarter wrote to Yondr explaining that its '788 Patent is invalid as anticipated or obvious in view of the prior art, including but not limited to U.S. Patent Application No. 13/011356 to Stewart and U.S. Patent No. 9,928,387 to Simpson. In its October 29 letter, Be Smarter provided an exemplary invalidity chart explaining in detail how all elements of the only asserted independent claim of the '788 Patent are taught by two prior art references:

'788 Patent, Claim 3	Stewart 2012/0187003	Simpson 9,928,387
3. A system for selectively limiting a user's control of such user's own electronic device, comprising:	[preamble]	[preamble]
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	 <p>FIG. 3</p>	 <p>FIG. 1</p>

together to define an opening for receiving a mobile electronic device,	Claim 15 - A security device: a pouch for housing a product therein.	 FIG. 2
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;	Claim 8 - The security device of claim 1, further comprising a locking mechanism...	Abstract - The present invention is a self contained, portable security case or container. The case is secure in its locked condition by locks which are preferably operated by an electronic key. The electronic <i>key can be programmed to open the case or container dependent upon various different conditions, for example, location, time</i> , identification of operator, etc. In addition...
a locking means for at least partially securing the opening; and means for unlocking the case.	Claim 5 - The security device of claim 2, further comprising an unlocking mechanism...	Abstract - The present invention is a self contained, portable security case or container. The case is secure in its locked condition by locks which are preferably operated by an electronic key. The electronic <i>key can be programmed to open the case or container dependent upon various different conditions, for example, location, time</i> , identification of operator, etc. In addition...

(Exhibit A, at 2-3.)

79. Yondr did not respond to or otherwise rebut Be Smarter's October 29 letter.

80. In addition, as set forth in Count III of these Amended Counterclaims which is incorporated by reference into this Count V, Yondr is aware that it made false representations to the Trademark Office in its effort to register the '045 Mark because its product configuration cannot be both novel and functional enough to warrant patent

protection and, at the same time, protectable as non-functional trade dress.

81. Be Smarter advised Yondr that its claimed trade dress mark was invalid and unenforceable in its October 29 letter. (Exhibit A at 3-4.)

82. After receiving Be Smarter's October 29, 2024, letter, Yondr continued to correspond with Be Smarter's Customers, accusing such customers and Be Smarter of infringing its intellectual property rights. For example, on or about December 5, 2024, counsel for Yondr wrote to the Taylor, Texas Independent School District continuing to assert that Be Smarter's sales of its CellockED product infringes Yondr's intellectual property.

83. A true and correct copy of Yondr's email to Taylor, Texas Independent School District dated December 5, 2024, is attached to these Amended Counterclaims as Exhibit F.

84. On or about January 27-28, Be Smarter and Yondr attended the Texas Association of School Administrators (TASA) Midwinter Conference in Austin, Texas. At that conference, Yondr continued to falsely claim Be Smarter is infringing valid and enforceable intellectual property rights.

85. Yondr knowingly and intentionally continues to threaten Be Smarter's Customers with full knowledge that its patents are invalid and its '045 Mark was fraudulently obtained for at least the reasons described in Be Smarter's October 29 as well as the facts set forth in Count III of these Amended Counterclaims.

86. Yondr is acting in bad faith by knowingly and intentionally trying to interfere with Be Smarter's contractual and business relationships with its customers.

87. Yondr's objective bad faith is shown by the invalidity analysis set forth in Be Smarter's October 29 letter to Yondr as well as Be Smarter's false statements to the Trademark Office outlined in Count III of these Amended Counterclaims.

88. Yondr's subjective bad faith is shown by its intentional actions, *i.e.*, its ongoing efforts to mislead and discourage Be Smarter's customers, even though Yondr knows that its patents are invalid and it obtained its '045 Mark via false representations to the Trademark Office.

89. As a direct result of Yondr's knowing and intentional tortious interference with Be Smarter's contractual and business relationships with its customers, Denver Public Schools terminated its contract with Be Smarter.

90. Yondr cannot reasonably expect to succeed on the merits of its patent and trademark infringement claims in this action in light of its patents' invalidity and its trademark's unenforceability due to inequitable conduct.

91. Be Smarter has lost actual sales and suffered actual damage as the proximate result of Yondr's tortious interference with the foregoing contracts and business relationships.

Prayer for Relief

WHEREFORE, Be Smarter prays that the Court enter judgment in favor of Be Smarter against Plaintiff on these Counterclaims, granting the following relief pursuant to 28 U.S.C. 2201 and 2202, 35 U.S.C. 285, and any other applicable law, rule, or inherent power of the Court:

- a. dismissal of all of Yondr's claims against Be Smarter in this action with prejudice;
- b. a declaration that all asserted claims of the '788 Patent are invalid;
- c. a declaration that all asserted claims of the '078 Patent are invalid;
- d. a declaration that the '045 Mark is invalid or unenforceable;
- e. cancellation of the '045 Mark;
- f. all lost profits and other damages resulting from Yondr's tortious interference with Be Smarter's business relationships;
- g. exemplary or punitive damages for Yondr's intentional tortious actions;
- h. reasonable attorneys' fees;
- i. court costs; and
- j. all other relief the Court deems fair and equitable.

[continued on next page]

Jury Demand

Counterclaim-Plaintiff Be Smarter requests a trial by jury on all matters and issues properly tried to a jury pursuant to Federal Rules of Civil Procedure 38 and 39 and other applicable federal and state law.

Dated: January 31, 2025

Respectfully submitted,

By: /s/ Arthur Gollwitzer III
Arthur Gollwitzer III
Texas Bar No. 24073336
agollwitzer@jw.com
Melissa S. Ruiz
Texas Bar No. 24128097
mrui@jw.com
JACKSON WALKER LLP
100 Congress Avenue, Suite 100
Austin, TX 78701
Telephone: 512.236.2000
Facsimile: 512.236.2002

***Attorneys for Defendants
Be Smarter, LLC and James
Guerra***

Certificate of Service

I, Arthur Gollwitzer III, an attorney of record in this matter, hereby certify that on January 31, 2025, I electronically filed the following document:

Defendant Be Smarter's First Amended Counterclaims

with the Clerk of the United States District Court for the Western District of Texas, Austin Division, using the CM/ECF system, which will send notification and a copy of this filing to the following counsel of record:

Joshua L. Raskin
Anne M. Rock
Omar A. Nesheiwat
GREENBERG TRAURIG, LLP
One Vanderbilt Ave.
New York, NY 10017
(212) 801-9200
Email: RaskinJ@gtlaw.com
Annie.rock@gtlaw.com
Omar.nesheiwat@gtlaw.com

Matthew J. Levinstein
GREENBERG TRAURIG, LLP
77 West Wacker Dr. Suite 3100
Chicago, IL 60601
(312) 456-1039
Email: Levinsteinm@gtlaw.com

By: /s/ Arthur Gollwitzer III
Arthur Gollwitzer III

EXHIBIT A



Arthur Gollwitzer
(512) 236-2268 (Direct Dial)
agollwitzer@jw.com

October 29, 2024

Via E-Mail: Joshua.Raskin@gtlaw.com

Joshua L. Raskin
Greenberg Traurig
77 West Wacker Drive, Ste. 3100
Chicago, Illinois 60601

Re: Yondr Infringement and Unfair Competition Allegations

Dear Mr. Raskin:

We represent Be Smarter, LLC and write in response to your letter on behalf of Yondr Inc., dated September 30, 2024. In that letter, Yondr asserts that Be Smarter sells and distributes a product known as “CellockED” that allegedly infringes claims of United States Patent No. 9,819,788 and purported trade dress identified in Trademark Registration No. 6,995,045. Yondr also claims Be Smarter has engaged in unfair competition, namely false advertising. Our initial investigation of Yondr’s allegations, the asserted patent and trade dress, and our client’s product leads us to conclude that Yondr’s assertions are misplaced.

Specifically, even our preliminary investigation of the validity of the ‘788 Patent yielded prior art that anticipates this patent or renders it obvious.¹ In addition, the accused CellockED product does not include all of the elements of any independent claim of the ‘788 Patent based on a straightforward claim construction and comparison of the elements of those claims to the accused product. Finally, Yondr’s purported Lanham Act claims also lack merit. For example, we see little or no evidence that Yondr’s claimed trade dress is either inherently distinctive or has acquired secondary meaning, and Yondr cannot present evidence of all elements of a false advertising claim.

¹ Moreover, the ‘788 Patent does not, in our opinion, claim patentable subject matter as required by 35 U.S.C. § 101, and *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014).

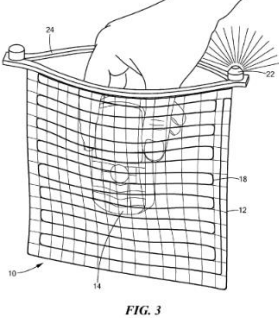
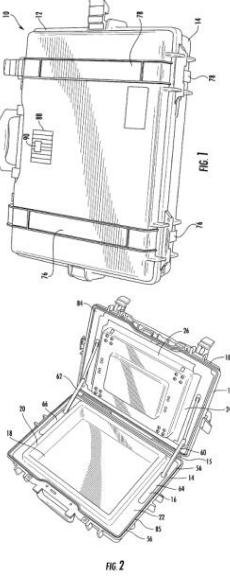
Nothing contained in this letter shall be construed or interpreted as any type of admission of wrongdoing or liability by our client. This letter is written without election, waiver, or prejudice and with full reservation of our client’s rights.

- 1 -

Joshua L. Raskin
Greenberg Traurig
October 29, 2024
Page - 2 -

I. The '788 Patent

Our preliminary analysis reveals that Yondr's '788 Patent is invalid. As you know, a patent claim is invalid if every element of that claim is taught by a single prior art reference, 35 U.S.C. § 102, or the claim elements are obvious in light of one or more prior art references, 35 U.S.C. § 103. *See, e.g., Clearvalue, Inc. v. Pearl River Polymers, Inc.*, 668 F.3d 1340, 1344 (Fed. Cir. 2012); *see also KSR Int'l v. Teleflex Inc.*, 550 U.S. 98 (2007). In this case, United States Patent No. 9,928,387 ("Simpson") discloses every element of claim 3 of the '788 Patent, or renders that claim obvious in combination with United States Publication No. 2012/0187003 ("Stewart"):

'788 Patent, Claim 3	Stewart 2012/0187003	Simpson 9,928,387
3. A system for selectively limiting a user's control of such user's own electronic device, comprising:	[preamble]	[preamble]
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,	 <p>FIG. 3</p> <p>Claim 15 – A security device: a pouch for housing a product therein.</p>	 <p>FIG. 1</p> <p>FIG. 2</p>
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;	Claim 8 – The security device of claim 1, further comprising a locking mechanism...	Abstract - The present invention is a self contained, portable security case or container. The case is secure in its locked condition by locks which are preferably operated by an electronic key. The electronic <i>key can be programmed to open the case or container dependent upon various different conditions, for example, location, time, identification of operator, etc.</i> In addition...

Joshua L. Raskin
Greenberg Traurig
October 29, 2024
Page - 3 -

a locking means for at least partially securing the opening; and means for unlocking the case.	Claim 5 – The security device of claim 2, further comprising an unlocking mechanism...	Abstract - The present invention is a self contained, portable security case or container. The case is secure in its locked condition by locks which are preferably operated by an electronic key. The electronic <i>key can be programmed to open the case or container dependent upon various different conditions, for example, location, time</i> , identification of operator, etc. In addition...
--	--	---

Independent claims 1-2 are invalid for similar reasons. Dependent claims 4-8 also are invalid as obvious based on Simpson either taken alone or in combination with other prior art references, such as Stewart. Moreover, based upon our initial investigation and despite the short time we have had Yondr's letter and the short time Yondr specified for a response, we expect to uncover additional prior art further demonstrating the Yondr's patent claims are anticipated by or rendered obvious by the prior art under 35 U.S.C. §§ 102 and 103 if Yondr continues to pursue this matter.

Finally, Yonder cannot prove the accused CellockED product infringes any claim of the '788 Patent. Specifically, the accused CellockED product does not include all of the elements of any independent claim of the '788 Patent based on a straightforward claim construction and comparison of the patent's claims to the accused product. Our investigation continues.

II. Trade Dress and Unfair Competition

Trade dress rights hinge on the claimed product design being inherently distinctive or having acquired secondary meaning, and product-configuration trade dress is only protectable "upon a showing of secondary meaning." *See Wal-Mart Stores, Inc. v. Samara Bros.*, 529 U.S. 205, 216 (2000); *Beatriz Ball, LLC v. Barbagallo Co.*, 40 F4th 308, 316-17 (5th Cir. 2022). Notwithstanding Yondr's apparent trademark registration and any accompanying presumptions, there is no evidence of such secondary meaning in this matter. First, the claimed pouch design is, exactly that, a pouch. There is nothing distinctive about Yondr's pouch, and we doubt Yondr could present evidence to the contrary. Likewise, we are not aware of any evidence that the claimed pouch design has acquired any secondary meaning.

Second, we disagree with Yondr's assertion that Be Smarter made any false or misleading statements in its advertising. To state a claim for false advertising under the Lanham Act, a plaintiff must show: (i) a false or misleading statement; (ii) that deceived, or had the capacity to deceive, consumers; (iii) the deception had a material effect on

Joshua L. Raskin
Greenberg Traurig
October 29, 2024
Page - 4 -

purchasing decisions; (iv) the misrepresented product or service affects interstate commerce; and (v) the plaintiff has been, or is likely to be, injured by the false advertising. *See Select Comfort Corp. v. Baxter*, 996 F.3d 925, 939 (5th Cir. 2021). Here, Yondr's assertion appears solely based on a YouTube video. But the actor's demonstration in the video is accurate. The Yondr product does not unlock as shown in the video. Moreover, Yondr presents no evidence of materiality, actual consumer deception, or injury.

III. Conclusion

Be Smarter expects the foregoing evidence that the '788 Patent is invalid brings this matter to a close. Indeed, we believe the '788 Patent's claims would be invalidated either in the district court or in an *Inter Partes Review* proceeding in the United States Patent Office if Yondr elects to pursue this matter further.

Very truly yours,

JACKSON WALKER LLP

A handwritten signature in black ink, appearing to read "Arth Gollwitz", with a stylized flourish at the end.

Arthur Gollwitzer III

EXHIBIT B

To: Omid E. Khalifeh(info@omnilegalgroup.com)
Subject: U.S. Trademark Application Serial No. 97170045 -
Sent: October 06, 2022 12:53:43 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[screenshot-www-amazon-com-cell-phone-pouches-women-s-16650750484221](#)
[screenshot-www-google-com-search-16650751252081](#)

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97170045

Mark:

Correspondence Address:

Omid E. Khalifeh
OMNI LEGAL GROUP
2029 CENTURY PARK EAST, SUITE 438
LOS ANGELES CA 90067 UNITED STATES

Applicant: Yondr, Inc.

Reference/Docket No. N/A

Correspondence Email Address: info@omnilegalgroup.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be abandoned. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: October 06, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

Drawing Requirement and Mark Description Requirement
Request for Information

SEARCH OF USPTO DATABASE OF MARKS

The trademark examining attorney has searched the USPTO database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

DRAWING REQUIREMENT AND MARK DESCRIPTION REQUIREMENT

The drawing of applicant's applied-for three-dimensional mark is not acceptable because it includes functional elements depicted in solid lines rather than broken or dotted lines. See TMEP §1202.02(c)(i)(A). Elements of a mark that are functional are required to be shown in broken or dotted lines. See 37 C.F.R. §2.52(b)(4); *In re Water Gremlin Co.*, 635 F.2d 841, 844, 208 USPQ 89, 91 (C.C.P.A. 1980); *In re Heatcon, Inc.*, 116 USPQ2d 1366, 1379-80 (TTAB 2015); TMEP §1202.02(c)(i)(A).

Here, the knob in the center of the tapered flap is the only non-functional element of the mark. The opening at the top is functional because all cell phone pouches have an opening for one to place the cell phone in the pouch and remove it and place it back in. The outer edges of the pouch are functional because they keep the cell phone in place. The attached evidence shows that most cell phone pouches include these elements and are functional elements of this mark in particular.

"Functional matter cannot be protected as a trademark." TMEP §1202.02(a)(iii)(A); see 15 U.S.C. §§1052(e)(5), (f), 1091(c), 1064(3), 1115(b)(8). A feature is functional if it is "essential to the use or purpose of the [product]" or "it affects the cost or quality of the [product]." *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 32, 58 USPQ2d 1001, 1006 (2001) (quoting *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165, 34 USPQ2d 1161, 1163-64 (1995)); *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10, 214 USPQ 1, 4 n.10 (1982); TMEP §1202.02(a)(iii)(A).

In the present case, the following elements are functional: the closing top of the pouch and the bottom part of the case. The attached evidence shows that these elements are functional because they are used to hold the cell phone and open and close the case to remove the cell phone and place it back in. See *In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 1340-41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §1202.02(a)(v).

Therefore, applicant must provide (1) a new drawing of the mark showing the functional element(s) in broken or dotted lines, and (2) an amended mark description that references the matter in broken or dotted lines and indicates such matter is not claimed as part of the mark. See TMEP §1202.02(c)(i)(A), (c)(ii). Applicant must provide the amended drawing regardless of whether the remaining portions of the mark are determined to be registrable. TMEP §1202.02(c)(i)(A).

The following mark description format is suggested, if accurate:

The mark consists of the three-dimensional configuration of a pouch for mobile computing

devices. The pouch features 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 broken lines depicting the outer edges and top of the pouch indicate placement of the mark on the goods and are not part of the mark.

See TMEP §1202.02(c)(ii).

REQUEST FOR INFORMATION

Applicant must provide the following information and documentation regarding the applied-for three-dimensional configuration mark:

(1) A written statement as to whether the applied-for mark, or any feature(s) thereof, is or has been the subject of a design or utility patent or patent application, including expired patents and abandoned patent applications. Applicant must also provide copies of the patent and/or patent application documentation.

(2) Advertising, promotional, and/or explanatory materials concerning the applied-for configuration mark, particularly materials specifically related to the design feature(s) embodied in the applied-for mark.

(3) A written explanation and any evidence as to whether there are alternative designs available for the feature(s) embodied in the applied-for mark, and whether such alternative designs are equally efficient and/or competitive. Applicant must also provide a written explanation and any documentation concerning similar designs used by competitors.

(4) A written statement as to whether the product design or packaging design at issue results from a comparatively simple or inexpensive method of manufacture in relation to alternative designs for the product/container. Applicant must also provide information regarding the method and/or cost of manufacture relating to applicant's goods.

(5) Any other evidence that applicant considers relevant to the registrability of the applied-for configuration mark.

See 37 C.F.R. §2.61(b); *In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 1340-41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §§1202.02(a)(v) *et seq.*

Any document filed with the USPTO becomes part of the official public application record and will not be returned or removed. TMEP §§404, 814. If any of the information required above is confidential or applicant does not want such information to become part of the public record for a valid reason, applicant should submit an explanation of those circumstances or redact confidential portions prior to submission. See TMEP §814. Applicants are not required to submit confidential information into the record; a written explanation or summary of that information may suffice. *Id.*

Regarding the requirement for this information, the Trademark Trial and Appeal Board and its appeals court have recognized that the necessary technical information for ex parte determinations as to functionality is usually more readily available to an applicant, and thus an applicant is normally the source of most of the evidence in these cases. *In re Teledyne Indus. Inc.*, 696 F.2d 968, 971, 217 USPQ

9, 11 (Fed. Cir. 1982); see *In re Babies Beat Inc.*, 13 USPQ2d 1729, 1731 (TTAB 1990) (holding registration was properly refused where applicant failed to comply with trademark examining attorney's requirement for copies of patent applications and other patent information); TMEP §1202.02(a)(v).

Applicant has a duty to respond directly and completely to this requirement for information. See *In re Ocean Tech., Inc.*, 2019 USPQ2d 450686, at *2 (TTAB 2019) (citing *In re AOP LLC*, 107 USPQ2d 1644, 1651 (TTAB 2013)); TMEP §814. Failure to comply with a requirement for information is an independent ground for refusing registration. *In re SICPA Holding SA*, 2021 USPQ2d 613, at *6 (TTAB 2021) (citing *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701-02 (TTAB 2003); TMEP §814).

RESPONSE GUIDELINES

Response guidelines. For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see "[Responding to Office Actions](#)" and the informational [video "Response to Office Action"](#) for more information and tips on responding.

Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal(s) and/or requirement(s) in this Office action. See TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

How to respond. [Click to file a response to this nonfinal Office action.](#)

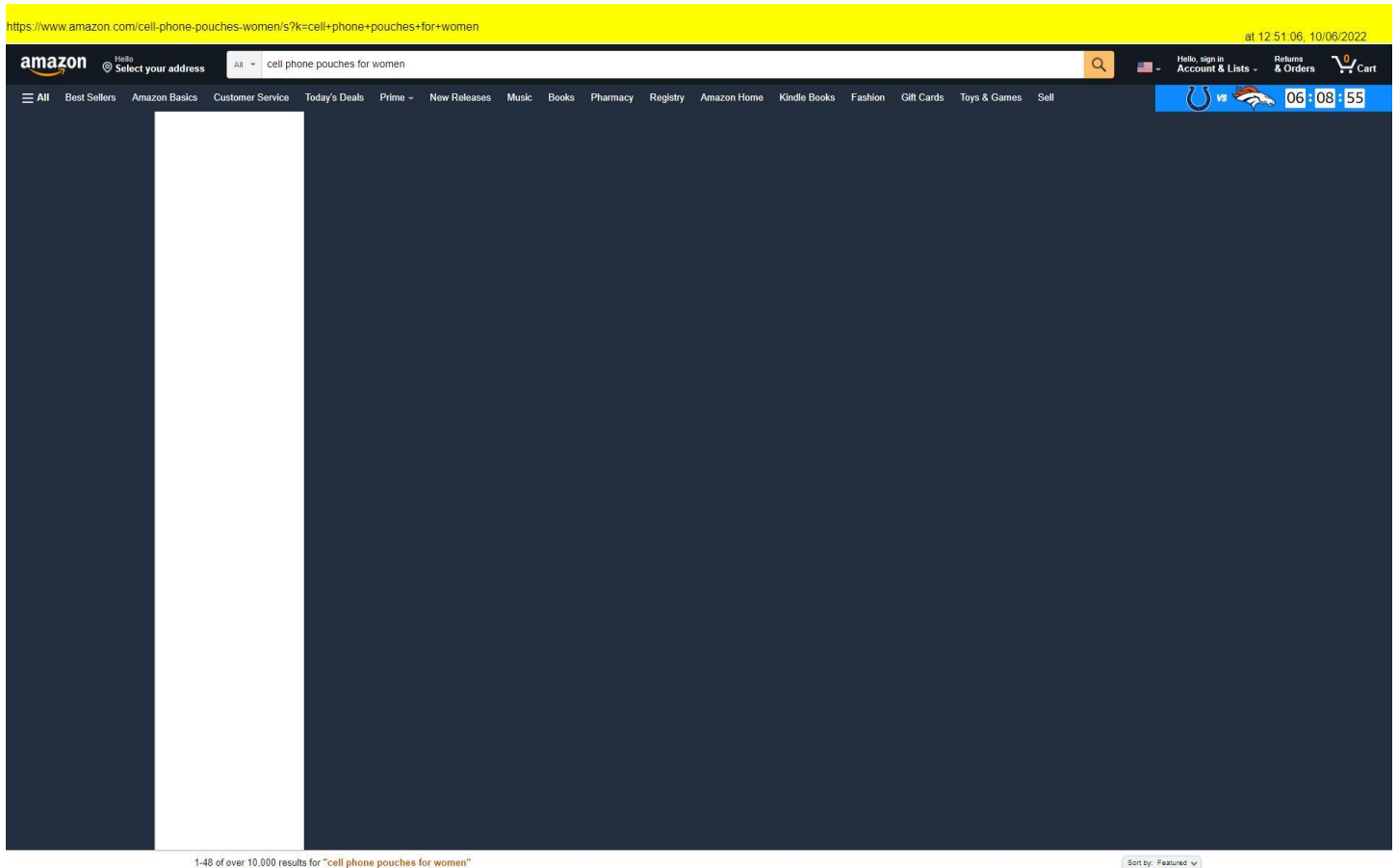
/Samir Patel/
Samir Patel
Trademark Examining Attorney
Law Office 106
(571) 272-6699
samir.ramesh-patel@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's

ability to timely respond.

- **Responses signed by an unauthorized party** are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.



Eligible for Free Shipping

☐ Free Shipping by Amazon

All customers get FREE Shipping on orders over \$25 shipped by Amazon

Delivery Day

☐ Get It by Tomorrow

Prime Try Before You Buy

☐ Try Before You Buy

Department

Women's Crossbody Handbags

Cell Phones & Accessories

Cell Phone Holsters

Cell Phone Basic Cases

Cell Phone Sleeves

Cell Phone Dry Bags

Women's Shoulder Handbags

Women's Eyeglass Cases

[See All 9 Departments](#)

Customer Reviews

★★★★☆ & Up

★★★★☆ & Up

★★★★☆ & Up

★★★★☆ & Up

Amazon Fashion

☐ Our Brands

☐ Premium Brands

☐ Popular Brands

Brands

☐ BaggaMini

☐ SILKAREA

☐ WallingU

☐ Vera Bradley

☐ MEISEE

☐ Dasein

☐ MINICAT

[See more](#)

Price

Up to \$25

\$25 to \$50

\$50 to \$100

\$100 to \$200

\$200 & above

Deals

☐ Today's Deals

Handbag Closure Type

☐ Buckle

☐ Button

☐ Clasp

☐ Drawstring

☐ Flap

☐ Hook & Loop

☐ Kiss Lock

[See more](#)

BANDOLIER

The Original Crossbody iPhone Case

[Shop the BANDOLIER Store on Amazon](#)



Emma Crossbody iPhone Case



Sarah Crossbody iPhone Case



Add-On Pouches

RESULTS

Price and other details may vary based on product size and color.



Featured from our brands

ykoee

ykoee Cell Phone Pouch Nylon Holster Case with Belt Clip Cover Compatible...

★★★★☆ ~ 5,296

\$13²⁵

Save 8% with coupon

prime Get it as soon as Sat, Oct 8

FREE Shipping on orders over \$25 shipped by Amazon

Exclusive to Amazon



••••• +24

Ans TOP

Lightweight Leather Phone Purse Clear, Small Crossbody Bag Mini Cell...

★★★★☆ ~ 15,692

\$11⁹⁹ ~~\$20.99~~

Save 10% with coupon (some sizes/colors)

prime

FREE Shipping on orders over \$25 shipped by Amazon



Gabigaba

Sling Bags for Women Crossbody Bags Small Size Chest Bag Cell Phone...

\$26⁹⁹

Save 10% with coupon

prime

FREE Shipping by Amazon



Tainada

Tainada Men Women Neoprene Shockproof Phone Sleeve Pouch...

★★★★☆ ~ 502

\$18⁹⁹ ~~\$22.99~~

Save 10% when you buy \$30.00 of select items

prime Get it as soon as Sat, Oct 8

FREE Shipping on orders over \$25 shipped by Amazon

CUSTOMERS FREQUENTLY VIEWED

Sponsored









Yondr EX2004
Be Smarter, et al. v. Yondr - PGR2025-00070

Handbag Special Features

☐ Anti-Theft

☐ Cell Phone Holder

☐ Checkpoint Friendly

☐ Foldable

☐ Lightweight

☐ RFID Blocking

☐ Water Resistant

See more

Handbag Material

☐ Canvas

☐ Fabric

☐ Faux Leather

☐ Leather

☐ Nylon

☐ Patent Leather

☐ Rubber

☐ Straw

☐ Suede

☐ Synthetic

Handbag Theme

☐ Animals

☐ Cartoon

☐ City

☐ Fantasy

☐ Holidays

☐ Movies

☐ Occasion

See more

Handbag Included Components

☐ Clutch

☐ Messenger Bag

☐ Sling Bag

☐ Wallet

☐ Wristlet

Handbag Lining Description

☐ Cotton

☐ Faux Leather

☐ Leather

☐ Nylon

☐ Polycotton

☐ Polyester

☐ Polyurethane

See more

Handbag Embellishment Feature

☐ Bead

Handbag Pattern

☐ Animal Print

☐ Camouflage

☐ Checkered

☐ Floral

☐ Geometric

☐ Paisley

☐ Solid

See more

Color

☐ Black

☐ Grey

☐ White

☐ Brown

☐ Red

☐ Pink



+33 colors/patterns

APHISON

Mini Cell Phone Purse, Leather Small Crossbody Bags for Women,...

★★★★☆ ~ 2,588

\$19⁹⁹ ~~\$28.00~~

prime

FREE Shipping on orders over \$25 shipped by Amazon



+29 colors/patterns

MINICAT

INICAT Minicat Women RFID Blocking Small Crossbody Bags Cell Phone...

★★★★☆ ~ 6,114

\$23⁹⁹

Save 11% with coupon (some sizes/colors)

prime

FREE Shipping on orders over \$25 shipped by Amazon



+37 colors/patterns

befen

Leather Small Cell Phone Crossbody Wallet Purse and Bags for Women

★★★★☆ ~ 5,083

\$23⁹⁹ ~~\$26.00~~

Save 5% with coupon (some sizes/colors)

prime

FREE Shipping on orders over \$25 shipped by Amazon



+2 colors/patterns

Peak Gear

Nylon Crossbody Purse - Hidden RFID Pocket - Includes Lifetime Lost &...

★★★★☆ ~ 5,025

\$29⁹⁷ ~~\$49.00~~

prime

FREE Shipping by Amazon

Small Business



0.16

E Tronic Edge

E Tronic Edge Running Belt for Women and Men, Money Belt and Running Fanny Pack...

★★★★☆ ~ 12,478

\$16⁹⁹ ~~\$22.99~~

Join Prime to buy this item at \$14.99

prime

Get it as soon as Sat, Oct 8

FREE Shipping on orders over \$25 shipped by Amazon

More Buying Choices

\$14.11 (4 used & new offers)

NEW ARRIVALS



+1 colors/patterns

Sponsored

LOCTOTE

Anti Theft Crossbody Neck Pouch | Slash Resistant, RFID Blocking and...

★★★★☆ ~ 2

\$9⁹⁰

prime

FREE Shipping by Amazon



+1

Bella Taylor

Country Floral Feedack Collection, RFID Modern Wristlet Cell Phone...

★★★★☆ ~ 2

\$31⁹⁵

prime

FREE Shipping by Amazon



+1

Wild & Bold

Small Crossbody Bags For Women Cross Body Purses Mini Cell Phone...

★★★★☆ ~ 3

\$19⁹⁹

prime

FREE Shipping by Amazon



+1

IIAmour

smartphone pouch Shoulder bag Crossbody Cellphone bag

★★★★☆ ~ 553

\$14⁹⁰

prime

FREE Shipping by Amazon

Yondr EX2004
Be Smarter, et al. v. Yondr - PGR2025-00070

International Shipping
☐ International Shipping Eligible

Condition
New
Used

Availability
☐ Include Out of Stock

FREE Shipping by Amazon

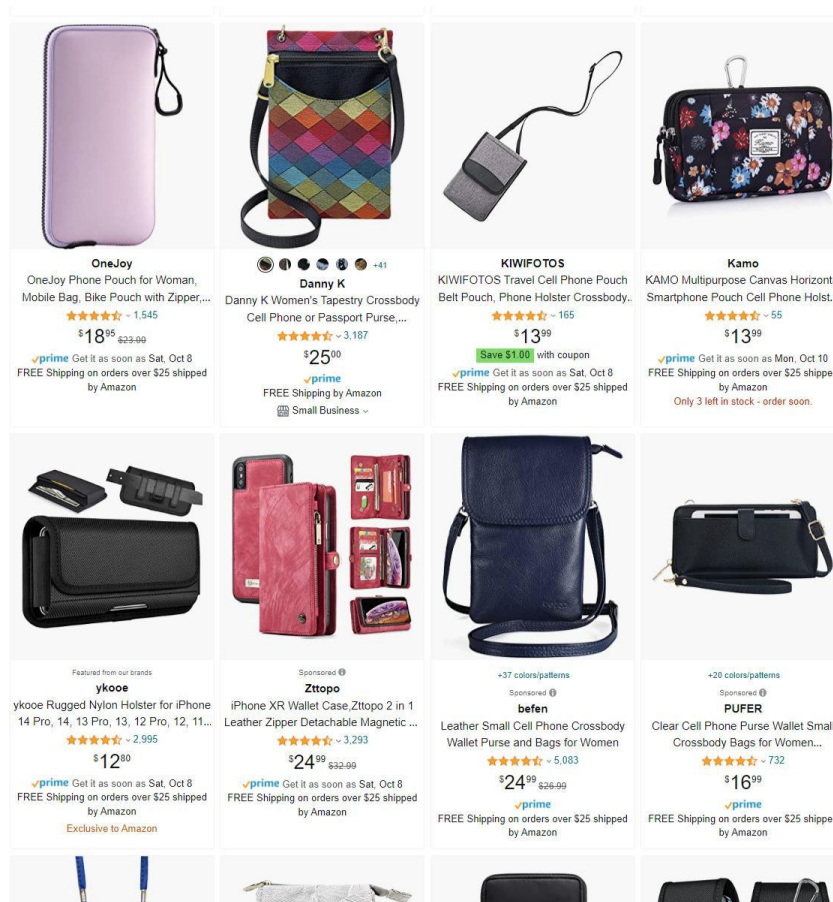
FREE Shipping by Amazon
 Small Business

FREE Shipping on orders over \$25 shipped by Amazon

FREE Shipping on orders over \$25 shipped by Amazon

MORE RESULTS

<p>Rynapac Universal Waterproof Phone Pouch Bag - 2Pack, Waterproof Case... ★★★★☆ ~ 1,288 \$6⁹⁹ Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p>	<p>Feastind Women Nylon Cell Phone Purse Travel Crossbody Bag Wristband Sport... ★★★★☆ ~ 1,384 \$8⁸⁵ Get it as soon as Thu, Oct 13 FREE Shipping on orders over \$25 shipped by Amazon Only 5 left in stock - order soon. More Buying Choices \$7.58 (7 new offers)</p>	<p>BIAOTIE Lightweight Small Crossbody bags Cell Phone Purses Travel Pouch Shoulder... ★★★★☆ ~ 1,123 \$10⁹⁹ Get it as soon as Thu, Oct 13 FREE Shipping on orders over \$25 shipped by Amazon Exclusive to Amazon</p>	<p>eYistar Neoprene Shock Absorbing Proof Pouch Large Cell Phone Sleeve Case... ★★★★☆ ~ 229 Save 18% \$8⁹⁹ \$9.98 Lowest price in 30 days Get it as soon as Thu, Oct 13 FREE Shipping on orders over \$25 shipped by Amazon Only 20 left in stock - order soon.</p>
<p>WaitingU Universal Crossbody Cell Phone Purse Waist Pack Bag for Outdoor Sports... ★★★★☆ ~ 408 \$11⁹⁹ Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p>	<p>Techcircle Techcircle Cell Phone Neck Pouch PU Leather Carrying Bag with Credit Car... ★★★★☆ ~ 257 \$9⁷⁰ Get it as soon as Thu, Oct 13 FREE Shipping on orders over \$25 shipped by Amazon Only 18 left in stock - order soon.</p>	<p>PT PT Universal Multipurpose Carry Case Pouch Nylon Sporty Smartphone... ★★★★☆ ~ 388 \$13⁹⁰ Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p>	<p>Peacocktion Small Crossbody Cell Phone Purse for Women, Lightweight Mini Shoulder B... ★★★★☆ ~ 1,182 \$18⁹⁹ Get it as soon as Thu, Oct 13 FREE Shipping on orders over \$25 shipped by Amazon</p>





TRIBE Running Phone Holder Armband, (iPhone & Galaxy Cel...)

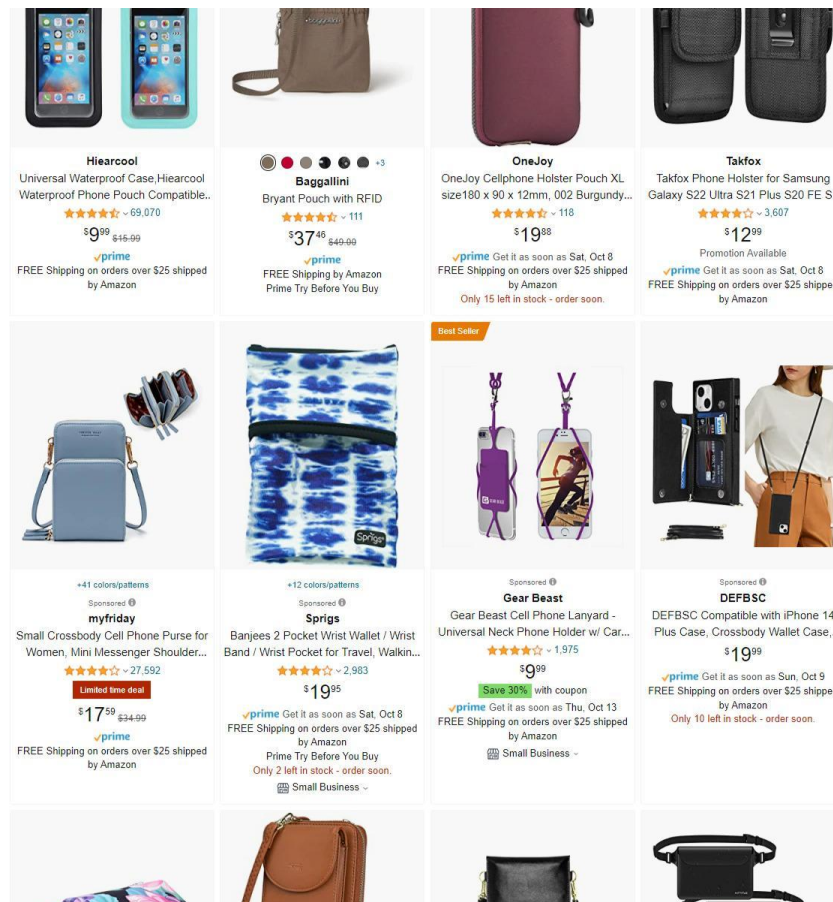
★ ★ ★ ★ ★ 13,922

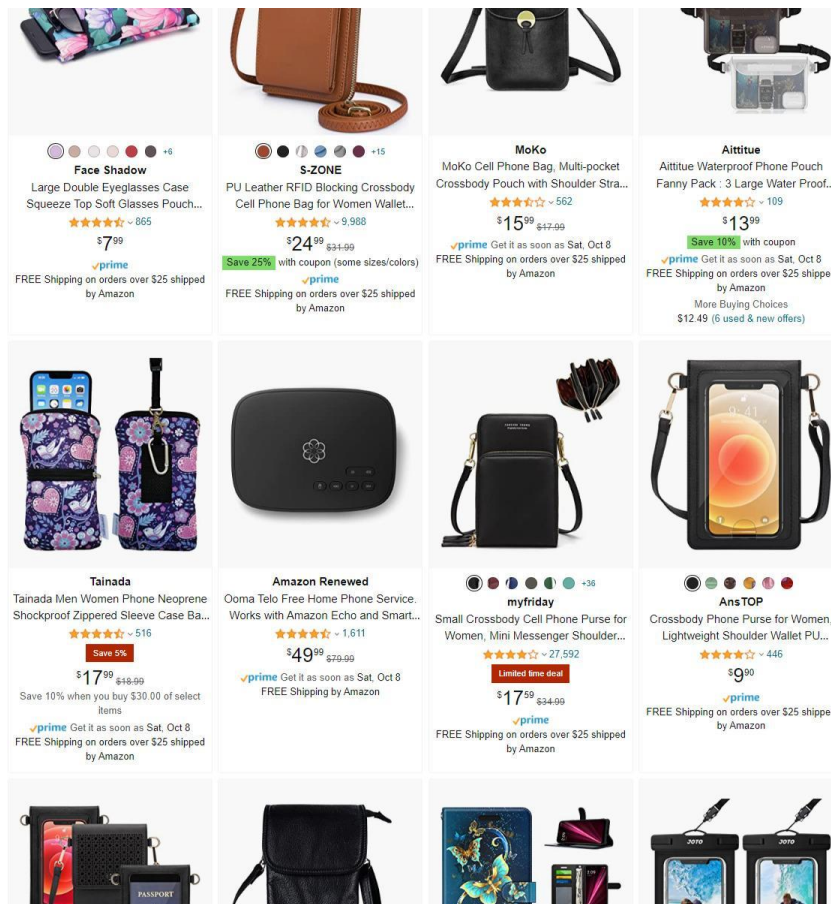
\$12.98 ✓prime

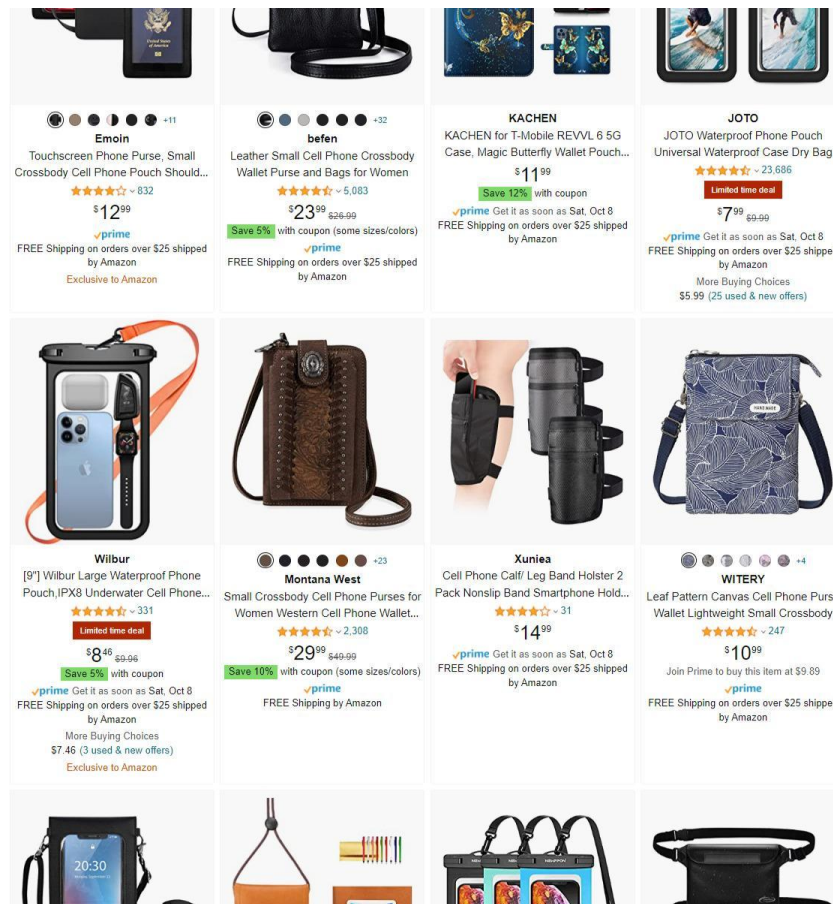
Shop now

Sponsored

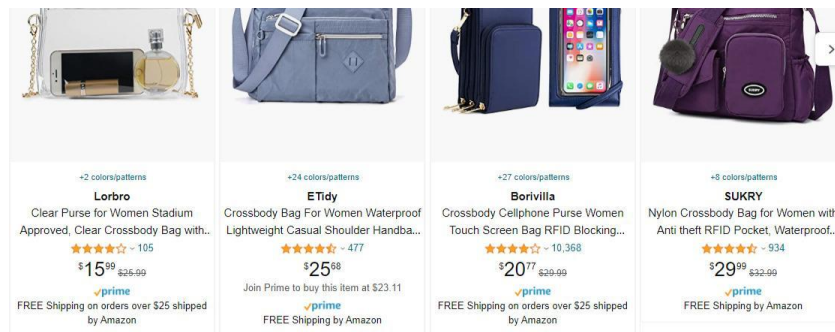
 <p>Tapp Collections</p> <p>Leather Neck Pouch for Phone (Style 2) - Blue</p> <p>★ ★ ★ ★ ★ ~ 3,467</p> <p>\$13.99</p> <p>✓prime Get it as soon as Sat, Oct 8</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Small Business</p>	 <p>MEISEE</p> <p>Roomy Cell Phone Purse Wallet Canvas Small Crossbody Purse Bags..</p> <p>★ ★ ★ ★ ★ ~ 3,022</p> <p>\$11.99</p> <p>✓prime</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p>	 <p>VINAIDA</p> <p>Small Crossbody Wallet Phone Bag Women Mini Crossbody Purse Cell...</p> <p>★ ★ ★ ★ ★ ~ 2,039</p> <p>\$10.99 \$16.99</p> <p>✓prime</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p>	 <p>ykoee</p> <p>ykoee RFID Blocking Cell Phone Holster for iPhone 14 13 12 11 Pro...</p> <p>★ ★ ★ ★ ★ ~ 1,046</p> <p>Limited time deal</p> <p>\$8.49 \$14.99</p> <p>✓prime Get it as soon as Thu, Oct 13</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Exclusive to Amazon</p>
 <p>ykoee</p> <p>ykoee Cell Phone Pouch Nylon Holster Case with Belt Clip Cover Compatible...</p> <p>★ ★ ★ ★ ★ ~ 5,296</p> <p>\$13.33</p> <p>Save 8% with coupon</p> <p>✓prime Get it as soon as Sat, Oct 8</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Exclusive to Amazon</p>	 <p>Takfox</p> <p>Takfox Phone Holster for Samsung Galaxy S22 Ultra S21 Plus S20...</p> <p>★ ★ ★ ★ ★ ~ 4,750</p> <p>\$12.99 \$16.99</p> <p>Promotion Available</p> <p>✓prime Get it as soon as Sat, Oct 8</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p>	 <p>JOTO</p> <p>JOTO Universal Waterproof Phone Pouch Cellphone Dry Bag Case...</p> <p>★ ★ ★ ★ ★ ~ 74,168</p> <p>\$7.99 \$16.99</p> <p>✓prime Get it as soon as Sat, Oct 8</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p> <p>More Buying Choices \$5.08 (22 used & new offers)</p>	 <p>Nautica</p> <p>Catalina Vegan Leather RFID Womens Crossbody Cell Phone Purse Holder...</p> <p>★ ★ ★ ★ ★ ~ 297</p> <p>\$19.95</p> <p>✓prime</p> <p>FREE Shipping on orders over \$25 shipped by Amazon</p>
 <p>Amazon's Choice</p>			







 <p>Anxly Black Touchscreen Phone Purse Crossbody for Women, Cellphone...</p> <p>★★★★☆ ~ 158</p> <p>\$25⁹⁹</p> <p>Promotion Available</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping by Amazon</p>	 <p>Techcircle Cell Phone Neck Pouch, Techcircle PU Leather Carrying Bag with Credit Car...</p> <p>★★★★☆ ~ 163</p> <p>\$10⁹⁹</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Only 13 left in stock - order soon.</p>	 <p>newppon Newppon Waterproof Cell Phone Pouch : 3 Pack Universal Water Proof...</p> <p>★★★★☆ ~ 1,076</p> <p>\$9⁹⁹</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p> <p>More Buying Choices \$8.79 (12 used & new offers)</p>	 <p>AiRunTech AiRunTech Waterproof Pouch with Waist Strap (2 Pack) Beach...</p> <p>★★★★☆ ~ 8,167</p> <p>\$14⁸⁵</p> <p>Save 5% with coupon</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p> <p>More Buying Choices \$11.88 (16 used & new offers)</p>
<p>Best Seller</p>  <p>Tribe TRIBE Water Resistant Cell Phone Armband Case Running Holder for...</p> <p>★★★★☆ ~ 52,214</p> <p>\$14⁹⁸</p> <p>Save 15% with coupon</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Small Business ~ More Buying Choices \$11.86 (3 used & new offers)</p>	<p>Featured from our brands</p>  <p>Migeec Migeec Leather Cell Phone Holster Case with Belt Clip Pouch and Belt...</p> <p>★★★★☆ ~ 772</p> <p>\$12⁹⁹</p> <p>✓prime Get it as soon as Sat, Oct 8 FREE Shipping on orders over \$25 shipped by Amazon</p> <p>Exclusive to Amazon</p>	<p>~29 colors/patterns</p> <p>Sponsored</p>  <p>AnsTOP Lightweight Leather Phone Purse Clear, Small Crossbody Bag Mini Cell...</p> <p>★★★★☆ ~ 15,692</p> <p>\$11⁹⁹ \$20.99</p> <p>Save 10% with coupon (some sizes/colors)</p> <p>✓prime FREE Shipping on orders over \$25 shipped by Amazon</p>	<p>Sponsored</p>  <p>WYAQJLV Small Crossbody Wallet Amazon Cell Phone Purse Designers Running...</p> <p>★★★★☆ ~ 28</p> <p>\$15⁹⁹</p> <p>Save 5% with coupon</p> <p>✓prime FREE Shipping on orders over \$25 shipped by Amazon</p>
<p>TRENDING NOW</p> <p>Sponsored</p>    			



BRANDS RELATED TO YOUR SEARCH

Sponsored



NEED HELP?

Visit the help section or contact us



Sponsored

See personalized recommendations

https://www.google.com/search?q=cell+phone+pouch&rlz=1C1GCEA_en&oq=cell+phone+pouch&aqs=chrome..69j59j0j5129j3232j0j1&sourceid=chrome&ie=UTF-8

at 12:52:11, 10/06/2022

Google

cell phone pouch

Shopping Images Videos News More Tools

About 17,900,000 results (0.71 seconds)

Ads · Shop cell phone pouch



Accessory Zip Pouch Green, Nylon |...
\$9.95
L.L.Bean
365-day ret...



Baggallini | Women's Arlington Messenger Bag
\$34.99
Baggallini
\$26.24 with ...



Bellroy City Pouch | Small Crossbody Bag
\$65.00
Bellroy
★★★★★ (75)



SALE
Men's Improved Fire Hose Phone Pouch
\$31.96 \$40
Duluth Trading Co.
★★★★★ (270)



Airinum Necklace Bag
\$29.00
Airinum
★★★★★ (22)

https://www.walmart.com/cell-phone-pouches

Cell Phone Pouches - Walmart.com



Shop for Cell Phone Pouches at Walmart.com ... Cell Phone Holster Case, TSV Belt Clip Nylon Phone Pocket Carrying Pouch Fit for iPhone 13 12 11 Pro Max, ...

https://www.amazon.com/cell-phone-pouches-women

Cell Phone Pouches For Women - Amazon.com

Women Nylon Cell Phone Purse Travel Crossbody Bag Wristband Sport Armband Wallet For Galaxy S10 Plus S9 Plus A50 A7 J7 Prime J7 V J7 Pro J4, Moto G7 Z4 Z3 G6 E5 ...

Images for cell phone pouch

waterproof

neck

belt

crossbody

tactical



View all →

People also ask

What are cell phone pouches?

How do you carry a cell phone without a pocket?

How much does the Yondr pouch cost?

How do you make a phone pouch at home?

[Feedback](#)

Popular products

Up to \$10
\$10 - \$20
Over \$20
Waterproof
Leather
Silicone
Plastic



Large Smartphone Pouch
\$11.08
Amazon.com - 5+ stores and 5+ stores
★★★★★ (3)
1+ highlight
Top 18 Best Phone Holders of 2022 (Reviews) - FindThisBest
FindThisBest



Onn. Universal Waterproof Pouch
\$4.96
Walmart
★★★★★ (28)
3+ highlights
Fits securely
4 user reviews
Lower price than most

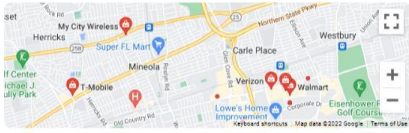


MoKo Waterproof Pouch
\$9.99
eBay - keef-393 and 10+ stores
★★★★★ (14)
3+ highlights
Fits securely
3 user reviews
Lower price than most



Toughbuilt Smart Phone Pouch
\$16.97
Home Depot and 10+ stores
★★★★★ (12)
3+ highlights
Excellent sturdy phone holder, Tool Talk

Places

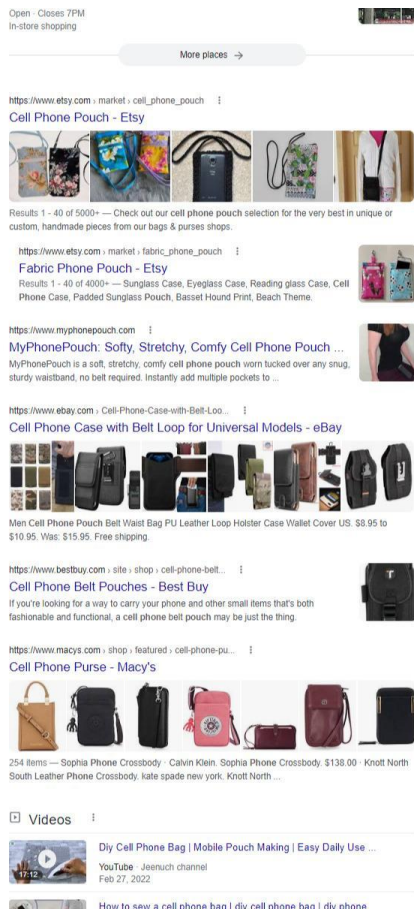


Rating
Hours

Walmart
4.0 ★★★★★ (6,9K) · \$ · Department store
Westbury, NY · (516) 794-7280
Open · Closes 11PM
📍 In stock: cell phone cases · Pouch · Updated today

Best Buy
4.1 ★★★★★ (3,4K) · \$\$ · Electronics store
Westbury, NY · In Westbury Plaza · (516) 357-9025
Open · Closes 8PM
📍 Their website mentions cell phone and pouches

My City Wireless
5.0 ★★★★★ (36) · Cell phone store
159 Hillside Avenue · In Bonita Nail spa · (516) 877-2355



 YouTube · sherry handmade
May 6, 2022

 YouTube · Misaki Sewing
Oct 3, 2020

Feedback

View all →

Ad · <https://www.neimanmarcus.com/>

Luxury Pouches - Shop Must-Have Designer Trends

Make a Statement with Must-Have Luxury Clothing, Gifts, Beauty & More From Neiman Marcus. Discover High-End Luxury Clothing, Handbags, Gifts and More at Neiman Marcus...

★★★★★ Rating for neimanmarcus.com: 4.7 - 67 reviews · Return policy: Most items 30+ days

25% Off Home · Designer Jewelry · Shop What's New & Now · Designer Accessories

9 820 Old Country Rd, Garden City, NY · Open today · 11:00 AM – 7:00 PM

Ad · <https://www.niteize.com/holders/phone-cases>

Nite Ize® - Shop Top-Rated Phone Holsters

"Clip is second to none and **pouch** is constructed very well. I wholeheartedly recommend."

Keep your **phone** safe and in reach while on-the-job or on-the-go. Shop all holsters now.

New Products · Nite Ize Blog · Gear Genius · Worry Free Guarantee

Ad · <http://www.amazon.com/>

Travel Phone Pouch on Amazon - Low Priced Travel Phone Pouch

Read Customer Reviews & Find Best Sellers. Free 2-Day Shipping w/Amazon Prime. Prime Deals on Oct 11-12.

★★★★★ Rating for amazon.com: 4.5 - 3,737 reviews · Average delivery time: 1-2 days

Cases & Holsters · Accessories · Amazon Prime Benefits · Cell Phone Deals · Cell Phones

Related searches

 Cell phone pouch for school

Feedback

cell phone pouch for ladies

cell phone pouch with strap

cell phone pouch waterproof

cell phone pouch for running

cell phone pouch belt loop

cell phone pouch with neck strap

cell phone pouch for elderly

Gooooooooooooole

11596, North Hempstead, NY · Based on your past activity

Update location

Help Send feedback Privacy Terms

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on October 06, 2022 for

U.S. Trademark Application Serial No. 97170045

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, **[TSDR](#)**, to confirm that it appears under the “Documents” tab, or contact the **[Trademark Assistance Center](#)**.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

EXHIBIT C

PDF-128
 Approved for use through 11/02/2024. DMG 2651 0102
 U.S. Patent and Trademark Office - U.S. Patent and Trademark Office
 Under this Trademark Resolution Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97170045
LAW OFFICE ASSIGNED	LAW OFFICE 106
MARK SECTION (current)	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/97170045/large
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR(S) CLAIMED (If applicable)	Color is not claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a distinctive 3-dimensional configuration for pouches or packaging adapted to contain mobile computing devices, featuring 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.
MARK SECTION (proposed)	
MARK FILE NAME	\\TICRS\EXPORT18\IMAGEOUT 18\971\700\97170045\xml4\ ROA0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the three-dimensional configuration of a pouch for mobile computing devices. The pouch features 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 broken lines depicting the outer edges and top of the pouch indicate placement of the mark on the goods and are not part of the mark.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	1308 x 1886
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Examiner requested further information. In response, 1) the applied-for trademark design has not been claimed in any US or foreign patent filings; 2) specimen submitted with the application as filed reflect some advertising, promotional, and explanatory material related to the design of the mark; 3) there are many other designs for phone cases available in the marketplace, as evidenced by Examiner's appendices to the outstanding Office Action; 4) upon information and belief, the applied-for trademark design does not result from a comparatively simple or inexpensive method of manufacture in relation to alternative designs; and 5) Applicant is not aware of any other evidence that would be relevant to the registrability of the applied-for trademark design.
CORRESPONDENCE INFORMATION (current)	
NAME	Omid E. Khalifeh

PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	info@omnilegalgroup.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
CORRESPONDENCE INFORMATION (proposed)	
NAME	Omid E. Khalifeh
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	info@omnilegalgroup.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Ariana Santoro/
SIGNATORY'S NAME	Ariana Santoro
SIGNATORY'S POSITION	Associate Attorney, Omni Legal Group, California Bar member
SIGNATORY'S PHONE NUMBER	3102766664
DATE SIGNED	11/11/2022
ROLE OF AUTHORIZED SIGNATORY	Authorized U.S.-Licensed Attorney
SIGNATURE METHOD	Signed directly within the form
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Nov 11 19:21:37 ET 2022
TEAS STAMP	USPTO/ROA-XX.XXX.X.XXX-20 221111192137357087-971700 45-8004ff255f4b8c293ba2c9 f0222b8e243b12afce47b86e4 7e2a63ddbcaa76a9d7-N/A-N/ A-20221111191436665101

PTO-1000
 Information used through 11/15/2022 09:59:33Z
 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
 Copyright © 2000-2022. All rights reserved. No portion of this document may be reproduced without written permission from the U.S. Patent and Trademark Office.

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **97170045** (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/97170045/large>) has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/97170045/large>)

Proposed: (Stylized and/or with Design, see [mark](#))

The applicant is not claiming color as a feature of the mark.

The mark consists of the three-dimensional configuration of a pouch for mobile computing devices. The pouch features 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 broken lines depicting the outer edges and top of the pouch indicate placement of the mark on the goods and are not part of the mark.

ADDITIONAL STATEMENTS

Miscellaneous Statement

Examiner requested further information. In response, 1) the applied-for trademark design has not been claimed in any US or foreign patent filings; 2) specimen submitted with the application as filed reflect some advertising, promotional, and explanatory material related to the design

of the mark; 3) there are many other designs for phone cases available in the marketplace, as evidenced by Examiner's appendices to the outstanding Office Action; 4) upon information and belief, the applied-for trademark design does not result from a comparatively simple or inexpensive method of manufacture in relation to alternative designs; and 5) Applicant is not aware of any other evidence that would be relevant to the registrability of the applied-for trademark design.

Correspondence Information (current):

Omid E. Khalifeh
PRIMARY EMAIL FOR CORRESPONDENCE: info@omnilegalgroup.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Correspondence Information (proposed):

Omid E. Khalifeh
PRIMARY EMAIL FOR CORRESPONDENCE: info@omnilegalgroup.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the owner/holder and the owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

SIGNATURE(S)

Response Signature

Signature: /Ariana Santoro/ Date: 11/11/2022
Signatory's Name: Ariana Santoro
Signatory's Position: Associate Attorney, Omni Legal Group, California Bar member

Signatory's Phone Number: 3102766664 Signature method: Signed directly within the form

The signatory has confirmed that he/she is a U.S.-licensed attorney who is an active member in good standing of the bar of the highest court of a U.S. state (including the District of Columbia and any U.S. Commonwealth or territory); and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S.-licensed attorney not currently associated with his/her company/firm previously represented the owner/holder in this matter: the owner/holder has revoked their power of attorney by a signed revocation or substitute power of attorney with the USPTO; the USPTO has granted that attorney's withdrawal request; the owner/holder has filed a power of attorney appointing him/her in this matter; or the owner's/holder's appointed U.S.-licensed attorney has filed a power of attorney appointing him/her as an associate attorney in this matter.

Mailing Address: Omid E. Khalifeh
OMNI LEGAL GROUP

2029 CENTURY PARK EAST, SUITE 438
LOS ANGELES, California 90067

Mailing Address: Omid E. Khalifeh
OMNI LEGAL GROUP

2029 CENTURY PARK EAST, SUITE 438
LOS ANGELES, California 90067

Serial Number: 97170045
Internet Transmission Date: Fri Nov 11 19:21:37 ET 2022
TEAS Stamp: USPTO/ROA-XX.XXX.X.XXX-20221111192137357
087-97170045-8004ff255f4b8c293ba2c9f0222
b8e243b12afce47b86e47e2a63ddbcaa76a9d7-N
/A-N/A-20221111191436665101

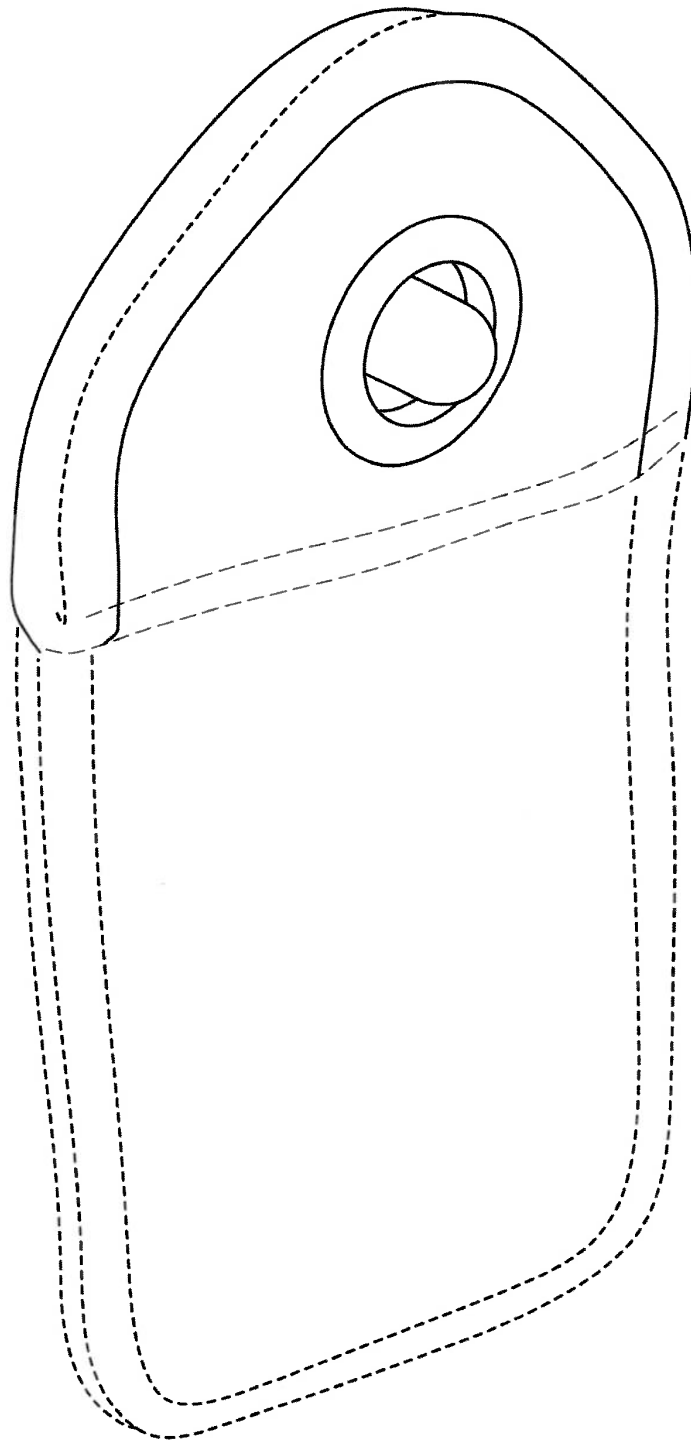


EXHIBIT D



Joshua L. Raskin
Tel 212.801.6930
Fax 212.805.5583
Joshua.Raskin@gtlaw.com

September 30, 2024

VIA E-MAIL, AND UPS

Dr. Jennifer Garcia-Edwardsen, Superintendent of Schools
Taylor Independent School District
3101 N. Main Street
Taylor, TX 76574
jedwardsen@taylorisd.org

Re: Infringement of Yondr Inc.'s Intellectual Property Rights

Dear Dr. Garcia-Edwardsen:

We represent Yondr Inc. ("Yondr") with respect to the protection and enforcement of its U.S. intellectual property rights. We write to advise Taylor Independent School District (the "District") of a developing situation. Specifically, Yondr has recently learned that the District has purchased and is using Be Smarter, LLC's ("Be Smarter") CellockED-brand lockable phone pouches (the "CellockED pouches"). As discussed in more detail below, it is Yondr's position that the manufacture and sale of those CellockED pouches by Be Smarter violates Yondr's valuable intellectual property and, in turn, that the use of those pouches by the District could expose the District to liability as well. The purpose of this letter is to bring this to your attention and hopefully avoid a conflict.

Yondr is a market leader in the phone pouch and phone free space industry and is responsible for bringing numerous innovative and disruptive technologies and inventions to consumers. Such inventions include Yondr's patented System and Apparatus for Selectively Limiting User Control of an Electronic Device, which inventions are disclosed and claimed in U.S. Patent No. 9,819,788 (the "'788 Patent"). In addition, the distinctive design of Yondr's pouches is covered by Yondr's federally Registered Trademark No. 6,995,045.

It has recently come to Yondr's attention that Be Smarter, without Yondr's authorization, has made and sold its CellockED pouches to the District in violation of one or more claims of Yondr's '788 Patent as well as Yondr's trademark. Indeed, Yondr has advised Be Smarter that it will commence litigation against Be Smarter in the United States District Court for the Western District of Texas to put a halt to Be Smarter's infringing activity if Be Smarter does not immediately cease and desist. A copy of Yondr's draft complaint against Be Smarter is attached. (Exhibit A.)

While Yondr is committed to aggressively enforcing its intellectual property rights in its patented inventions, Yondr's grievance is with Be Smarter, not the District. However,

GREENBERG TRAURIG, LLP ■ ATTORNEYS AT LAW ■ WWW.GTLAW.COM
77 West Wacker Drive, Suite 3100 ■ Chicago, Illinois ■ Tel 312.456.8400 ■ Fax 312.456.8435

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON
LOS ANGELES
MEXICO CITY
MIAMI
MILAN
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
PHOENIX
ROME
SACRAMENTO
SAN FRANCISCO
SEOUL
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TEL AVIV
TYSONS CORNER
WARSAW
WASHINGTON, D.C.
WHITE PLAINS

*

—

Dr. Jennifer Garcia-Edwardsen
September 30, 2024
Page 2

Yondr wanted to make sure that the District is aware that the use of an infringing item constitutes an infringing act as well. Yondr therefore hopes that the District will reach out to Yondr to discuss a forward path. You are therefore invited to contact Yondr by emailing Luke Stultz at luke@overyondr.com.

Nothing in this letter shall be deemed to constitute a waiver or relinquishment of any of Yondr's potential rights and remedies, all of which Yondr explicitly reserves.

Sincerely,

A handwritten signature in blue ink, appearing to read "Josh", with a long horizontal flourish extending to the right.

Joshua L. Raskin

Exhibit A

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

YONDR, INC.,

Plaintiff,

v.

BE SMARTER, LLC

Defendant.

Civil Action No.

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 Defendant Be Smarter LLC (“Be Smarter” or “Defendant”) for infringement of U.S. Patent No. 9,819,788 (the “788 Patent” or the “Asserted Patent”), 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 Be Smarter’s unauthorized and unlicensed copying and use of the Asserted Patent 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 patent discloses) 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. Be Smarter is one example. James Armando Guerra, the Manager of Be Smarter, first offered for sale the accused product, CellockED, in 2024, which directly infringes Yondr’s patent and trademark. The CellockED product is marketed and sold on defendant’s 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. On 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

JURISDICTION AND VENUE

10. 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.

11. 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 claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

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

13. 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 District such that personal jurisdiction over Be Smarter would not offend traditional notions of fair play and substantial justice.

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

FACTUAL ALLEGATIONS

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

15. 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.

16. Prior to Dugoni's invention described in the Asserted Patent, 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 Ex. A, at 1:66-2:24.

17. 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.

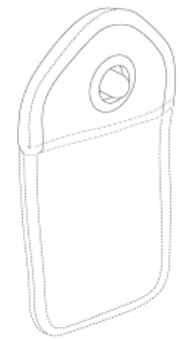
B. The Yondr System Has a Distinctive Appearance That Has Been Registered as a Trademark.

18. 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").

19. 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. 6995045 (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.



20. 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
 <p>The first photograph shows a top-down view of a grey Yondr pouch with a black smartphone inside. The interior of the pouch is bright yellow, and the word 'YONDR' is printed in yellow at the bottom. The second photograph is a side view of the same pouch with the phone inside, showing its rounded shape and the yellow interior. The third photograph is a close-up of the top of the pouch, highlighting the yellow strap with a black circular fastener and the 'YONDR' logo.</p>	 <p>A line drawing of the Yondr pouch, showing its rectangular shape with rounded corners and a small circular detail at the top, representing the fastener mechanism.</p>

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

22. 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.



23. 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.

24. 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.

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

25. 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.veryondr.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.

26. 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/>

27. 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.

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

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

29. On information and belief, James Guerra is the Manager 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

30. 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

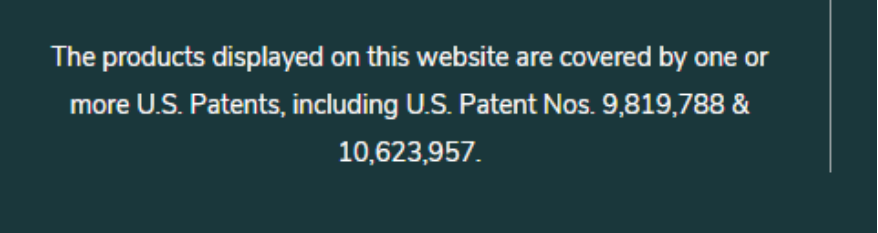
31. Upon information and belief, Be Smarter LLC owns the CellockED product and is the owner of the CellockED YouTube account (described below).

32. 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.”

33. Upon information and belief, the YouTube account, “CellockED – Focus on Education,” is owned and operated by Be Smarter. 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, James Guerra, promotes CellockED on his personal LinkedIn and, according to his LinkedIn profile, is the founder of CellockED.

34. Upon information and belief, Be Smarter was aware of Yondr when it 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, Be Smarter had visited the Yondr website. Yondr's website provides clear notice that the products displayed are covered by patents, including the Asserted Patent.

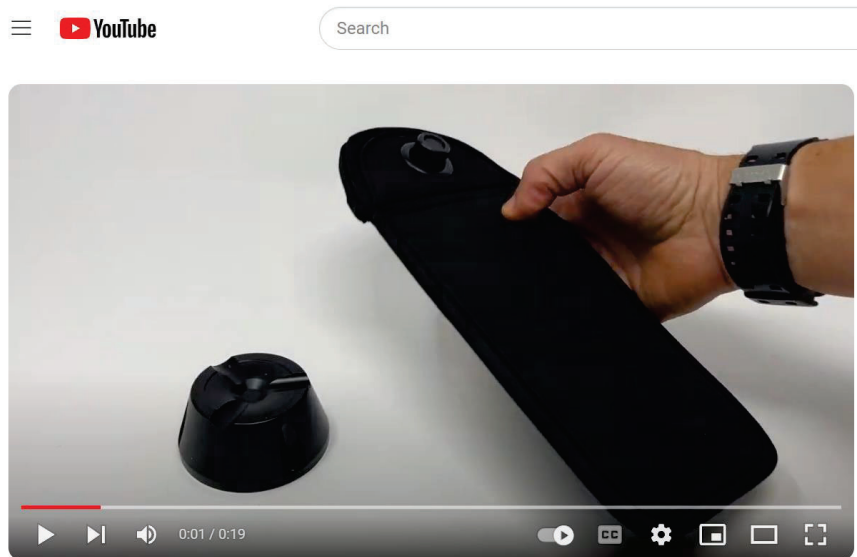


The products displayed on this website are covered by one or more U.S. Patents, including U.S. Patent Nos. 9,819,788 & 10,623,957.

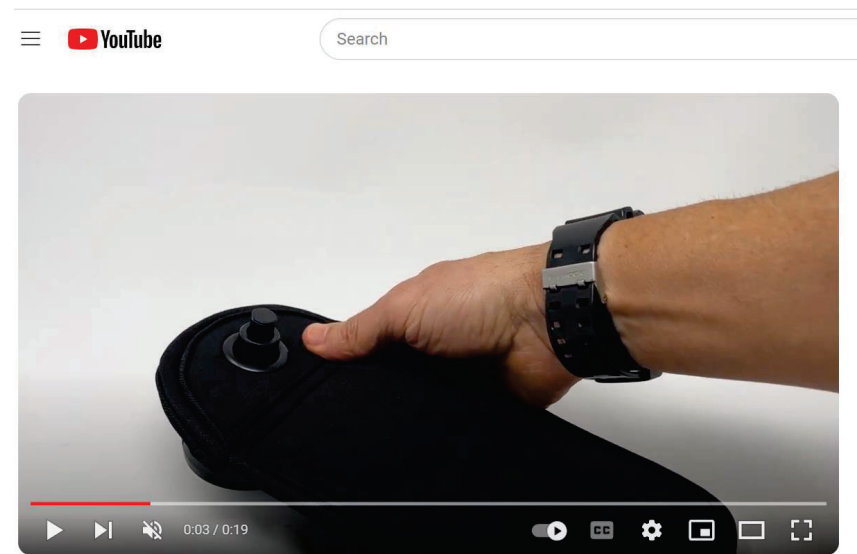
See <https://www.veryondr.com/>. Should Be Smarter contend that it did not have knowledge of the Asserted Patent, this Complaint serves as notice.

35. On information and belief, Be Smarter demonstrates how the CellockED technology works in a video on its YouTube page. 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.

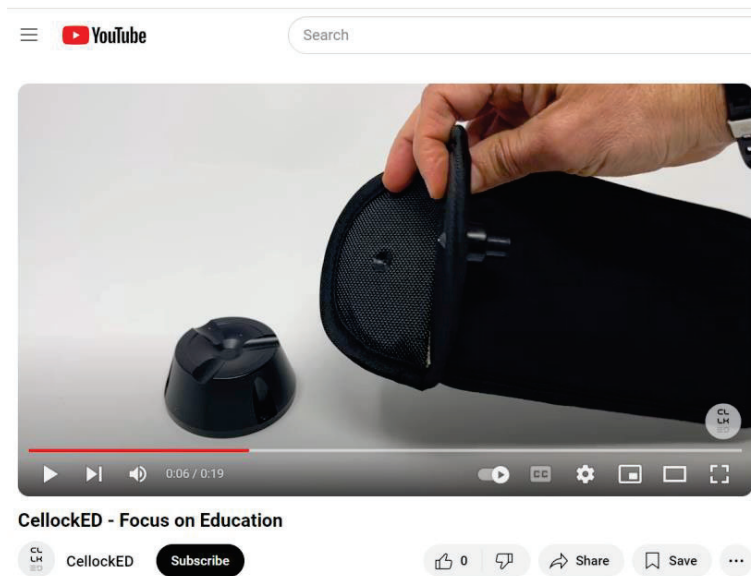


CellockED - Focus on Education



CellockED - Focus on Education





36. On information and belief, just like the Yondr System, CellockED 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. CellockED is covered by the Asserted Patent.

37. Be Smarter has infringed the Asserted Patent by making, using, offering for sale, selling and/or importing the CellockED product. CellockED is a cell phone case with 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 a cell 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.

38. Be Smarter promotes 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 \(youtube.com\)](#).

39. Be Smarter’s CellockED technology has used, and is using the technology of the Asserted Patent, thereby committing patent infringement. On further information and belief, Be Smarter has derived revenue from its infringing activities. According to the CellockED website, Be Smarter has 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, Be Smarter is profiting from these partnerships. An image of a portion of the infringing product is shown below in a photo included on the Be Smarter Manager’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

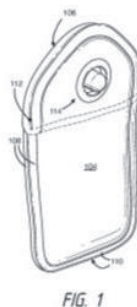
40. Be Smarter's CellockED technology is additionally covered by Claims in allowed U.S. Patent Applications 18/604,847 and 16/813,437. Be Smarter used, and is using the technology of U.S. Patent Application 18/604,847 and 16/813,437. Should Be Smarter contend that it did not have knowledge of these applications, this Complaint serves as actual notice under 35 U.S.C. §

154(d). Yondr expects those applications to issue into patents soon, and intends to amend this Complaint to add those patents at that time.

2. CellockED infringes Yondr's Trademark.

41. Be Smarter 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 that are indistinguishable from the Yondr Pouches. Be Smarter is not licensed or otherwise authorized to market or distribute products embodying the Yondr Registered Product Configuration Mark.

42. 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
			

43. Upon information and belief, Be Smarter was aware of the Yondr Registered Product Configuration Mark when it launched CellockED. Upon further information and belief, Be Smarter intentionally infringed the Yondr Registered Product Configuration Mark.

44. Be Smarter's 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. Be Smarter Makes False and Misleading Claims About Yondr to Promote the CellockEd Product.

45. As stated above, the Be Smarter website also includes a false and misleading YouTube video criticizing the Yondr System.

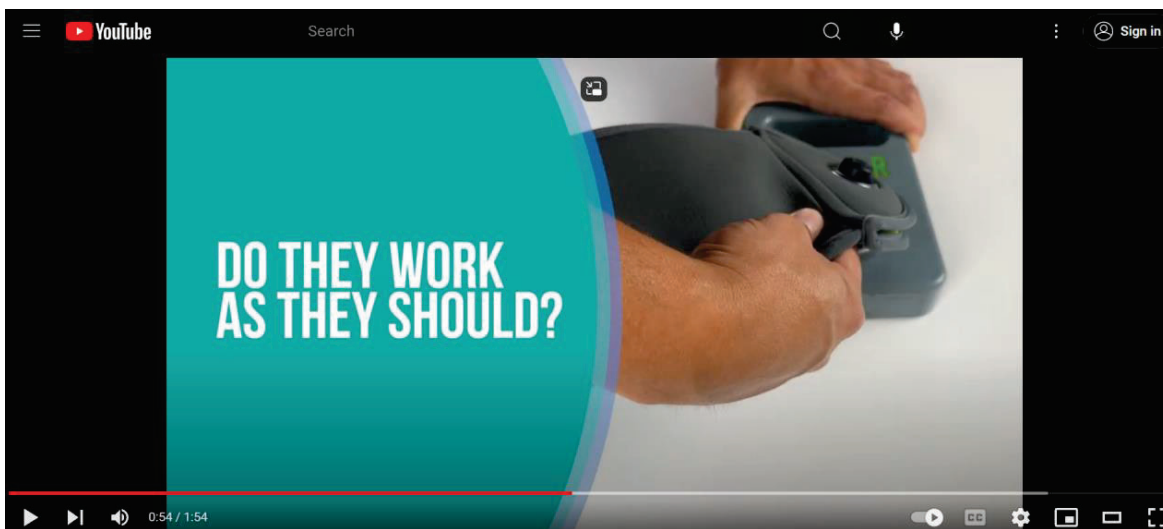
46. Upon information and belief, potential customers have accessed and will continue to access the video either on Be Smarter's CellockED website or the CellockED YouTube page.

47. Be Smarter's 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.

48. Upon information and belief, the misleading YouTube video was meant to, and does, cast unjustified doubt on the quality of Yondr and the Yondr System.

49. Upon information and belief, 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, Be Smarter 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.



50. Upon information and belief, Be Smarter knowingly made these and, upon information and belief, other false statements about Yondr. Upon further information and belief, Be Smarter expects and knows its defamatory statements could harm and have harmed Yondr, but included those statements anyway.

51. Upon information and belief, Yondr has lost business due to Be Smarter's defamatory statements including an opportunity to partner with and sell their system to various school districts.

52. Be Smarter's 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.

COUNT 1: INFRINGEMENT OF THE '788 PATENT

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

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

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

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

57. A copy of the '788 Patent is attached as Exhibit A.

A. The '788 Patent

58. 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.

59. 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

60. Be Smarter's CellockED product infringes the '788 Patent. *See* Exhibit B.

61. Be Smarter's 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/>.

62. 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.").

63. CellockED is covered by one or more claims of the '788 Patent. *See* Exhibit B.

64. Be Smarter has 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).

65. Be Smarter has been and is 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 '597 Patent, in violation of 35 U.S.C. § 271(b).

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

67. Upon information and belief, Be Smarter has knowledge of the '788 Patent.

68. Upon information and belief, Be Smarter's 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.

69. Yondr has been damaged by Be Smarter's infringement of the '788 Patent and will continue to be damaged unless Be Smarter is 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.

70. Be Smarter's 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: TRADEMARK INFRINGEMENT, 15 USC §1114

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

72. Yondr owns the Yondr Registered Product Configuration Mark and owns valid registration in the Yondr Registered Product Configuration Mark on the Principal Register.

73. Be Smarter is using an infringing mark that is identical to or indistinguishable from the genuine Yondr Registered Product Configuration Mark. Be Smarter's infringing mark is incorporated into CellockED and is used in the promotion of its 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.

74. Be Smarter's 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 Be Smarter's 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 Be Smarter.

75. Upon information and belief, Be Smarter's 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.

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

77. Be Smarter's infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

78. Yondr has no adequate remedy at law.

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

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

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

COUNT 3: UNFAIR COMPETITION, 15 U.S.C. § 1125

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

83. As set forth above, Be Smarter has intentionally and unlawfully engaged in various acts of unfair competition, including by making false misleading statements in its commercial advertising and promotional materials which misrepresent the characteristics and qualities of Yondr's product.

84. Upon information and belief, Be Smarter made false statements in interstate marketing materials to Yondr's actual and prospective customers to influence those customers to instead purchase Be Smarter's product, CellockED.

85. Upon information and belief, Be Smarter's 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.

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

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

88. Yondr therefore seeks judgment in its favor to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's false statements in violation of 15 U.S.C. § 1125, including punitive and treble damages, Be Smarter's 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 4: TRADEMARK INFRINGEMENT UNDER TEXAS COMMON LAW

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

90. Yondr owns the Yondr Registered Product Configuration Mark and a valid registration in the Yondr Registered Product Configuration Mark on the Principal Register.

91. Be Smarter is 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.

92. Be Smarter's 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 Be Smarter's 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 Be Smarter.

93. Upon information and belief, Be Smarter's 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 Be Smarter's own resources.

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

95. Be Smarter's infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

96. Yondr has no adequate remedy at law.

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

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

99. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 5: TRADE LIBEL UNDER TEXAS COMMON LAW

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

101. Be Smarter published a video that contained false information about Yondr.

102. Upon information and belief, Be Smarter acted with malice when they published a video that contained false information about Yondr.

103. Upon information and belief, Be Smarter's 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.

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

105. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 6: COMMON LAW UNFAIR COMPETITION UNDER TEXAS LAW

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

107. Be Smarter has made and distributed, in interstate commerce and in this District, statements that contain false or misleading statements of fact about Yondr and its product.

108. Yondr's System is sold within the State of Texas and Be Smarter's statements were made from within Texas and reached, on information and belief, Texas consumers.

109. Be Smarter has and continues to commit unlawful acts, as pleaded above, including, but not limited to, trademark infringement and trade libel. Be Smarter has committed these unlawful acts maliciously and with the specific intent, to interfere with Yondr's ability to conduct its own business.

110. Be Smarter has 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 Be Smarter, its agents, employees, representatives, and all persons acting in concert with it from engaging in further acts of unfair competition and ordering removal of all Be Smarter's false statements.

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

112. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 Be Smarter and respectfully requests the following relief:

1. A judgment that Be Smarter infringed and continues to infringe the Asserted Patent;
2. A judgment and order requiring Be Smarter to pay Yondr's monetary damages sufficient to compensate Yondr for Be Smarter's infringement of the Asserted Patent, 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 Be Smarter's willful infringement of the Asserted Patent;
5. A judgment and order finding this to be an exceptional case under 35 U.S.C. § 285 and requiring Be Smarter to pay costs of this action and attorneys' fees;
6. A permanent injunction against all Be Smarter products found to infringe the Asserted Patent;
7. In lieu of an injunction, an award of a compulsory forward royalty;
8. A judgment that Be Smarter infringed and continues to infringe the Yondr Registered Product Configuration Mark;
9. An award of damages sustained as a consequence of Be Smarter's infringement of the Registered Product Configuration Mark and trebling of those damages under 15 U.S.C. § 1117;
10. A judgment that Be Smarter 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 Be Smarter, enjoining Be Smarter from making false statements regarding Yondr, its System and/or its personnel;
12. An entry of a preliminary and permanent injunction requiring Be Smarter 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 Be Smarter's 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 Be Smarter 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:

Respectfully submitted,

By: /s/_____

Joshua L. Raskin
WDTX No. 309973
Anne M. Rock
Omar A. Nesheiwat
GREENBERG TRAURIG, LLP
One Vanderbilt Ave.
New York, NY 10017
(212) 801-9200
RaskinJ@gtlaw.com
Annie.rock@gtlaw.com
Omar.nesheiwat@gtlaw.com

Matthew J. Levinstein
GREENBERG TRAURIG, LLP
77 West Wacker Dr. Suite 3100
Chicago, IL 60601
(312) 456-1039
Levinsteinm@gtlaw.com

**ATTORNEYS FOR PLAINTIFF
YONDR, INC.**

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>A system for selectively limiting a user's control of such user's own electronic device, comprising:</p>	<p>https://cellocked.newschoolhero.org/about/ shows how the CellockED limits a user's controls of his or her own electronic device.</p> <div data-bbox="553 512 1015 579"> <h2>About CellockED</h2> </div> <div data-bbox="553 611 1065 804"> <p>In 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.</p> </div> <div data-bbox="553 829 706 882"> <p>Contact us</p> </div> <div data-bbox="1117 436 1318 940">  </div>
<p>a case sized to receive the user's mobile electronic device having</p>	<p>https://cellocked.newschoolhero.org/about/ shows that the CellockED is a case sized to receive the user's mobile electronic device.</p> <div data-bbox="558 1113 1049 1856">  </div> <p>https://cellocked.newschoolhero.org/about/ "we propose the adoption of a new cell phone pouch."</p>

EXHIBIT A

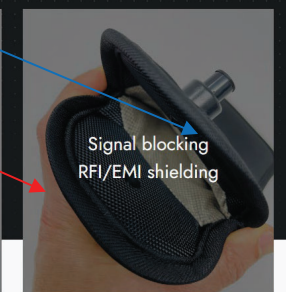
Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
	https://cellocked.newschoolhero.org/about/ Product Overview: "large size to secure most cellular phone devices."
a front and a rear panel	<p>https://cellocked.newschoolhero.org/ shows that the CellockED has a front panel and a rear panel.</p> 
each having first and second longitudinally opposed side edges and laterally opposed lower edges ,	<p>The video posted at https://www.youtube.com/watch?v=QX5utmkggNU shows that CellockED's front and rear panels each have first and second longitudinally opposed side edges and laterally opposed lower edges.</p> 

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>the first, second, and lower edges being secured together to define an opening for receiving a mobile electronic device;</p>	<p>The video posted at https://www.youtube.com/watch?v=QX5utmkggqNU shows that CellockED's first, second, and lower edges are secured together to define an opening for receiving a mobile electronic device.</p> 
<p>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;</p>	<p>https://cellocked.newschoolhero.org/about/ shows how CellockED can remain locked until a predetermined condition is met.</p>

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
	<div><h2>About CellockED</h2><p>In 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.</p><div>Contact us</div></div>
<div>a locking means for at least partially securing the opening;</div>	<div><p>https://cellocked.newschoolhero.org/about/ shows that CellockED has locking means for at least partially securing the opening.</p><h2>Product Overview</h2><div><div>02</div><div>Magnetic Locking System</div><div>Unique retractable locking system that replaces any keys or combination locks</div></div><div></div></div>

EXHIBIT A

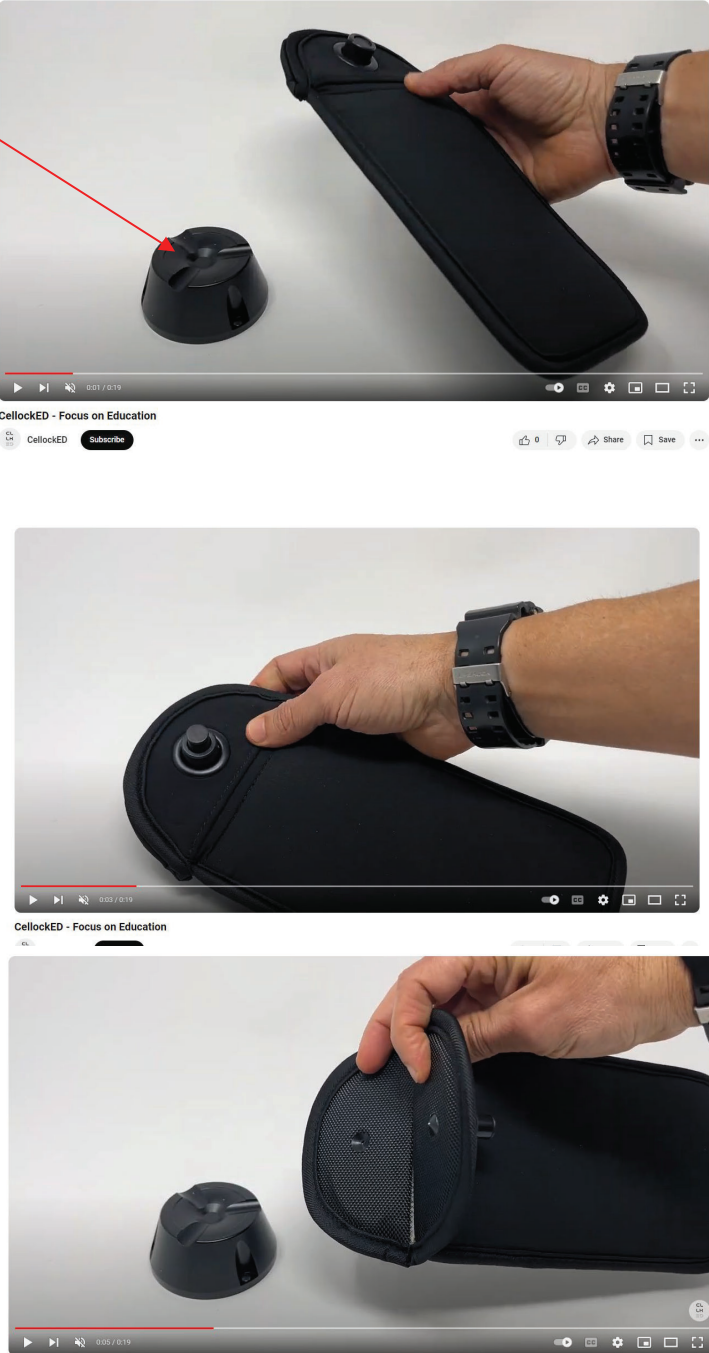
Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>and means for unlocking the case.</p>	<p>https://www.youtube.com/watch?v=QX5utmkggNU shows that the CellockED has means for unlocking the case.</p>  <p>The video consists of three sequential frames. The first frame shows a hand holding a black, elongated device. A red arrow points from the text 'means for unlocking the case' to a small, circular, black component on a surface. The second frame shows a hand holding the device, with the circular component visible on its side. The third frame shows a hand holding the device, with the circular component visible on its side.</p>

EXHIBIT E



Joshua L. Raskin
Tel 212.801.6930
Fax 212.805.5583
Joshua.Raskin@gtlaw.com

September 30, 2024

VIA E-MAIL, AND UPS

Dr. Alex Marrero, Superintendent of Schools
Denver Public Schools
1860 Lincoln Street
Denver, CO 80203
dps_superintendent@dpsk12.org

Re: Infringement of Yondr Inc.'s Intellectual Property Rights

Dear Dr. Marrero:

We represent Yondr Inc. ("Yondr") with respect to the protection and enforcement of its U.S. intellectual property rights. We write to advise Denver Public Schools (the "District") of a developing situation. Specifically, Yondr has recently learned that the District has purchased and is using Be Smarter, LLC's ("Be Smarter") CellockED-brand lockable phone pouches (the "CellockED pouches"). As discussed in more detail below, it is Yondr's position that the manufacture and sale of those CellockED pouches by Be Smarter violates Yondr's valuable intellectual property and, in turn, that the use of those pouches by the District could expose the District to liability as well. The purpose of this letter is to bring this to your attention and hopefully avoid a conflict.

Yondr is a market leader in the phone pouch and phone free space industry and is responsible for bringing numerous innovative and disruptive technologies and inventions to consumers. Such inventions include Yondr's patented System and Apparatus for Selectively Limiting User Control of an Electronic Device, which inventions are disclosed and claimed in U.S. Patent No. 9,819,788 (the "'788 Patent"). In addition, the distinctive design of Yondr's pouches is covered by Yondr's federally Registered Trademark No. 6,995,045.

It has recently come to Yondr's attention that Be Smarter, without Yondr's authorization, has made and sold its CellockED pouches to the District in violation of one or more claims of Yondr's '788 Patent as well as Yondr's trademark. Indeed, Yondr has advised Be Smarter that it will commence litigation against Be Smarter in the United States District Court for the Western District of Texas to put a halt to Be Smarter's infringing activity if Be Smarter does not immediately cease and desist. A copy of Yondr's draft complaint against Be Smarter is attached. (Exhibit A.)

While Yondr is committed to aggressively enforcing its intellectual property rights in its patented inventions, Yondr's grievance is with Be Smarter, not the District. However, Yondr wanted to make sure that the District is aware that the use of an infringing item

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON
LOS ANGELES
MEXICO CITY
MIAMI
MILAN
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
PHOENIX
ROME
SACRAMENTO
SAN FRANCISCO
SEOUL
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TEL AVIV
TYSONS CORNER
WARSAW
WASHINGTON, D.C.
WHITE PLAINS

Dr. Alex Marrero
September 30, 2024
Page 2

constitutes an infringing act as well. Yondr therefore hopes that the District will reach out to Yondr to discuss a forward path. You are therefore invited to contact Yondr by emailing Fenchie Huey at frenchie@overyondr.co.

Nothing in this letter shall be deemed to constitute a waiver or relinquishment of any of Yondr's potential rights and remedies, all of which Yondr explicitly reserves.

Sincerely,

A handwritten signature in blue ink, appearing to read "Josh", with a long horizontal flourish extending to the right.

Joshua L. Raskin

Exhibit A

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

YONDR, INC.,

Plaintiff,

v.

BE SMARTER, LLC

Defendant.

Civil Action No.

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 Defendant Be Smarter LLC (“Be Smarter” or “Defendant”) for infringement of U.S. Patent No. 9,819,788 (the “’788 Patent” or the “Asserted Patent”), 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 Be Smarter’s unauthorized and unlicensed copying and use of the Asserted Patent 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 patent discloses) 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. Be Smarter is one example. James Armando Guerra, the Manager of Be Smarter, first offered for sale the accused product, CellockED, in 2024, which directly infringes Yondr’s patent and trademark. The CellockED product is marketed and sold on defendant’s 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. On 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

JURISDICTION AND VENUE

10. 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.

11. 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 claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

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

13. 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 District such that personal jurisdiction over Be Smarter would not offend traditional notions of fair play and substantial justice.

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

FACTUAL ALLEGATIONS

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

15. 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.

16. Prior to Dugoni's invention described in the Asserted Patent, 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 Ex. A, at 1:66-2:24.

17. 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.

18. 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").

19. 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. 6995045 (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.



20. 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
 <p>The first photograph shows a top-down view of a grey Yondr pouch with a black smartphone inside. The interior of the pouch is bright yellow, and the word 'YONDR' is printed in yellow at the bottom. The second photograph is a side view of the same pouch with the phone inside, showing its rounded shape and the yellow interior. The third photograph is a close-up of the top of the pouch, highlighting the yellow interior and the grey strap with a yellow circular fastener.</p>	 <p>A line drawing of the Yondr pouch, showing its rectangular shape with rounded corners and a small circular fastener at the top.</p>

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

22. 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.



23. 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.

24. 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.

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

25. 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.veryondr.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.

26. 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/>

27. 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.

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

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

29. On information and belief, James Guerra is the Manager of Be Smarter.

Franchise Search Results		Public Information Report
 Public Information Report BE SMARTER, LLC Report Year :2024		
<p>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.</p> <p>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.</p>		
Title	Name and Address	
MANAGER	JAMES A GUERRA 605 E UNIVERSITY AVE STE 101 GEORGETOWN, TX 78626	

30. 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

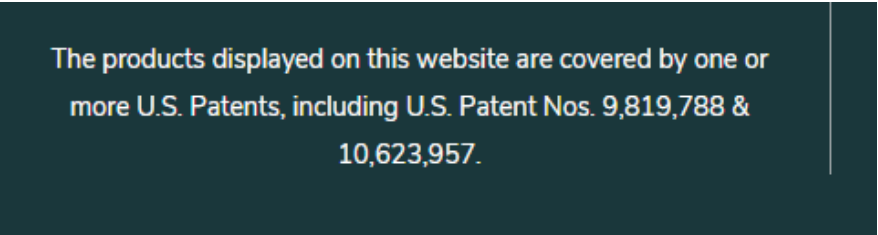
31. Upon information and belief, Be Smarter LLC owns the CellockED product and is the owner of the CellockED YouTube account (described below).

32. 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.”

33. Upon information and belief, the YouTube account, “CellockED – Focus on Education,” is owned and operated by Be Smarter. 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, James Guerra, promotes CellockED on his personal LinkedIn and, according to his LinkedIn profile, is the founder of CellockED.

34. Upon information and belief, Be Smarter was aware of Yondr when it 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, Be Smarter had visited the Yondr website. Yondr's website provides clear notice that the products displayed are covered by patents, including the Asserted Patent.

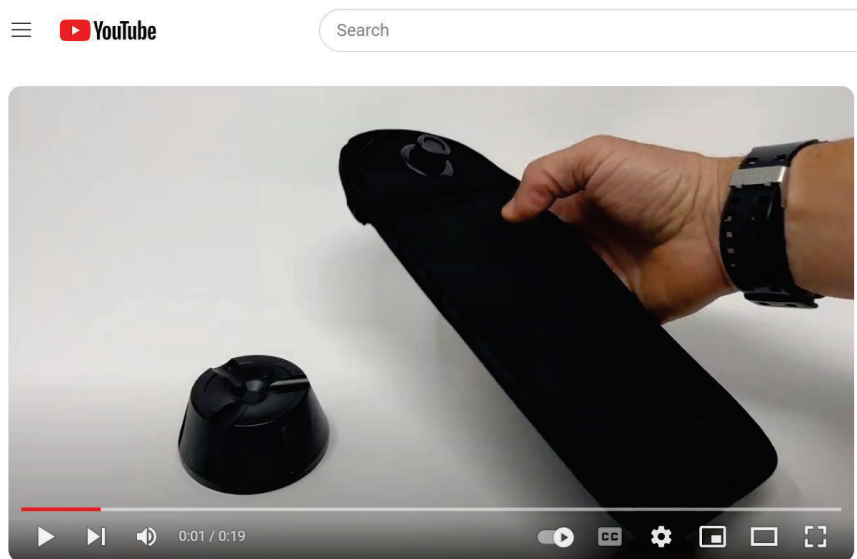


The products displayed on this website are covered by one or more U.S. Patents, including U.S. Patent Nos. 9,819,788 & 10,623,957.

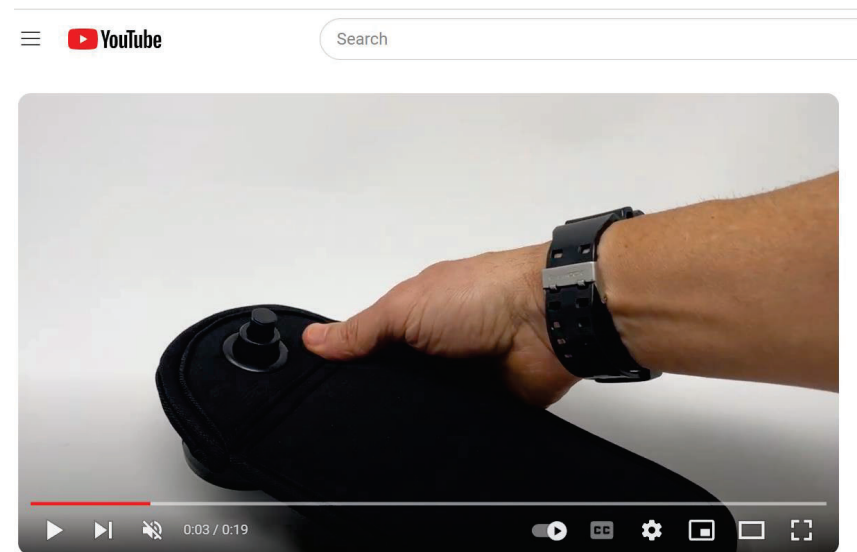
See <https://www.veryondr.com/>. Should Be Smarter contend that it did not have knowledge of the Asserted Patent, this Complaint serves as notice.

35. On information and belief, Be Smarter demonstrates how the CellockED technology works in a video on its YouTube page. 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.

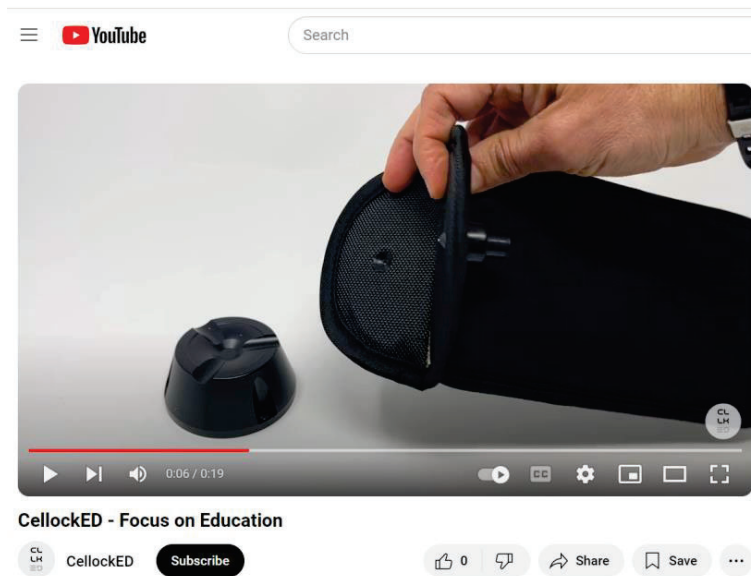


CellockED - Focus on Education



CellockED - Focus on Education





36. On information and belief, just like the Yondr System, CellockED 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. CellockED is covered by the Asserted Patent.

37. Be Smarter has infringed the Asserted Patent by making, using, offering for sale, selling and/or importing the CellockED product. CellockED is a cell phone case with 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 a cell 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.

38. Be Smarter promotes 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 \(youtube.com\)](#).

39. Be Smarter’s CellockED technology has used, and is using the technology of the Asserted Patent, thereby committing patent infringement. On further information and belief, Be Smarter has derived revenue from its infringing activities. According to the CellockED website, Be Smarter has 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, Be Smarter is profiting from these partnerships. An image of a portion of the infringing product is shown below in a photo included on the Be Smarter Manager’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

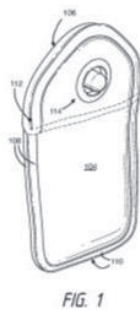
40. Be Smarter's CellockED technology is additionally covered by Claims in allowed U.S. Patent Applications 18/604,847 and 16/813,437. Be Smarter used, and is using the technology of U.S. Patent Application 18/604,847 and 16/813,437. Should Be Smarter contend that it did not have knowledge of these applications, this Complaint serves as actual notice under 35 U.S.C. §

154(d). Yondr expects those applications to issue into patents soon, and intends to amend this Complaint to add those patents at that time.

2. CellockED infringes Yondr's Trademark.

41. Be Smarter 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 that are indistinguishable from the Yondr Pouches. Be Smarter is not licensed or otherwise authorized to market or distribute products embodying the Yondr Registered Product Configuration Mark.

42. 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
			

43. Upon information and belief, Be Smarter was aware of the Yondr Registered Product Configuration Mark when it launched CellockED. Upon further information and belief, Be Smarter intentionally infringed the Yondr Registered Product Configuration Mark.

44. Be Smarter's 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. Be Smarter Makes False and Misleading Claims About Yondr to Promote the CellockEd Product.

45. As stated above, the Be Smarter website also includes a false and misleading YouTube video criticizing the Yondr System.

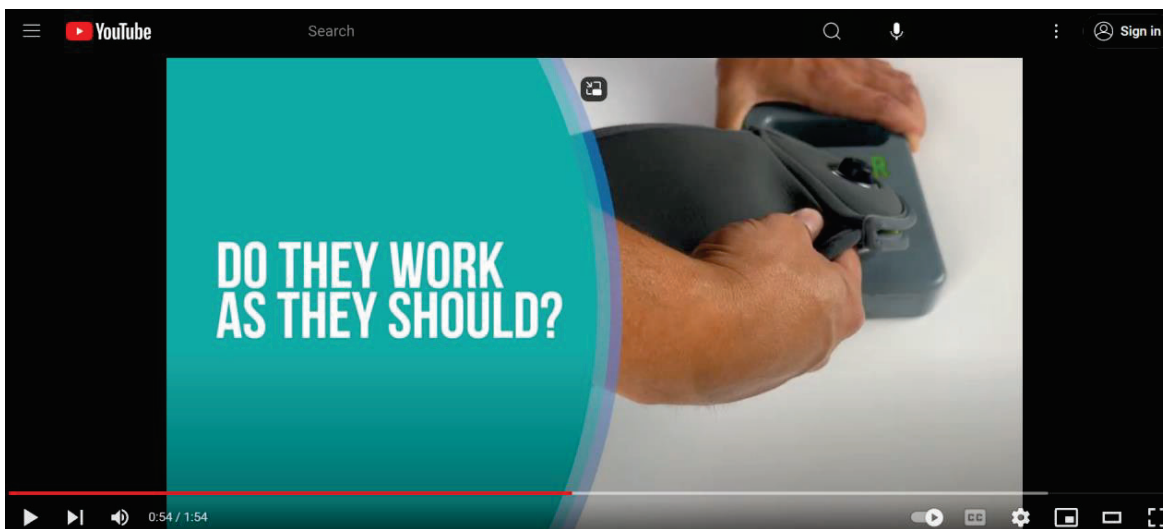
46. Upon information and belief, potential customers have accessed and will continue to access the video either on Be Smarter's CellockED website or the CellockED YouTube page.

47. Be Smarter's 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.

48. Upon information and belief, the misleading YouTube video was meant to, and does, cast unjustified doubt on the quality of Yondr and the Yondr System.

49. Upon information and belief, 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, Be Smarter 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.



50. Upon information and belief, Be Smarter knowingly made these and, upon information and belief, other false statements about Yondr. Upon further information and belief, Be Smarter expects and knows its defamatory statements could harm and have harmed Yondr, but included those statements anyway.

51. Upon information and belief, Yondr has lost business due to Be Smarter's defamatory statements including an opportunity to partner with and sell their system to various school districts.

52. Be Smarter's 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.

COUNT 1: INFRINGEMENT OF THE '788 PATENT

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

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

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

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

57. A copy of the '788 Patent is attached as Exhibit A.

A. The '788 Patent

58. 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.

59. 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

60. Be Smarter's CellockED product infringes the '788 Patent. *See* Exhibit B.

61. Be Smarter's 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/>.

62. 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.").

63. CellockED is covered by one or more claims of the '788 Patent. *See* Exhibit B.

64. Be Smarter has 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).

65. Be Smarter has been and is 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 '597 Patent, in violation of 35 U.S.C. § 271(b).

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

67. Upon information and belief, Be Smarter has knowledge of the '788 Patent.

68. Upon information and belief, Be Smarter's 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.

69. Yondr has been damaged by Be Smarter's infringement of the '788 Patent and will continue to be damaged unless Be Smarter is 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.

70. Be Smarter's 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: TRADEMARK INFRINGEMENT, 15 USC §1114

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

72. Yondr owns the Yondr Registered Product Configuration Mark and owns valid registration in the Yondr Registered Product Configuration Mark on the Principal Register.

73. Be Smarter is using an infringing mark that is identical to or indistinguishable from the genuine Yondr Registered Product Configuration Mark. Be Smarter's infringing mark is incorporated into CellockED and is used in the promotion of its 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.

74. Be Smarter's 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 Be Smarter's 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 Be Smarter.

75. Upon information and belief, Be Smarter's 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.

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

77. Be Smarter's infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

78. Yondr has no adequate remedy at law.

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

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

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

COUNT 3: UNFAIR COMPETITION, 15 U.S.C. § 1125

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

83. As set forth above, Be Smarter has intentionally and unlawfully engaged in various acts of unfair competition, including by making false misleading statements in its commercial advertising and promotional materials which misrepresent the characteristics and qualities of Yondr's product.

84. Upon information and belief, Be Smarter made false statements in interstate marketing materials to Yondr's actual and prospective customers to influence those customers to instead purchase Be Smarter's product, CellockED.

85. Upon information and belief, Be Smarter's 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.

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

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

88. Yondr therefore seeks judgment in its favor to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's false statements in violation of 15 U.S.C. § 1125, including punitive and treble damages, Be Smarter's 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 4: TRADEMARK INFRINGEMENT UNDER TEXAS COMMON LAW

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

90. Yondr owns the Yondr Registered Product Configuration Mark and a valid registration in the Yondr Registered Product Configuration Mark on the Principal Register.

91. Be Smarter is 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.

92. Be Smarter's 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 Be Smarter's 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 Be Smarter.

93. Upon information and belief, Be Smarter's 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 Be Smarter's own resources.

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

95. Be Smarter's infringing acts have caused and, unless such acts are restrained by this Court, will continue to cause substantial and irreparable injury to Yondr.

96. Yondr has no adequate remedy at law.

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

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

99. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 5: TRADE LIBEL UNDER TEXAS COMMON LAW

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

101. Be Smarter published a video that contained false information about Yondr.

102. Upon information and belief, Be Smarter acted with malice when they published a video that contained false information about Yondr.

103. Upon information and belief, Be Smarter's 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.

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

105. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 6: COMMON LAW UNFAIR COMPETITION UNDER TEXAS LAW

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

107. Be Smarter has made and distributed, in interstate commerce and in this District, statements that contain false or misleading statements of fact about Yondr and its product.

108. Yondr's System is sold within the State of Texas and Be Smarter's statements were made from within Texas and reached, on information and belief, Texas consumers.

109. Be Smarter has and continues to commit unlawful acts, as pleaded above, including, but not limited to, trademark infringement and trade libel. Be Smarter has committed these unlawful acts maliciously and with the specific intent, to interfere with Yondr's ability to conduct its own business.

110. Be Smarter has 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 Be Smarter, its agents, employees, representatives, and all persons acting in concert with it from engaging in further acts of unfair competition and ordering removal of all Be Smarter's false statements.

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

112. Yondr therefore seeks judgment in its favor and to recover from Be Smarter all damages that Yondr has sustained as a result of Be Smarter's 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, Be Smarter's 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 Be Smarter and respectfully requests the following relief:

1. A judgment that Be Smarter infringed and continues to infringe the Asserted Patent;
2. A judgment and order requiring Be Smarter to pay Yondr's monetary damages sufficient to compensate Yondr for Be Smarter's infringement of the Asserted Patent, 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 Be Smarter's willful infringement of the Asserted Patent;
5. A judgment and order finding this to be an exceptional case under 35 U.S.C. § 285 and requiring Be Smarter to pay costs of this action and attorneys' fees;
6. A permanent injunction against all Be Smarter products found to infringe the Asserted Patent;
7. In lieu of an injunction, an award of a compulsory forward royalty;
8. A judgment that Be Smarter infringed and continues to infringe the Yondr Registered Product Configuration Mark;
9. An award of damages sustained as a consequence of Be Smarter's infringement of the Registered Product Configuration Mark and trebling of those damages under 15 U.S.C. § 1117;
10. A judgment that Be Smarter 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 Be Smarter, enjoining Be Smarter from making false statements regarding Yondr, its System and/or its personnel;
12. An entry of a preliminary and permanent injunction requiring Be Smarter 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 Be Smarter's 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 Be Smarter 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:

Respectfully submitted,

By: /s/_____

Joshua L. Raskin
WDTX No. 309973
Anne M. Rock
Omar A. Nesheiwat
GREENBERG TRAURIG, LLP
One Vanderbilt Ave.
New York, NY 10017
(212) 801-9200
RaskinJ@gtlaw.com
Annie.rock@gtlaw.com
Omar.nesheiwat@gtlaw.com

Matthew J. Levinstein
GREENBERG TRAURIG, LLP
77 West Wacker Dr. Suite 3100
Chicago, IL 60601
(312) 456-1039
Levinsteinm@gtlaw.com

**ATTORNEYS FOR PLAINTIFF
YONDR, INC.**

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>A system for selectively limiting a user's control of such user's own electronic device, comprising:</p>	<p>https://cellocked.newschoolhero.org/about/ shows how the CellockED limits a user's controls of his or her own electronic device.</p> <div data-bbox="553 516 1008 581"> <h2>About CellockED</h2> </div> <div data-bbox="553 615 1062 806"> <p>In 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.</p> </div> <div data-bbox="558 833 704 882"> <p>Contact us</p> </div> <div data-bbox="1117 441 1318 940">  </div>
<p>a case sized to receive the user's mobile electronic device having</p>	<p>https://cellocked.newschoolhero.org/about/ shows that the CellockED is a case sized to receive the user's mobile electronic device.</p> <div data-bbox="558 1115 1049 1856">  </div> <p>https://cellocked.newschoolhero.org/about/ “we propose the adoption of a new cell phone pouch.”</p>

EXHIBIT A

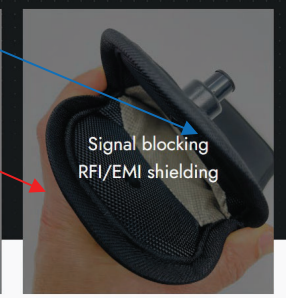
Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
	https://cellocked.newschoolhero.org/about/ Product Overview: "large size to secure most cellular phone devices."
a front and a rear panel	<p>https://cellocked.newschoolhero.org/ shows that the CellockED has a front panel and a rear panel.</p> 
each having first and second longitudinally opposed side edges and laterally opposed lower edges,	<p>The video posted at https://www.youtube.com/watch?v=QX5utmkggNU shows that CellockED's front and rear panels each have first and second longitudinally opposed side edges and laterally opposed lower edges.</p> 

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>the first, second, and lower edges being secured together to define an opening for receiving a mobile electronic device,</p>	<p>The video posted at https://www.youtube.com/watch?v=QX5utmkggqNU shows that CellockED's first, second, and lower edges are secured together to define an opening for receiving a mobile electronic device.</p> 
<p>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;</p>	<p>https://cellocked.newschoohero.org/about/ shows how CellockED can remain locked until a predetermined condition is met.</p>

EXHIBIT A

Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
	<div><h2>About CellockED</h2><p>In 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.</p><div>Contact us</div></div>
<div>a locking means for at least partially securing the opening;</div>	<div><p>https://cellocked.newschoolhero.org/about/ shows that CellockED has locking means for at least partially securing the opening.</p><h2>Product Overview</h2><div><div>02</div><div>Magnetic Locking System</div><div>Unique retractable locking system that replaces any keys or combination locks</div></div><div></div></div>

EXHIBIT A

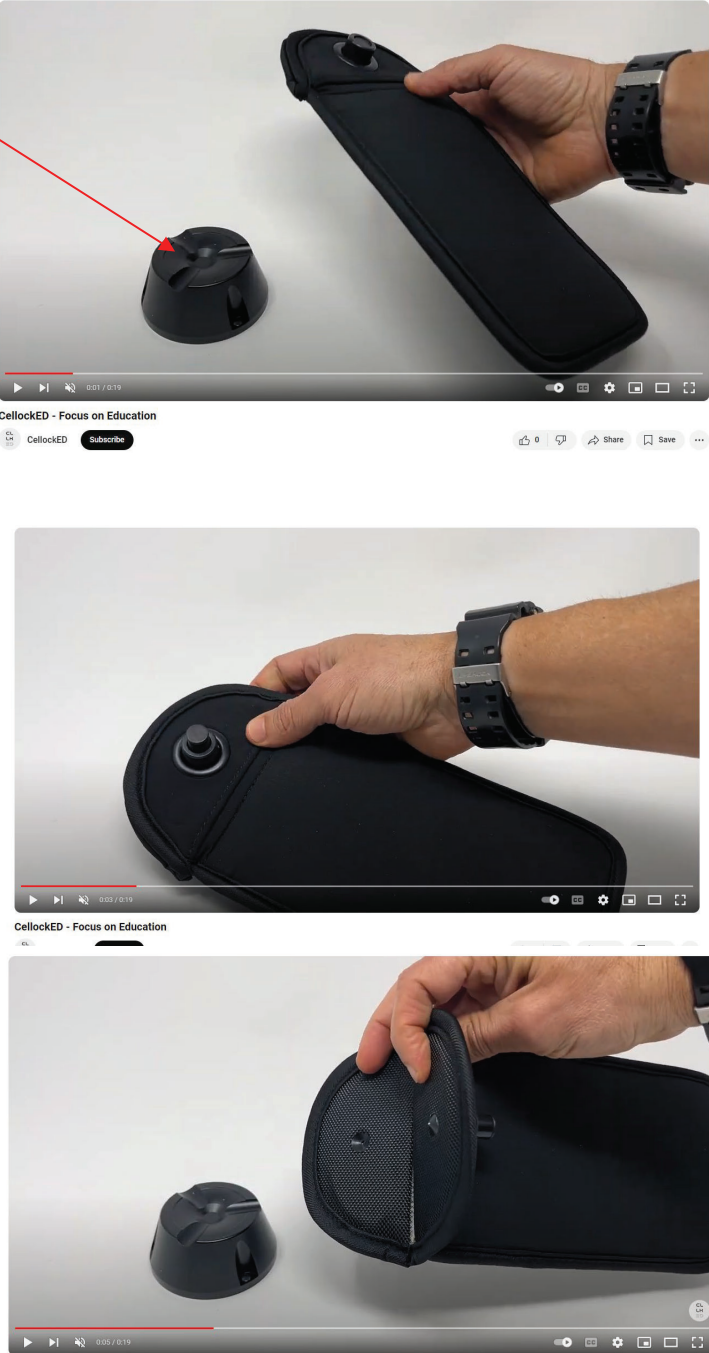
Claim 3 of U.S. Patent No. 9,819,788	Be Smarter's CellockED
<p>and means for unlocking the case.</p>	<p>https://www.youtube.com/watch?v=QX5utmkggNU shows that the CellockED has means for unlocking the case.</p> 

EXHIBIT F

From: Joshua.Raskin@gtlaw.com
Sent: Thursday, December 5, 2024 11:17 AM
To: hturner@wabsa.com
Cc: jedwardsen@taylorisd.org; Gollwitzer, Arthur; asorendo@wabsa.com; YONDR-Lit@gtlaw.com
Subject: RE: Taylor ISD: Yondr and Cellock
Attachments: 2024.10.31 [DKT 001] Yondr Original Complaint.pdf

Caution: **External Email.

Hi Haley,

Thank you for your letter. Please be advised that our client filed a complaint against Be Smarter, LLC and James Guerra on October 31, 2024 (copy attached). The complaint will hopefully show you the strong case Yondr has against Be Smarter and its owner for their marketing and sale of the CellockED pouches. As stated in our September 30 letter, Yondr is committed to enforcing its intellectual property rights. That being said, our client's main grievance is with Be Smarter and Mr. Guerra, not Taylor Independent School District, and Yondr hopes that the district will reach out to Yondr to discuss a path forward.

Thanks again, and please do not hesitate to reach out should you have any questions.

Best,

Josh

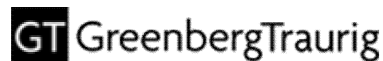
*Nothing in this email shall be deemed to constitute a waiver or relinquishment of any of Yondr's potential rights and remedies, all of which Yondr explicitly reserves.

Joshua L. Raskin

Shareholder; Vice Chair, Global Patent Litigation Group
Chair, NY IP & Technology Group

Greenberg Traurig, LLP
One Vanderbilt Avenue | New York, NY 10017
T +1 212.801.6930
M +1 917.747.3351

raskinj@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



From: Amy Sorendo <asorendo@wabsa.com>
Sent: Thursday, December 5, 2024 10:45 AM
To: Raskin, Joshua L. (Shld-NY-IP-Tech) <Joshua.Raskin@gtlaw.com>
Cc: Haley Turner <hturner@wabsa.com>; Jennifer Garcia-Edwardsen <jedwardsen@taylorisd.org>; agollwitzer@jw.com
Subject: Taylor ISD: Yondr and Cellock

EXTERNAL TO GT

Good morning Mr. Raskin,

Please see the attached letter from attorney Haley Turner regarding the above referenced parties.



AMY SORENDO

LEGAL ASSISTANT TO HALEY TURNER, DAVID HOLMES
AND AMANDA MOORE

 512.454.6864  WalshGallegos.com

505 E. Huntland Dr., Suite 600, Austin, Texas 78752

CONFIDENTIALITY NOTICE: This email & attached documents may contain confidential information. All information is intended only for the use of the named recipient. If you are not the named recipient, you are not authorized to read, disclose, copy, distribute or take any action in reliance on the information and any action other than immediate delivery to the named recipient is strictly prohibited. If you have received this email in error, do not read the information and please immediately notify sender by telephone to arrange for a return of the original documents. If you are the named recipient you are not authorized to reveal any of this information to any other unauthorized person. If you did not receive all pages listed or if pages are not legible, please immediately notify sender by phone.

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate the information.