

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BLUE SPRING PARTNERS, LLC,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A HERETO,

Case No.: 24-cv-01548

Defendants.

COMPLAINT

Plaintiff Blue Spring Partners (“Plaintiff”), hereby alleges as follows against the individuals, corporations, limited liability companies, partnerships, and unincorporated associations and foreign entities identified on **Schedule A** attached hereto (collectively, “Defendants”):

INTRODUCTION

1. This action has been filed by Plaintiff to combat online counterfeiters who trade upon Plaintiff’s reputation and goodwill by selling and/or offering for sale products in connection with Plaintiff’s FIN FUN trademarks, which are covered by U.S. Trademark Registration Nos. 4,913,258 and 4,949,791 (the “FIN FUN Trademarks”); FIN FUN patents, which are covered by at least U.S. Patent Registration Nos. D9,162,110 B1 and D979,694 S (the “FIN FUN Patents”); and copyrights, which are covered by at least U.S. Copyright Office Registration Nos. VAu 1-267-344, VAu 1-320-470, VA 2-034-595, VA 2-034-569, VA 2-165-671, VA 2-174-603, VA 2-174-604, VA 2-156-990, VA 2-034-596, VAu 1-297-712, VA 2-120-230, VA 2-203-914, VA 2-078-

689, VAu 1-354-331, VAu 1-375-826, VA 2-034-589, VA 2-078-690, VA 2-203-910, VAu 1-422-233, VA 2-158-718, VA 2-078-693, VAu 1-362-491, VA 2-203-918, VA 1-361-372, VA 2-095-344, VAu 1-395-674, VA 2-156-991, VA 2-154-671, VAu 1-267-341, VA 2-078-695, VA 2-034-586, VA 2-165-670, VA 2-203-912, VA 2-203-569, VAu 1-422-235, VA 2-203-908, VAu 1-414-473, VA 2-034-584, VAu 1-267-327, VAu 1-267-329, VA 2-165-646, VA 2-034-579, VA 2-034-580, VAu 1-328-899, VAu 1-387-110, VAu 1-311-801, VAu 1-328-896, VAu 1-415-191, VA 2-095-300, VA 2-034-602, VA 2-078-696, VA 2-034-594, VAu 1-297-714, VA 2-034-576, and VA 2-095-296 (the “FIN FUN Copyright Registrations”). The FIN FUN Trademarks, FIN FUN Patents, and the FIN FUN Copyright Registrations, which cover Plaintiff’s artwork and designs for mermaid tails and fins, are valid, subsisting, and in full force and effect. True and correct copies of the federal trademark registration certificates for the FIN FUN Trademarks and FIN FUN Patents are attached hereto as **Exhibit 1**. True and correct copies of the federal copyright registration certificates for the FIN FUN Copyright Registrations are attached hereto as **Exhibit 2**. The Defendants likewise advertise, market and/or sell their unauthorized and illegal products embodying Plaintiff’s copyrights and/or patents by reference to the same name and design as the Plaintiff’s genuine products and/or by reference to an identical or substantially identical name and mark as the FIN FUN Trademarks, which causes further confusion and deception in the marketplace.

2. The Defendants create numerous fully interactive commercial internet stores operating under the Defendant Domain Names and/or the Online Marketplace Accounts identified in Schedule A attached hereto (collectively, the “Defendant Internet Stores”). The Defendants design the Defendant Internet Stores to appear to be selling genuine Plaintiff products, while selling inferior imitations of Plaintiff’s products. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants’ illegal operations arise out of the same transaction,

occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their illegal counterfeiting operation. Plaintiff is forced to file this action to combat Defendants' counterfeiting of the FIN FUN Trademarks, FIN FUN Patents, and Plaintiff's copyrights, as well as to protect unknowing consumers from purchasing unauthorized FIN FUN products over the Internet. Plaintiff has been and continues to be irreparably damaged through consumer confusion, dilution, and tarnishment of its valuable trademarks and copyrights and goodwill as a result of Defendants' actions and seeks injunctive and monetary relief.

3. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in Illinois and in this Judicial District, and the acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in Illinois and in this Judicial District. In addition, each Defendant has offered to sell and ship infringing products into this Judicial District.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over the patent infringement claim arising under the patent laws of the United States pursuant to 35 U.S.C. § 1 *et seq.*, 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331.

5. This Court has original subject matter jurisdiction over the trademark infringement and false designation of origin claims in this action pursuant to provisions of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, 28 U.S.C. § 1338(a)–(b), and 28 U.S.C. § 1331.

6. This Court has original subject matter jurisdiction over the copyright claim pursuant to the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, 28 U.S.C. § 1338(a)–(b), and 28 U.S.C. § 1331.

7. This Court has jurisdiction over the unfair deceptive trade practices claim in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. §

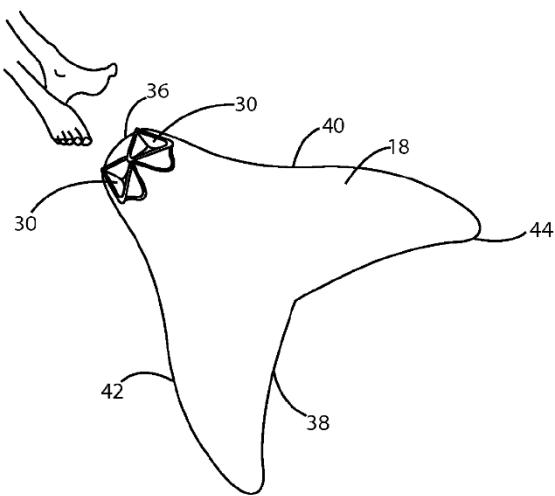
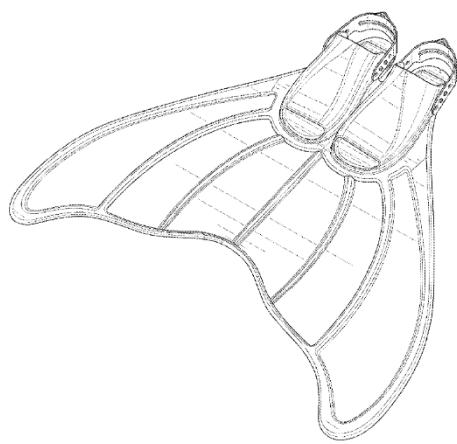
1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants, because each of the Defendants directly targets consumers in the United States, including Illinois, through at least Defendant Internet Stores. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can purchase unauthorized and illegal products embodying Plaintiff's trademarks and copyrights, that are marketed by reference to the same names and marks Plaintiff's genuine FIN FUN products are marketed, one name and mark being for example, "Fin Fun". Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars, and, on information and belief, has sold unauthorized and illegal products embodying Plaintiff's federally registered trademarks and copyrights to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(a) because Defendants have committed acts of copyright infringement, patent infringement, and/or trademark infringement in this judicial district, do substantial business in the judicial district, have registered agents in this judicial district, and reside or may be found in this district.

THE PLAINTIFF

9. Plaintiff Blue Spring Partners, LLC t/as Fin Fun ("Plaintiff") is a limited liability company organized under the laws of Idaho with offices in Idaho Falls, ID and is the owner of the FIN FUN Trademarks and FIN FUN Copyright Registrations, with its federal registrations attached as Exhibits 1 and 2.

10. Plaintiff is the owner and lawful assignee of all right, title, and interest in and to the FINFUN Patents, attached as Exhibit 1:

U.S. Patent Number	Claim	Issue Date
D9,162,110 B1		October 20, 2015
D979,694 S		February 28, 2023

11. In September 2010, Plaintiff designed, caused to subsist in material form and first published the original FIN FUN product, originally published on eBay and

instantly attracted substantial international media attention and success. Shortly after, in early 2012, Plaintiff began selling the FIN FUN products on its website <https://www.finfunmermaid.com/>, and by 2014, FIN FUN products were also available for purchase on Amazon. In November 2016, Plaintiff began applying for the registrations of the now federally registered FIN FUN Copyright Registrations in respect of the copyrights embodied by the many FIN FUN products (the “FIN FUN Products”). The effective date of the first FIN FUN Copyright Registration is November 2, 2016. Exemplary copies of the FIN FUN Products were deposited with the United States Copyright Office and remain available for inspection there.

12. From September 2010 to the present, Plaintiff has been the official source of genuine FIN FUN products in the United States, which include the following:



Tidal Teal Mermaid Tail

SKU: TLX-TT

175 Reviews [Add Your Review](#)

Mermaid Tail Skin Only

Mermaid Tail Skin + **Swim Monofin**
[What is a Swim Monofin?](#)

\$39.95

All prices in USD

Size:

[Size Chart](#)

YOUTH

ADULT



Viridian Calypso Elite Mermaid Tail

SKU: TLE3-VIR

[Be the first to review this product](#)

Mermaid Tail Skin Only

Mermaid Tail Skin + **Elite Monofin**

[Why choose the Elite Monofin?](#)

\$350.00

All prices in USD

Size:

[Size Chart](#)

ADULT

[ADD TO CART](#)



Riptide Atlantis Mermaid Tail

SKU: TLA-RIP

3 Reviews [Add Your Review](#)

Mermaid Tail Skin Only

Mermaid Tail Skin + **Swim Monofin**

[What is a Swim Monofin?](#)

\$64.95

\$54.95

All prices in USD

Size:

[Size Chart](#)

YOUTH

ADULT



Cuddle Tails Mermaid Tail Blanket in Aqua Dream

SKU: CT-M3AD

★★★★★ 3 Reviews Add Your Review

\$34.95

All prices in USD

Size:

Add to Cart

FREE SHIPPING

On all orders \$100 or more.
Continental U.S. Only



Blue Trim Monofin

SKU: MF-05

★★★★★ 60 Reviews Add Your Review

\$39.95

All prices in USD

Size:

Add to Cart

FREE SHIPPING

On all orders \$100 or more.
Continental U.S. Only



Oasis Elite Monofin

SKU: MF-ELT-OAS-M

★★★★★ 4 Reviews Add Your Review

\$125.00

\$99.95

Add to Cart

For use ONLY with Elite Mermaid Tails. Not compatible with other Fin Fun mermaid tails.

Please note that Elite Monofins take 2-3 weeks to ship.

Elite Monofin and Tails are excluded from Free Shipping promotions.

Upgrade your mermaid experience to Elite with the Oasis Elite Monofin that's specially crafted for the Elite mermaid tail.

13. Since at least 2015, the FIN FUN Trademarks are and have been the subject of substantial and continuous marketing and promotion by Plaintiff. Plaintiff has and continues to widely market and promote the FIN FUN Trademarks in the industry and to consumers. Plaintiff's promotional efforts include—by way of example but not limitation—substantial print media, the FIN FUN Products' website and social media sites, and point of sale materials.

14. The FIN FUN Trademarks are distinctive and identify the merchandise as goods from Plaintiff. The FIN FUN Trademarks are valid and subsisting and in full force and effect, and constitute conclusive evidence of Plaintiff's exclusive right to use the FIN FUN Trademarks throughout the United States pursuant to 15 U.S.C. § 1057(b).

15. The FIN FUN Trademarks each qualify as a famous mark, as that term is used in 15 U.S.C. §1125 (c)(1), and have been continuously used and never abandoned.

16. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the FIN FUN Products. As a result, products bearing the name and mark "FIN FUN" are widely recognized and exclusively associated by consumers, the public, and the trade as being products sourced from Plaintiff.

17. Plaintiff also owns all exclusive rights, including without limitation, the rights to reproduce the copyrighted works in copies, to prepare derivative works based upon the copyrighted works, and to distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending, in various copyrights for the FIN FUN Products as the owner of the FIN FUN copyrights, including without limitation copyrights covered by the FIN FUN Copyright Registrations, as set out above.

THE DEFENDANTS

18. Defendants are individuals and business entities who, upon information and belief, reside mainly in the People's Republic of China or other foreign jurisdictions.

Defendants conduct business throughout the United States, including within Illinois and in this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell and, on information and belief, has sold and continues to sell counterfeit FIN FUN products to consumers within the United States, including Illinois and in this Judicial District.

THE DEFENDANTS' UNLAWFUL CONDUCT

19. The success of the FIN FUN brand has resulted in its counterfeiting. Plaintiff has identified numerous domain names linked to fully interactive websites and marketplace listings on platforms such as Alibaba.com, AliExpress.com, Amazon.com, DHgate.com, eBay.com, Etsy.com, Walmart.com and Wish.com, including the Defendant Internet Stores, which were offering for sale, selling, and importing counterfeit FIN FUN products to consumers in this Judicial District and throughout the United States. Defendants have persisted in creating the Defendant Internet Stores. Internet websites like the Defendant Internet Stores are estimated to receive tens of millions of visits per year and to generate over \$135 billion in annual online sales. According to an intellectual property rights seizures statistics report issued by the United States Department of Homeland Security, the manufacturer's suggested retail price of goods seized by the U.S. government in fiscal year 2020 was over \$1.3 billion. Internet websites like the Defendant Internet Stores are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages such as lost tax revenue every year.

20. On personal knowledge and belief, Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine FIN FUN products. Many of the Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards, Western Union, and PayPal. Defendant Internet Stores

often include images and design elements that make it very difficult for consumers to distinguish such counterfeit sites from an authorized website. Defendants further perpetuate the illusion of legitimacy by offering “live 24/7” customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the McAfee® Security, VeriSign®, Visa®, MasterCard®, and PayPal® logos.

21. Plaintiff has the exclusive right to use the FIN FUN Trademarks in interstate commerce, and Plaintiff’s use has been exclusive since it first adopted the FIN FUN Trademarks, with the exception of unauthorized uses such as by Defendants as described in this Complaint. Plaintiff is the official source of FIN FUN Products in the United States, and Plaintiff has not licensed or authorized Defendants to use the FIN FUN Trademarks, FIN FUN Patents, or the FIN FUN Copyright Registrations, and none of the Defendants are authorized retailers of genuine FIN FUN Products.

22. On personal knowledge and belief, Defendants deceive unknowing consumers by using the FIN FUN Trademarks, FIN FUN Patents, and/or the FIN FUN Copyright Registrations without authorization within the product descriptions of their Defendant Internet Stores to attract customers, as well as embodied by the counterfeit products themselves.

23. On personal knowledge and belief, Defendants also deceive unknowing consumers by using FIN FUN Trademarks without authorization within the content, text, and/or meta tags of their websites to attract various search engines crawling the Internet looking for websites relevant to consumer searches for FIN FUN Products. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (“SEO”) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for genuine FIN FUN Products. Further, Defendants utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after

others are shut down. As such, Plaintiff also seeks to disable Defendant Internet Stores owned by Defendants that are the means by which the Defendants could continue to sell counterfeit FIN FUN products into this District.

24. On information and belief, Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their massive network of Defendant Internet Stores. For example, it is common practice for counterfeiters to register their domain names with incomplete information, randomly typed letters, or omitted cities or states, as Defendants here have done. And many Defendant Domain Names use privacy services that conceal the owners' identity and contact information. On personal knowledge and belief, Defendants regularly create new websites and Online Marketplace Accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their massive counterfeiting operation, and to avoid being shut down.

25. On personal knowledge and belief, even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, some of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. In addition, the counterfeit FIN FUN products for sale in the Defendant Internet Stores bear similarities and indicia of being related to one another, suggesting that the counterfeit FIN FUN products were manufactured by and come from a common source and that, upon information and belief, Defendants are interrelated. The Defendant Internet Stores also include other notable common features, including use of the same domain name registration patterns, unique shopping cart platforms, accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, HTML user-defined variables, domain redirection, lack of contact information, identically or similarly priced items and volume

sales discounts, similar hosting services, similar name servers, and the use of the same text and images.

26. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, counterfeiters like Defendants will often register new domain names or Online Marketplace Accounts under new aliases once they receive notice of a lawsuit.¹ Counterfeiters also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring take down demands sent by brand owners.² Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. A 2012 U.S. Customs and Border Protection report on seizure statistics indicated that the Internet has fueled “explosive growth” in the number of small packages of counterfeit goods shipped through the mail and express carriers.

27. Further, counterfeiters such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of Plaintiff’s enforcement efforts. On personal knowledge and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of

¹ <https://www.ice.dhs.gov/news/releases/buyers-beware-ice-hsi-and-cbp-boston-warn-consumers-about-counterfeit-goods-during> (counterfeiters are “very adept at setting up online stores to lure the public into thinking they are purchasing legitimate good on legitimate websites”) (last visited Nov. 17, 2022).

² While discussed in the context of false pharma supply chains, rogue internet servers and sellers are a well-known tactic that have even been covered in congressional committee hearings. <https://www.govinfo.gov/content/pkg/CHRG-113hhrg88828/html/CHRG-113hhrg88828.htm> (last visited Nov. 17, 2022).

this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that offshore counterfeiters regularly move funds from U.S.-based PayPal accounts to foreign-based bank accounts outside the jurisdiction of this Court.

28. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully used and continue to use the FIN FUN Trademarks, FIN FUN Patents, and the FIN FUN Copyright Registrations in connection with the advertisement, distribution, offering for sale, and sale of counterfeit FIN FUN products into the United States and Illinois over the Internet, and by reference to the same name and mark as the original FIN FUN Product, is marketed and/or sold by, being “Fin Fun”. Each Defendant Internet Store offers shipping to the United States, including Illinois and each Defendant has offered to sell counterfeit FIN FUN products into the United States, including Illinois.

29. Defendants’ use of the FIN FUN Trademarks, FIN FUN Patents, and/or the FIN FUN Copyright Registrations in connection with the advertising, distribution, offering for sale, and sale of counterfeit FIN FUN products, including the sale of counterfeit FIN FUN products into Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)
[Against Defendants Designated in Schedule A]

30. Plaintiff repeats and incorporates by reference herein its allegations contained in paragraphs 1–29 of this Complaint.

31. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the registered FIN FUN Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The FIN FUN Trademarks are highly distinctive marks. Consumers

have come to expect the highest quality from Plaintiff's products provided under the FIN FUN Trademarks.

32. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with the FIN FUN Trademarks without Plaintiff's permission.

33. Plaintiff is the registered owner of the FIN FUN Trademarks and official source of FIN FUN Products. The United States Registrations for the FIN FUN Trademarks (Exhibit 1) are in full force and effect. Upon information and belief, Defendants have knowledge of Plaintiff's rights in the FIN FUN Trademarks and are willfully infringing and intentionally using counterfeits of the FIN FUN Trademarks. Defendants' willful, intentional, and unauthorized use of the FIN FUN Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the counterfeit goods among the general public.

34. Defendants' activities constitute willful trademark infringement and counterfeiting under 15 U.S.C. §§ 1114, 1117.

35. The injuries and damages sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of counterfeit FIN FUN Products.

36. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill of its well-known FIN FUN Trademarks.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(A))
[Against Defendants Designated in Schedule A]

37. Plaintiff repeats and incorporates by reference herein its allegations contained in paragraphs 1–36 of this Complaint.

38. Defendants' promotion, marketing, offering for sale, and sale of counterfeit FIN FUN products embodying the FIN FUN Trademarks and/or the FIN FUN Copyright Registrations, has created and is creating a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Plaintiff or the origin, sponsorship, or approval of Defendants' counterfeit FIN FUN Products by Plaintiff.

39. By using the FIN FUN Trademarks in connection with the sale of counterfeit FIN FUN products, embodying the FIN FUN Copyright Registrations, Defendants create a false designation of origin and a misleading representation of fact as to the origin and

40. Defendants' conduct constitutes willful false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the counterfeit FIN FUN Products to the general public under 15 U.S.C. §§ 1114, 1125.

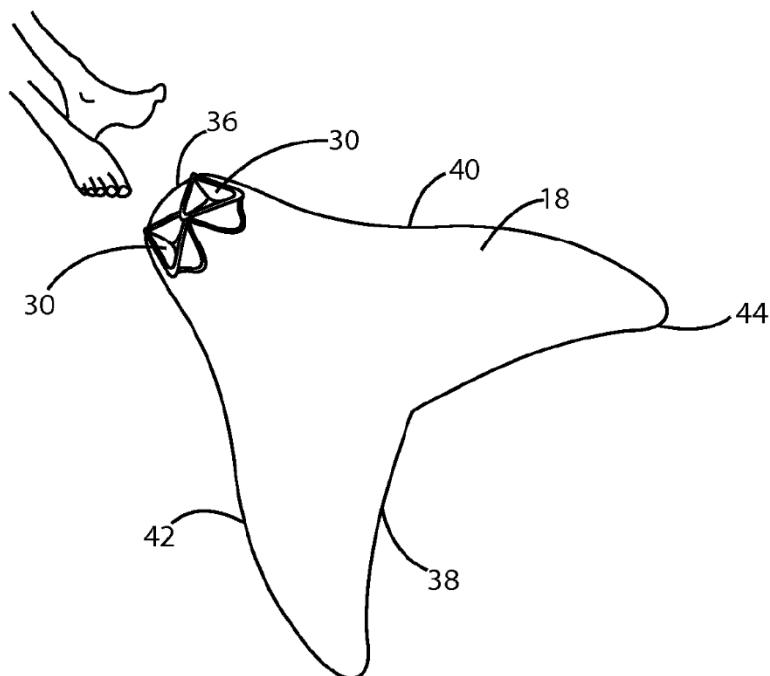
41. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill of its brand.

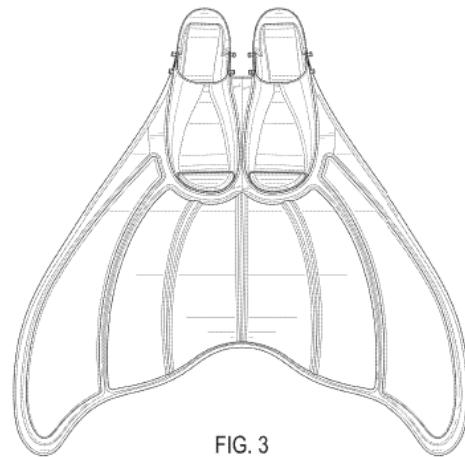
COUNT III
PATENT INFRINGEMENT (35 U.S.C. § 271)
[Against Defendants Designated in Schedule A]

42. Plaintiff repeats and incorporates by reference herein its allegations contained in paragraphs 1–41 of this Complaint.

43. Defendants are and have been making, using, selling, offering for sale, and/or importing into the United States for subsequent sale or use, without authority, Counterfeit Products that infringe directly and/or indirectly the FIN FUN Patents.

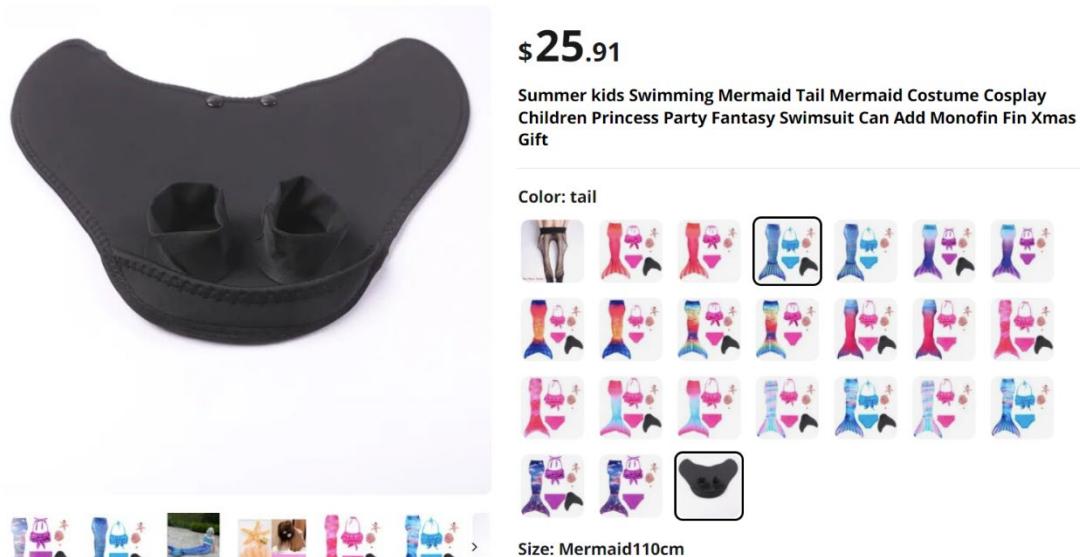
44. For example, below is a comparison of figures from Plaintiff's FINFUN Patents and images of one of Defendants' Counterfeit Products sold on two Defendant Internet Stores.

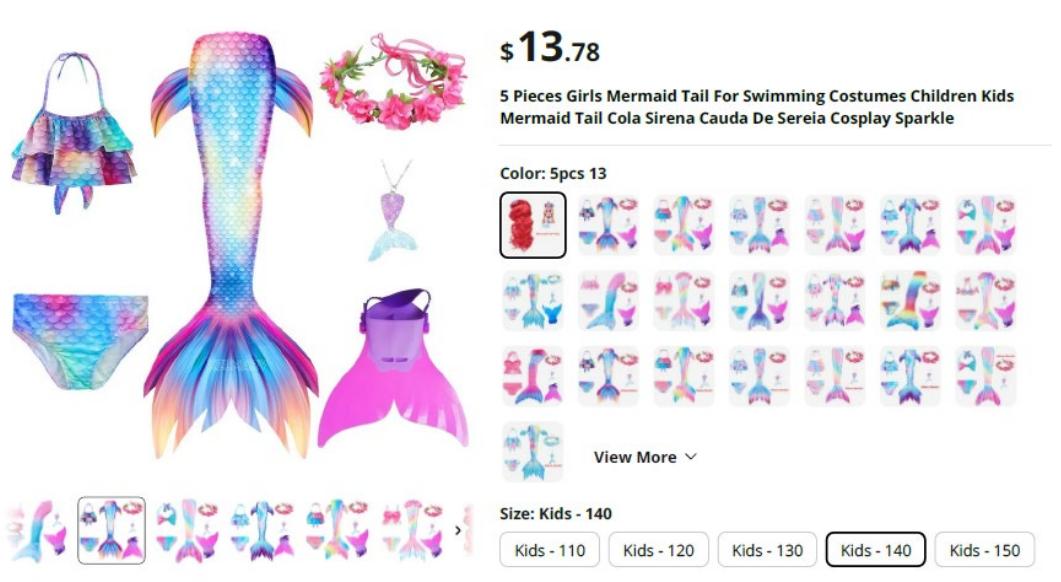




Figures from FIN FUN Patents

compared to





Counterfeit FIN FUN Products sold on exemplary Defendant Online Stores

45. Defendants' activities constitute willful patent infringement and counterfeiting under 35 U.S.C. § 271.

46. Defendants have infringed the Plaintiff's FINFUN Patent through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

47. Plaintiff is entitled to recover damages adequate to compensate for the infringement pursuant to 35 U.S.C. §§ 284 289, including Defendants' profits.

COUNT IV
COPYRIGHT INFRINGEMENT (17 U.S.C. § 101, et seq.)
[Against Defendants Designated in Schedule A]

48. Plaintiff repeats and incorporates by reference herein its allegations contained in paragraphs 1–47 of this Complaint.

49. Plaintiff owns all exclusive rights, including without limitation the rights to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending, in various copyrights for the FIN FUN Products as either the owner and/or licensee of the FIN FUN copyrights, including without limitation copyrights covered by the FIN FUN Copyright Registrations.

50. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with the FIN FUN copyrights without Plaintiff's permission.

51. Defendants had access to the FIN FUN Products incorporating Plaintiff's registered copyrights before Defendants created their Defendant Internet Stores.

52. Upon information and belief, Defendants have directly copied Plaintiff's copyrights for the FIN FUN Products. Alternatively, Defendants' representations of Plaintiff's copyrights for the FIN FUN Products in the Defendant Internet Stores are strikingly similar, or at the very least substantially similar, to Plaintiff's copyrights for the FIN FUN Products and constitute unauthorized copying, reproduction, distribution, creation of a derivative work, and/or public display of Plaintiff's copyrights for the FIN FUN Products. As just one example, Defendants deceive unknowing consumers by using the FIN FUN copyrights without authorization within the product descriptions of their Defendant Online Store to attract customers as follows:



Drag image to spin

Fiji Fantasy Mermaid Tail

SKU: TUX-FI

★★★★★ 35 Reviews Add Your Review

Mermaid Tail Skin Only

Mermaid Tail Skin + **Swim Monofin**
[What is a Swim Monofin?](#)

\$54.95

All prices in USD

Size: *Adult M*

[Size Chart](#)

YOUTH

ADULT

Add to Cart

Genuine FIN FUN Product the subject of the federally registered FIN FUN

Copyright Registrations (see “Fiji Fantasy,” VA 2-158-718)

compared to

Counterfeit FIN FUN Product sold on exemplary Defendant Online Store

[Home](#) / [Apparel & Accessories](#) / [Sportswear](#) / [Swimwear & Beachwear](#) / [Bikinis & Beachwear](#)



[View larger image](#)

Ready to Ship

High Elastic Baby Girls Swimwear Mermaid Tail Princess Swimwear Children's Swimsuit 2 Piece Set Swimming Suit Bikini

\$4.20 - \$9.19 / set | 2 set/sets (Min. order)

Benefits: Quick refunds on orders under US \$500 [View more >](#)

Color [View all 30 options](#)

Size children S 100-110 \$4.20 children M (100-110) \$4.20 children L (120-135) \$4.20

[View all 4 options](#)



Samples:

, children M (100-110)

\$10.00/set | Min. order : 1 set | [Get samples](#)

53. Defendants' exploitation of Plaintiff's copyrights for the FIN FUN Products in the Defendant Internet Stores constitutes infringement of Plaintiff's copyrights for the FIN FUN Products.

54. On information and belief, Defendants' infringing acts were willful, deliberate, and committed with prior notice and knowledge of Plaintiff's copyrights. Each Defendant willfully, wantonly, and in conscious disregard and intentional indifference to the rights of Plaintiff made and distributed in the United States, including this District, caused to be made and distributed in the United States, including this District, and aided, abetted, contributed to, and participated in the unauthorized making and distribution of the infringing Defendant Online Stores. Each Defendant either knew, or should have reasonably known, that Plaintiff's FIN FUN Products were protected by copyright and their representations infringed on Plaintiff's copyrights. Each Defendant continues to infringe upon Plaintiff's rights in and to the copyrighted work.

55. As a direct and proximate result of their wrongful conduct, Defendants have realized and continue to realize profits and other benefits rightfully belonging to Plaintiffs. Accordingly, Plaintiff seeks an award of damages pursuant to 17 U.S.C. § 504.

56. In addition to Plaintiff's actual damages, Plaintiff is entitled to receive the profits made by the Defendants from their wrongful acts, pursuant to 17 U.S.C. § 504(b). Each Defendant should be required to account for all gains, profits, and advantages derived by each Defendant from their acts of infringement.

57. In the alternative, Plaintiff is entitled to, and may elect to choose statutory damages pursuant to 17 U.S.C. § 504(c), which should be enhanced by 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement.

58. Plaintiff is entitled to, and may elect to choose, injunctive relief under 17 U.S.C. § 502, enjoining any use or exploitation by Defendants of their infringing work and for an order under 17 U.S.C. § 503 that any of Defendants' infringing products be impounded and destroyed.

59. Plaintiff seeks and is also entitled to recover reasonable attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

60. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to their reputation and the goodwill of its well-known FIN FUN copyrights.

COUNT IV
VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
(815 ILCS § 510/1, et seq.)
[Against Defendants Designated in Schedule A]

61. Plaintiff repeats and incorporates by reference herein its allegations contained in paragraphs 1–60 of this Complaint.

62. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their counterfeit FIN FUN Products as those of Plaintiff, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine FIN FUN Products, representing that their products have Plaintiff's approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

63. The foregoing acts of Defendants constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1, et seq.

64. Plaintiff has no adequate remedy at law, and Defendants' conduct has caused Plaintiff to suffer damage to their reputation and goodwill. Unless enjoined by the Court, Plaintiff will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under, or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:
 - a. using the FIN FUN Trademarks or any mark substantially identical or confusingly similar to the FIN FUN Trademarks in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine FIN FUN Product or is not authorized by Plaintiff to be sold in connection with the FIN FUN Trademarks;
 - b. using the FIN FUN Patent or any reproductions, copies, or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine FIN FUN Product or is not authorized by Plaintiff to be sold in connection with the FIN FUN Patents;
 - c. using the FIN FUN Copyright Registrations or any reproductions, counterfeit copies, or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine FIN FUN Product or is not authorized by Plaintiff to be sold in connection with the FIN FUN Copyright Registrations;
 - d. passing off, inducing, or enabling others to sell or pass off any product as a genuine FIN FUN Product or any other product

produced by Plaintiff that is not Plaintiff's or not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale under the FIN FUN Trademarks, FIN FUN Patents, or the FIN FUN Copyright Registrations;

- e. committing any acts calculated to cause consumers to believe that Defendants' counterfeit FIN FUN Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- f. further infringing the FIN FUN Trademarks, FIN FUN Patents, or the FIN FUN Copyright Registrations and damaging Plaintiff's goodwill;
- g. otherwise competing unfairly with Plaintiff in any manner;
- h. shipping, delivering, holding for sale, transferring, or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which infringe upon any of Plaintiff's patents, bear any of Plaintiff's trademarks, or copy any of Plaintiff's copyright, including the FIN FUN Trademarks, FIN FUN Patents, or the FIN FUN Copyright Registrations or any reproductions, counterfeit copies, or colorable imitations thereof;
- i. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts, the Defendant Internet Stores, or any other domain name or Online Marketplace Account that is being used to sell or is the means by which Defendants could continue to sell counterfeit FIN FUN products; and

j. operating and/or hosting websites at the Defendant Internet Stores and any other domain names registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product bearing the FIN FUN Trademarks or embodying the FIN FUN Patents and/or FIN FUN Copyright Registrations or any reproduction, counterfeit copy or colorable imitation thereof that is not a genuine FIN FUN Product or not authorized by Plaintiff to be sold in connection with the FIN FUN Trademarks, FIN FUN Patents, or the FIN FUN Copyright Registrations.

2. That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendants have complied with paragraph 1 above;

3. Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces such as Alibaba.com, AliExpress.com, Amazon.com, DHgate.com, eBay.com, Etsy.com, Walmart.com and Wish.com, social media platforms such as Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendant Internet Stores, and domain name registrars, shall:

a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit FIN FUN products bearing the FIN FUN Trademarks and/or embodying the FIN FUN Patents and/or FIN FUN Copyright Registrations, including any accounts associated with the Defendants listed on Schedule A;

- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit FIN FUN products bearing the FIN FUN Trademarks and/or embodying the FIN FUN Patents and/or FIN FUN Copyright Registrations; and
- c. take all steps necessary to prevent links to the Defendant Internet Stores identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Domain Names from any search index.

4. That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the FIN FUN Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117.

5. In the alternative, that Plaintiff be awarded statutory damages pursuant to 15 U.S.C. § 1117(c) of not less than \$1,000 and not more than \$2,000,000 for each and every use of the FIN FUN Trademarks and statutory damages of not less than \$750 and not more than \$30,000 for each and every infringement of Plaintiff's copyrights pursuant to 17 U.S.C. § 504(c), which should be enhanced to a sum of not more than \$150,000 by 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement;

6. That Plaintiff be awarded such damages as it shall prove at trial against Defendants that are adequate to compensate Plaintiff for Defendants' infringement of the FIN FUN Patents, but in no event less than a reasonable royalty for the use made of the invention by the Defendants, together with interest and costs, pursuant to 35 U.S.C. § 284;

7. That the amount of damages awarded to Plaintiff to compensate Plaintiff for infringement of Plaintiff's FIN FUN Patents be increased by three times the amount thereof, as provided by 35 U.S.C. § 284;

8. In the alternative, that Plaintiff be awarded all profits realized by Defendants from Defendants' infringement of Plaintiff's FIN FUN Patents, pursuant to 35 U.S.C. § 289;

9. That Plaintiff be awarded its reasonable attorneys' fees and costs; and
10. Award any and all other relief that this Court deems just and proper.

Dated: February 23, 2024

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP

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