

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

SUNDESA, LLC; and  
RUNWAY BLUE, LLC,  
*Plaintiffs,*

v.

PINPOINT MARETING GROUP, INC.  
d/b/a GOLD'S GEAR,  
*Defendant.*

Civil Action No. 3:17-cv-00435-M

Honorable Chief Judge Barbara M.G. Lynn

Demand for Jury Trial

**SUNDESA, LLC AND RUNWAY BLUE, LLC'S AMENDED COMPLAINT**

Sundesha, LLC and Runway Blue, LLC (collectively, "Sundesha"), by and through their undersigned counsel, claim against Pinpoint Marketing Group, Inc. d/b/a Gold's Gear ("Pinpoint") for the causes of action alleged as follows:

**THE PARTIES**

1. Sundesa, LLC is a limited liability company duly organized and existing under the laws of the state of Utah with its principle place of business located at 250 South 850 East Lehi, Utah 84043.

2. Runway Blue, LLC is a limited liability company duly organized and existing under the laws of the State of Utah with its principle place of business located at 35 S Pfeifferhorn Drive, Alpine, Utah 84004.

3. Pinpoint is a corporation organized under the laws of the State of Texas with its principal place of business located at 3710 West Royal Lane, Suite 125, Irving, Texas 75063. On information and belief Pinpoint also does business as Pinpoint Merchandising, Inc.

**JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the patent laws of the United States 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. § 271.

5. This is also a civil action for unfair competition arising under Utah Code Ann. § 13-5a-101, *et seq.*

6. This Court has original jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338(a). This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Pinpoint because Pinpoint is organized under the laws of the State of Texas and its principal place of business is located within this District.

8. As such, this Court's exercise of personal jurisdiction over Pinpoint is consistent with the Constitutions of the United States of America and the State of Texas.

9. Venue is proper in this judicial district under at least 28 U.S.C. §§ 1391 and 1400.

**FACTUAL BACKGROUND**

10. Sundesa's technological innovations are protected by, *inter alia*, a portfolio of utility and design patents.

11. Runway Blue is the owner by assignment of United States Design Patent No. D510,235 ("235 Patent").

12. Sundesa is an exclusive licensee of the '235 Patent and has been granted all rights thereunder, including the right and standing to enforce the '235 Patent.

13. Runway Blue is also the owner by assignment of United States Design Patent No. D644,065 (“’065 Patent”) (the ’235 Patent and the ’065 Patent collectively hereinafter the “Asserted Patents”).

14. Sundesa has marked all products embodying the claims of the ’235 Patent since introduction to the market.

15. Sundesa is an exclusive licensee of the ’065 Patent and has been granted all rights thereunder, including the right and standing to enforce the ’065 Patent.

16. Pinpoint is in the business of selling promotional products and accessories. In particular, Pinpoint sells and offers for sale, *inter alia*, shaker cups examples of which are pictured below (the “Accused Products”):



17. The Accused Products include all shaker cups sold by Pinpoint that include the same, or similar, design as those pictured hereinabove.

18. Pinpoint had pre-suit knowledge of the ’235 Patent at least because of Sundesa’s marking of its products that embody the claims of the ’235 Patent.

19. Furthermore, on December 5, 2016, Sundesa sent a letter to Pinpoint that identified the '235 Patent and Pinpoint's infringement of the same. This letter included a courtesy copy of the '235 Patent.

20. Thus, Pinpoint has had actual knowledge of the '235 Patent since at least as early as December 5, 2016.

21. Pinpoint has had actual knowledge of the '065 Patent since at least as early as September 12, 2017.

**FIRST CLAIM FOR RELIEF**  
**(Infringement of the '235 Patent)**

22. By this reference, Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

23. Pinpoint has infringed, and continues to infringe, the '235 Patent by manufacturing, using, offering to sell, selling, or importing, in this District, and elsewhere in the United States, the Accused Products, the design of which is substantially the same as the design of the '235 Patent.

24. The designs of the Accused Products are so similar to the design that is the subject matter of the '235 Patent that customers are likely to be deceived and persuaded to buy the Accused Product thinking they are actually buying products protected by the '235 Patent.

25. Pinpoint's actions constitute infringement of the '235 Patent in violation of 35 U.S.C. § 271.

26. Sundesa has sustained damages and will continue to sustain damages as a result of Pinpoint's aforementioned acts of infringement.

27. Sundesa is entitled to recover damages sustained as a result of Pinpoint's wrongful acts in an amount to be proven at trial.

28. Pinpoint's infringement of Sundesa's rights under the '235 Patent will continue to damage Sundesa's business causing irreparable harm, for which there is no adequate remedy at law, unless Pinpoint is enjoined by this Court.

29. Pinpoint has willfully infringed the '235 Patent, entitling Sundesa to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

30. Alternatively, Sundesa is entitled to recover Pinpoint's total profits from its sale of the Accused Products under 35 U.S.C. § 289.

**SECOND CLAIM FOR RELIEF  
(Infringement of the '065 Patent)**

31. By this reference, Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

32. Pinpoint has infringed, and continues to infringe, the '065 Patent by manufacturing, using, offering to sell, selling, or importing, in this District, and elsewhere in the United States, the Accused Products, the design of which is substantially the same as the design of the '065 Patent.

33. The designs of the Accused Products are so similar to the design that is the subject matter of the '065 Patent that customers are likely to be deceived and persuaded to buy the Accused Product thinking they are actually buying products protected by the '065 Patent.

34. Pinpoint's actions constitute infringement of the '065 Patent in violation of 35 U.S.C. § 271.

35. Sundesa has sustained damages and will continue to sustain damages as a result of Pinpoint's aforementioned acts of infringement.

36. Sundesa is entitled to recover damages sustained as a result of Pinpoint's wrongful acts in an amount to be proven at trial.

37. Pinpoint's infringement of Sundesa's rights under the '065 Patent will continue to damage Sundesa's business causing irreparable harm, for which there is no adequate remedy at law, unless Pinpoint is enjoined by this Court.

**THIRD CLAIM FOR RELIEF**  
**(State Law Unfair Competition, Utah Code Ann. § 13-5a-102(4))**

38. By this reference Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

39. Pinpoint has infringed, and continues to infringe, Sundesa's intellectual property by manufacturing, using, offering to sell, selling, or importing the Accused Products in this District and elsewhere in the United States.

40. Pinpoint's actions constitute patent infringement in violation of 35 U.S.C. § 271.

41. Sundesa has suffered injury in fact and has lost money or property as a result of Pinpoint's unfair and unlawful business practices in the form of damage to its good will, lost sales, and other actual damages, including material diminution in the value of Sundesa's intellectual property.

42. Because Pinpoint had pre-suit knowledge of the '235 Patent, by its continued infringing conduct, Pinpoint has engaged in unfair competition against Sundesa in willful and deliberate disregard of the rights of Sundesa and the consuming public.

43. As such, Pinpoint's infringing acts constitute an unlawful and unfair business act/practice in violation of Utah Code Ann. § 13-5-101, *et seq.*

**PRAYER FOR RELIEF**

Sundesa prays for relief as follows:

- a. A judgment finding Pinpoint liable for infringement of the claims of the '235 Patent.
- b. A judgment finding Pinpoint liable for infringement of the claims of the '065 Patent.
- c. A judgment finding Pinpoint liable for unfair competition, and unlawful or unfair business practices in violation of Utah Code Ann. § 13-5a-101, *et. seq.*;
- d. Orders of this Court directing Pinpoint to make an accounting for the total number of Accused Products that they made, used, sold, offered for sale, or imported into the United States.
- e. Orders of this Court temporarily, preliminarily, and permanently enjoining Pinpoint, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner, the claim of the '235 Patent, pursuant to at least 35 U.S.C. § 283;
- f. Orders of this Court temporarily, preliminarily, and permanently enjoining Pinpoint, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner, the claim of the '065 Patent, pursuant to at least 35 U.S.C. § 283;
- g. Orders of this Court temporarily, preliminarily, and permanently enjoining Pinpoint, its principals, agents, and servants, and any and all persons or entities acting in concert with any of them from engaging in unfair business practices, pursuant to at least Utah Code Ann. § 13-5a-101, *et seq.*;

- h. An award of damages adequate to compensate Sundesa for Pinpoint's infringement of the '235 Patent, in an amount to be proven at trial, or in the alternative, an award of Pinpoint's total profits under 35 U.S.C. § 289;
- i. An award of damages adequate to compensate Sundesa for Pinpoint's infringement of the '065 Patent, in an amount to be proven at trial, or in the alternative, an award of Pinpoint's total profits under 35 U.S.C. § 289;
- j. An award of treble Sundesa's damages, pursuant to at least 35 U.S.C. § 284;
- k. A declaration that this is an exceptional case and that Sundesa be awarded its attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285;
- l. An award of Sundesa's costs in bringing this action, pursuant to all applicable state statutory and common law, including at least 35 U.S.C. § 284;
- m. An award of Sundesa's attorneys' fees pursuant to all applicable state and statutory common law;
- n. Prejudgment interest pursuant to at least 35 U.S.C. § 284;
- o. Post-judgment interest pursuant to at least 28 U.S.C. § 1961(a); and
- p. For such other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38, Sundesa demands TRIAL BY JURY of all issues so triable, whether presented by Pinpoint's claims against Sundesa, Sundesa's Amended Complaint against Pinpoint, or otherwise.



Dated: September 21, 2017

By: /s/ Larry R. Laycock  
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Attorneys for Plaintiffs Sundesa, LLC and  
Runway Blue, LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically through the Court's ECF system in compliance with Local Rule 5.1. As such, this document was served on all counsel of record who are deemed to have consented to electronic service.

Dated: September 21, 2017

By: /s/ Larry R. Laycock