

EXHIBIT 1026

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 9:22-cv-81977

VPR BRANDS, LP,

Plaintiff,

v.

IMIRACLE HK LIMITED and HEAVEN
GIFTS INTERNATIONAL LIMITED,

Defendants.

**COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND
PATENT INFRINGEMENT**

(INJUNCTIVE RELIEF DEMANDED)

SRIPLAW

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iMiracle Exhibit 1026

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Plaintiff VPR BRANDS, LP by and through its undersigned counsel, brings this Complaint against Defendants iMiracle HK Limited and Heaven Gifts International Limited for damages and injunctive relief, and in support thereof states as follows:

NATURE OF THE LAWSUIT

1. Plaintiff VPR BRANDS, LP (“VPR”) brings this action for trademark infringement and unfair competition arising under the Federal Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1125(a) and under Florida common law, to enjoin and obtain damages resulting from the Defendants’ unauthorized marketing, advertising, promotion, sale, and importation of e-cigarette products that infringe Plaintiff’s United States Trademark Registration No. 5,486,616 for ELF for electronic cigarettes (“ELF Mark”). Plaintiff seeks preliminary and permanent injunctive relief to prevent Defendants from continuing to infringe Plaintiff’s ELF Mark, and monetary damages resulting from Defendants’ past and ongoing infringement.

2. This is also an action is for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendants’ unauthorized manufacture, use, sale, offer to sell and importation into the United States for subsequent use and sale of electronic cigarette products that infringe one or more claims of United States Patent Number 8,205,622 entitled “Electronic Cigarette.” Plaintiff seeks permanent injunctive relief and monetary damages resulting from Defendants’ infringement.

JURISDICTION AND VENUE

3. This is an action arising under the Lanham Act, 15 U.S.C. § 1114.

4. This is also an action arising under the Patent Act.

5. This Court has original and exclusive subject matter jurisdiction over this action pursuant to 35 U.S.C. § 271.

6. This Court also has subject matter jurisdiction over the claims herein pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendants are subject to personal jurisdiction in Florida pursuant to Fla. Stat. § 48.193 because Defendants market, advertise, distribute, and sell trademark infringing products in this judicial district to consumers in this judicial district, and Defendants' trademark infringement and unfair competition caused injury to Plaintiff in this judicial district.

8. According to the statements made by defendant IMIRACLE (HK) LIMITED in fifty-eight (58) separate complaints for trademark infringement it filed in the Southern and Middle Districts of Florida this month¹, the company has marketed and sold nicotine vaporizing products "to authorized stores in the United States, including in Florida" thereby subjecting it to personal jurisdiction in Florida.

9. According to the statements made by defendant HEAVEN GIFTS INTERNATIONAL LIMITED on its website, in its marketing materials, on LinkedIn.com, and elsewhere, it is one of the largest if not the largest wholesaler of nicotine vaporizing products to distributors in the United States, including in Florida, thereby subjecting it to personal jurisdiction in Florida.

10. Venue for Plaintiff's Lanham Act claims is proper in this district under 28 U.S.C. § 1391(b) and (c) because the events giving rise to the claims occurred in this district,

¹ A list of complaints filed by defendant IMIRACLE (HK) LIMITED is attached hereto as Exhibit 4. It appears that iMiracle HK decided to flood this district and the middle district with complaints against 58 defendants instead of making complaints to the Florida Department of Law Enforcement concerning defendants for forging or counterfeiting private labels in violation of § 831.03, Florida Statutes, or to the Federal Bureau of Investigation for violations of 18 U.S.C. § 2318 for trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging. Why they chose to flood the Florida federal courts with these cases instead of bringing their violations to the attention of law enforcement is currently unknown, but arguably the fact that iMiracle HK and its affiliated companies do not currently own or exclusively license the ELF Mark would present a significant impediment to their obtaining law enforcement cooperation in pursuing counterfeiters.

Defendants engaged in infringement in this district, and Defendants are subject to personal jurisdiction in this district.

THE PLAINTIFF

11. Plaintiff, VPR Brands, LP (“VPR”), is a Delaware limited partnership with its principal place of business in this judicial district, located at 1141 Sawgrass Corporate Parkway, Sunrise, FL 33323.

12. VPR is a market leader and pioneer engaged in product development for the vaping market, including e-liquids, vaporizers, and electronic cigarettes (also known as e-cigarettes) which are devices that deliver nicotine and or cannabis through atomization or vaping, and without smoke and other chemical constituents typically found in traditional products.

13. VPR is in the business of creating, designing, and distributing innovative electronic cigarette technologies and other related technologies. VPR is also in the business of creating valuable e-cigarette brands.

14. VPR has been successful in building valuable intellectual property due, at least in part, to the extensive experience of CEO Kevin Frija’s extensive experience in the e-cigarette industry. Frija began working in the e-cigarette business in 2008. In 2009, Frija became the President and Chief Executive Officer of Vapor Corp., one of the first U.S. importers and first publicly traded electronic cigarette companies. Frija helped grow Vapor Corp. into one of the largest and most recognized electronic cigarette companies at the time.

THE PLAINTIFF’S ELF TRADEMARK

15. As early as November 24, 2017, VPR first used the mark ELF in commerce in relation with electronic cigarettes.

16. Beginning on November 24, 2017, VPR began marketing a line of electronic cigarettes and electronic cigarette accessories under the **ELF** brand name and logo. On

November 24, 2017, VPR first used the ELF mark in commerce in connection with VPR's sale of electronic cigarettes and accessories.

17. On June 5, 2018, VPR obtained the United States Trademark Registration No. 5,486,616 for ELF in International Class 34 for use in connection with "Electronic cigarette lighters; Electronic cigarettes; Smokeless cigarette vaporizer pipe." (the "ELF Mark" or "'616 Registration"). **Exhibit 1** annexed hereto is a true and correct copy of the ELF registration.

18. VPR's ELF Mark is entitled to a presumption of validity. 15 U.S.C. § 1057(b); 15 U.S.C. § 1115(a); *see also Welding Servs., Inc. v. Forman*, 509 F.3d 1351, 1357 n.3 (11th Cir. 2007) ("Registration establishes a rebuttable presumption that the marks are protectable or 'distinctive.'").

19. ELF is an arbitrary mark that had no significance in the electronic cigarette business prior to VPR's usage of the mark.

20. Because the ELF Mark is an arbitrary mark it deserves greater trademark protection.

21. VPR currently markets two product lines under the ELF brand. One product line consists of the ELF Original Auto Draw Conceal Kit products. The ELF Original Auto Draw Conceal Kit is a reusable (non-disposable) bar-shaped e-cigarette featuring a buttonless design, high-capacity battery, and a high-end aluminum body in a variety of colors. The ELF Original Auto Draw Conceal Kit is compatible with all industry standard refillable 510 mouthpieces.

22. An example of VPR's ELF-branded hand-held vaporizing device is shown in **Exhibit 2**, a true and correct copy of the specimen submitted to the United States Patent and Trademark Office ("USPTO") to obtain the ELF Mark registration.

23 An example of the ELF Original Auto Draw Conceal Kit product bearing the ELF mark is shown below.



24 The other ELF product line consists of high-capacity e-cigarette batteries designed to be connected to industry standard refillable 510 mouthpieces. Example products bearing the ELF mark are shown below.



25 VPR's ELF Mark is highly distinctive, and the purchasing public equates the ELF Mark with Plaintiff's high-quality goods and services.

26 VPR markets and sells its ELF devices on its publicly available website
<https://vprbrands.com/>

27 VPR also sells its ELF e-cigarette products and e-cigarette accessory products
through retailers nationwide.

28 VPR was the first to use the mark ELF in connection with ELF e-cigarette
products and e-cigarette accessory products. Prior to VPR's use of the ELF mark, no other e-
cigarette brand used the ELF mark for e-cigarettes or accessories.

29 ELF is an arbitrary mark that had no significance in the electronic cigarette
industry.

30 VPR chose the arbitrary and unique ELF mark to signify to its consumers its ELF
e-cigarette products and e-cigarette accessory products from other devices on the market.

31 VPR continually and exclusively used the ELF mark for ELF e-cigarette products
and e-cigarette accessory products to date. VPR has continuously used the ELF Mark in
commerce to distinguish its e-cigarette products and e-cigarette accessory products since 2017.

32 VPR has never licensed the use of the ELF Mark to anyone for use with e-
cigarette products or e-cigarette accessory products.

33 VPR's ELF mark is distinctive, and the purchasing public equates Plaintiff's
Mark with Plaintiff's high-quality goods and services.

34 VPR expended significant resources to market ELF e-cigarette products and e-
cigarette accessory products to consumers.

35 VPR's ELF mark is widely recognized by consumers of e-cigarette products and
e-cigarette accessory products.

36. VPR's ELF mark is well known by national distributors of e-cigarette products and e-cigarette accessory products.

37. VPR's ELF mark signifies the highest industry standards for e-cigarette products and e-cigarette accessory products.

38. VPR's ELF mark serves as an indication of origin, source, and quality for consumers and distributors of e-cigarette products and e-cigarette accessory products.

39. VPR carefully monitors and controls the use of the ELF mark to ensure that only the highest quality e-cigarette products and e-cigarette accessory products carry the ELF brand.

40. At all times relevant, VPR was the senior user of the ELF Mark in the United States.

DEFENDANTS

41. IMIRACLE (HK) LIMITED ("iMiracle HK") is a Hong Kong Limited Liability Company that has its principal place of business in Hong Kong, China. iMiracle is a Chinese seller or distributor of vaporizers and e-cigarettes.

42. iMiracle HK is an affiliate of SHENZHEN IMIRACLE TECHNOLOGY CO. LTD. ("Shenzhen iMiracle"), a Chinese limited company with its principal place of business at RM 306-311, Tianshuzuo, No. 6099 Bao'an Avenue, Bao'an District, Shenzhen, CHINA 518000. iMiracle Shenzhen is a Chinese manufacturer of vaporizers and e-cigarettes.

43. iMiracle HK and Shenzhen iMiracle are both affiliates of SHENZHEN WEIBOLI TECHNOLOGY CO. LTD. ("Weiboli") which is located at the same address as Shenzhen iMiracle. Weiboli is a Chinese manufacturer of vaporizers and e-cigarettes.

44. Heaven Gifts International Limited ("Heaven Gifts") is a Hong Kong registered company with its registered office at 19H Maxgrand Plaza, No.3 Tai Yau Street, San Po Kong,

Kowloon Hong Kong. Heaven Gifts is an international wholesaler of vaporizers and e-cigarettes. Heaven Gifts operates the website at www.heavengifts.com.

~~45~~ Weiboli is currently a defendant in another case pending in this district entitled *VPR Brands, L.P. v. Shenzhen iMiracle Technology Co. Ltd., YLSN Distribution LLC, Ecto World LLC, Safa Goods LLC, D&A Distribution LLC, Unishow (U.S.A.), Inc., Sv3 LLC, and Kingdom Vapor Inc.*, Case No. 9:22-cv-81576, filed on October 13, 2022 (the “Weiboli Case”).

~~46~~ Shenzen iMiracle is currently a defendant in another case pending in this district entitled *VPR Brands, L.P. v. Shenzhen iMiracle Technology Co. Ltd., YLSN Distribution LLC, Ecto World LLC, Safa Goods LLC, D&A Distribution LLC, Unishow (U.S.A.), Inc., Sv3 LLC, and Kingdom Vapor Inc.*, Case No. 9:22-cv-81943, filed on December 16, 2022 (the “Shenzhen iMiracle Case”).

FALSE STATEMENTS MADE BY iMIRACLE HK IN ITS LAWSUITS FILED IN THE MIDDLE DISTRICT OF FLORIDA

~~47.~~ Exhibit 4 lists the fifty-eight (58) separate complaints for trademark infringement filed by defendant IMIRACLE (HK) LIMITED in the Southern and Middle Districts of Florida this month as of the date of the filing of this complaint.

~~48~~ The complaints filed by iMiracle HK are all substantially identical.

~~49~~ The complaints allege two counts under the Lanham Act: trademark infringement in violation of 15 U.S.C. § 1114 (Count I), and “false designation of origin and unfair competition,” also described as “false designation of origin and misleading description and representation of fact” in violation of 15 U.S.C. § 1125(a). The complaints do not indicate which subsections of § 1125(a) are being alleged, § 1125(a)(1)(A) or (B).

~~50.~~ The complaints in the fifty-eight cases are all based on a logo-mark trademark registration number 6,555,255 that iMiracle falsely describes as the “ELFBAR brand in the

United States” and the “well-known trademark ‘ELFBAR’” even though the mark claimed is not does not consist of English characters and does not spell out “ELFBAR.” Rather, the mark at issue in the fifty-eight complaints is a logo consisting of three circles above four leaves that looks nothing like an elf but looks like this:



51. The fifty-eight complaints filed by iMiracle falsely allege that “IMIRACLE has used the ELFBAR Mark in commerce throughout the United States, continuously, **since 2018**, in connection with the manufacturing of E-cigarette Vapes and accessories,” even though the trademark application for the logo-mark shown above does not claim use going back to 2018, and instead indicates that the first use of the logo-mark anywhere was 07/08/2020 and the first use in commerce in the U.S. was 09/29/2020, and even though Weiboli only introduced the ELFBAR product in the United States in 2021.

52. The fifty-eight complaints filed by iMiracle falsely allege that “since 2018, IMIRACLE has marketed and sold nicotine vaporizing products using” the logo-mark, that “since 2018, IMIRACLE has worked to build significant goodwill for the ELFBAR brand in the United States,” and that “for approximately four years, IMIRACLE has worked to distinguish the ELFBAR brand” even though products bearing the name ELFBAR were only sold in the United States starting in mid-2021.

53. The fifty-eight complaints filed by iMiracle falsely claim that the logo-mark that they deceptively call the “ELFBAR Mark” “is distinctive to both the consuming public and the Plaintiff’s trade” when it is not distinctive at all.

54. The fifty-eight complaints filed by iMiracle falsely claim that “IMIRACLE has proactively and successfully policed the unauthorized use of the ELFBAR Mark and/or counterfeit ELFBAR branded products nationwide,” when it has not.

55. iMiracle HK received an assignment of the logo-mark registered as registration number 6,555,255 from Weiboli on August 23, 2022. That assignment transferred only the logo-mark registered as registration number 6,555,255 mark and the goodwill associated with the logo-mark registered as registration number 6,555,255, and not any assets associated with the actual ELFBAR business defendants engage in as alleged in this complaint.

TRADEMARK INFRINGEMENT BY DEFENDANTS

56. Defendants iMiracle HK and Heaven Gifts are wholesalers and distributors of electronic cigarettes products who sell and distribute electronic cigarettes in commerce in the United States.

57. iMiracle HK and Heaven Gifts sell at wholesale and distribute ELFBAR and LOST MARY DESIGNED BY ELFBAR electronic cigarettes throughout the United States, including in Florida, by selling on a wholesale basis to distributors who sell to retailers and consumers in this jurisdiction.

58. iMiracle and Heaven Gifts, use the registered ELF Mark in interstate commerce in connection with the advertising, marketing, and sale of ELFBAR and LOST MARY DESIGNED BY ELFBAR without the consent, authorization, license or permission of VPR.

59. iMiracle and Heaven Gifts are the junior users of the ELF Mark for electronic cigarettes in the United States.

60. Defendants advertise, market, promote, offer for sale, distribute, and sell hand-held electronic cigarette products under the ELFBAR and LOST MARY DESIGNED BY ELFBAR names throughout the United States, including in this judicial district.

61. The ELFBAR and LOST MARY DESIGNED BY ELFBAR names use Plaintiff's registered ELF word mark in conjunction with the word "BAR."

62. The ELFBAR and LOST MARY DESIGNED BY ELFBAR names combine VPR's registered trademark ELF with the word bar that means a "substance formed into a regular narrow block," like a chocolate bar.

63. The shape of the ELFBAR and LOST MARY DESIGNED BY ELFBAR products are bar shaped, therefore the word BAR is merely descriptive of the shape of the ELFBAR and LOST MARY DESIGNED BY ELFBAR electronic cigarettes.

64. The word "bar" is commonly used to refer to bar shaped e-cigarettes such as Geek Bar, Air Bar, and Puff Bar. As a result, the addition of the word "bar" added to "elf" fails to distinguish VPR's ELF e-cigarette products from ELFBAR and LOST MARY DESIGNED BY ELFBAR products.

65. The shape of the ELF Original Auto Draw Conceal Kit product is also bar shaped. The ELFBAR and LOST MARY DESIGNED BY ELFBAR products copied the shape of VPR's product.

66. Defendants' ELFBAR and LOST MARY DESIGNED BY ELFBAR names are confusingly similar to Plaintiff's ELF Mark as applied to e-cigarette products, and is likely to cause confusion among consumers, retailers and distributors in the United States.

67. The ELFBAR and LOST MARY DESIGNED BY ELFBAR names are confusingly similar to Plaintiff's registered ELF mark as applied to e-cigarette products.

68. The ELFBAR and LOST MARY DESIGNED BY ELFBAR names are causing actual confusion among consumers, retailers and distributors of e-cigarettes in the United States.

69. At least as early as July 19, 2021, defendants, through its affiliate and/or its business relationship with Weiboli, had knowledge of VPR's ELF mark, and was on notice that ELFBAR and LOST MARY DESIGNED BY ELFBAR products are likely to cause confusion with VPR's ELF Mark in the United States.

70. On December 31, 2020, Weiboli filed an application with the USPTO to register the mark "ELFBAR" for electronic cigarettes.

71. On July 19, 2021, the USPTO issued an Office Action rejecting Weiboli's ELFBAR application, under section 2(d), based on a likelihood of confusion with Plaintiff's ELF Mark. The Office Action stated, in part, "the marks are confusingly similar because applicant's mark ELFBAR creates an overall similar commercial impression with the registered mark ELF. Because the marks look and sound similar and create the same commercial impression, the marks are considered similar for likelihood of confusion purposes."

72. Weiboli did not respond to the July 19, 2021, Office Action, and its application to register the ELFBAR mark was abandoned as of January 20, 2022.

73. Despite the USPTO's rejection of the ELF BAR trademark application, defendants entered the market in the U.S. with its infringing ELFBAR and LOST MARY DESIGNED BY ELFBAR products.

74. Defendants entered the market knowing that they were selling products under marks that were confusingly similar to VPR's ELF mark.

~~75.~~ Beginning in December of this year, VPR first became aware of disposable e-cigarette products being marketed and sold in the United States by defendants using the ELF mark.

~~76.~~ The ELFBAR and LOST MARY DESIGNED BY ELFBAR names are causing confusion among consumers, retailers and distributors of e-cigarettes in the United States.

~~77.~~ VPR has been harmed.

~~78.~~ The harm to VPR is irreparable.

THE PLAINTIFF'S PATENT

~~79.~~ VPR owns all right, title and interests in, and/or has standing to sue for infringement of United States Patent Number 8,205,622 (the "'622 Patent") entitled "Electronic Cigarette." A copy of the '622 Patent is attached hereto as **Exhibit 3**.

~~80.~~ The '622 Patent discloses an electronic cigarette consisting of an electronic inhaler and an electronic atomizer.

~~81.~~ The electronic inhaler contains a rechargeable or non-rechargeable power source such as a battery, which supplies electric power to the electronic inhaler. In addition to the power source, the inhaler also includes an electric airflow sensor to detect air movement generated by a user's inhaling or puffing act. The sensor's role is to collect an airflow signal that triggers the electronic cigarette to supply electric power to the inhaler and atomizer connected through an electric connector.

~~82.~~ Inside the electronic atomizer are an electric connector, electric heating wire, liquid container, and atomizer cap with an air-puffing hole. The user inhales through the air puffing hole at an end of the electronic cigarette to create an air inflow, which triggers the atomization process that converts a solution to a gas emulating the smoking process.

DEFENDANT iMIRACLE'S PATENT INFRINGEMENT

¶3. Defendant iMiracle makes, uses, imports, offers for sale, distributes and sells one or more electronic cigarette products that practice all the steps of at least one claim of the '622 Patent.

¶4. The electronic cigarette products that infringe the '622 Patent are branded as ELFBAR and LOST MARY DESIGNED BY ELFBAR.

¶5. ELFBAR and LOST MARY DESIGNED BY ELFBAR products are electronic cigarettes that contain a rechargeable battery that functions as a power source which supplies electric power to an electronic inhaler. In addition to the power source, the inhaler also includes an electric airflow sensor to detect air movement generated by a user's inhaling or puffing act.

¶6. ELFBAR and LOST MARY DESIGNED BY ELFBAR products also contain an electronic atomizer with an electric connector, electric heating wire, liquid container, and atomizer cap with an air-puffing hole.

¶7. The user inhales through the air puffing hole at an end of the ELFBAR and LOST MARY DESIGNED BY ELFBAR to create an air inflow, which triggers the atomization process that converts a solution to a gas emulating the smoking process.

¶8. The electronic cigarette products that defendants make, use, import, offer for sale, distribute and sell under the ELFBAR and LOST MARY DESIGNED BY ELFBAR brand names infringe one or more claims of the '622 Patent.

¶9. Defendant iMiracle makes, uses, imports, offers for sale, distributes and sells electronic cigarette products under other brand names that are substantially similar to the ELFBAR and LOST MARY DESIGNED BY ELFBAR products, function in the same way as the ELFBAR and LOST MARY DESIGNED BY ELFBAR iMiracle makes, uses, imports, offers for sale, distributes and sells, and infringe one or more claims of the '622 Patent.

90. At all times during which defendant iMiracle imported, made, used, offered to sell and sold electronic cigarette products that infringe one or more claims of the '622 Patent, defendant had knowledge of the '622 Patent.

91. Plaintiff has been irreparably harmed by defendant iMiracle's infringement of VPR's valuable patent rights.

92. Defendant iMiracle's unauthorized, infringing use of VPR's patented electronic cigarette has threatened the value of VPR's intellectual property because defendant's conduct results in VPR's loss of its lawful patent rights to exclude others from importing, making, using, selling, offering to sell and/or importing the patented inventions.

93. Defendant's disregard for VPR's property rights similarly threatens VPR's relationships with potential licensees of this intellectual property.

94. Defendant will derive a competitive advantage from using VPR's patented technology without paying compensation for such use.

95. Unless and until defendant's continued acts of infringement are enjoined, VPR will suffer further irreparable harm for which there is no adequate remedy at law.

COUNT I - TRADEMARK INFRINGEMENT UNDER SECTION 32(a) OF THE
LANHAM ACT, 15 U.S.C. § 1114(a)
AGAINST ALL DEFENDANTS

96. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 95 as if set forth fully herein.

97. VPR registered the ELF Mark, in International Class 34 for use in connection with electronic cigarettes, with the USPTO on June 5, 2018 and was assigned the registration number 5,486,616.

98. At all relevant times VPR was the owner of the ELF Mark at issue in this case.

99. Defendants' use of the ELFBAR and LOST MARY DESIGNED BY ELFBAR marks and similar marks containing ELF and ELFBAR in connection with electronic cigarettes is likely to cause confusion in the marketplace.

100. Defendants' infringement of Plaintiff's ELF Mark is willful, and done with knowledge that their use of ELFBAR and LOST MARY DESIGNED BY ELFBAR is likely to cause confusion in the marketplace.

101. Defendants' activities alleged in this Count have been without license, permission, or authorization from VPR.

102. The activities of Defendants as set forth in this Count have been to the injury, detriment and irreparable harm to VPR.

103. Unless enjoined, Defendants' infringement will continue to harm VPR's valuable registered trademark rights.

**COUNT II - TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
AND UNFAIR COMPETITION UNDER SECTION 43(a) OF THE LANHAM ACT, 15
U.S.C. § 1125(a) AGAINST ALL DEFENDANTS**

104. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 95 as if set forth fully herein.

105. At all relevant times VPR was the owner of the ELF Mark at issue in this case.

106. Defendants used plaintiff's ELF mark to promote the sale of electronic cigarette products in interstate commerce under the names ELFBAR and LOST MARY DESIGNED BY ELFBAR.

107. Defendants' use of plaintiff's ELF mark is a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, because Defendants have never been licensed or otherwise authorized to use Plaintiff's ELF Mark for any purpose.

~~108.~~ Defendants' use of plaintiff's ELF mark is a false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, mistake, or deceive consumers as to the affiliation, connection, or association of VPR with the Defendants.

~~109.~~ Defendants' use of plaintiff's ELF mark is a false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, mistake, or deceive as to the origin, sponsorship, or approval by VPR of Defendants' goods.

110. Defendants' use of plaintiff's ELF mark is a false designation of origin, false or misleading description of fact, or false or misleading representation of fact that Defendants' use in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of Defendants' ELFBAR and LOST MARY DESIGNED BY ELFBAR products.

111. The activities of Defendants as set forth in this Count have been to the injury, detriment and irreparable harm to VPR.

112. Unless enjoined, Defendants' unfair competition will continue to deceive the public and injure competition.

COUNT III- COMMON LAW UNFAIR COMPETITION
AGAINST ALL DEFENDANTS

113. VPR incorporates the allegations of paragraphs 1 through 95 as if fully set forth herein.

114. At all relevant times VPR was the owner of the ELF Mark at issue in this case.

115. Defendants used plaintiff's ELF mark to promote the sale of electronic cigarette products under the names ELFBAR and LOST MARY DESIGNED BY ELFBAR.

116. Defendants' use of the ELF mark is unfair and injures competition.

117. Defendants' activities alleged in this Count have been without license, permission, or authorization from VPR.

118. Defendants' activities alleged herein constitute unfair methods of competition in violation of the common law of the state of Florida.

119. As a direct and proximate result of Defendants' unfair competition, VPR has suffered and will continue to suffer loss of reputation among its purchasers and potential purchasers, and Defendants will continue to unfairly acquire income, profits, and goodwill.

120. VPR has been damaged.

121. The damage to VPR is irreparable.

122. Unless enjoined, Defendants' unfair competition will continue to deceive the public and injure competition.

COUNT IV- DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,205,622
AGAINST DEFENDANT iMIRACLE

123. VPR incorporates the allegations of paragraphs 1 through 95 as if fully set forth herein.

124. Within the six years preceding the filing of the original Complaint, defendant iMiracle directly infringed at least one claim of U.S. Patent No. 8,205,622 by the activities referred to in herein in violation of 35 U.S.C. § 271(a).

125. Without limiting the foregoing, defendant iMiracle infringed at least claim 13 of the '622 Patent by making, using, distributing, importing, offering to sell and selling ELFBAR and LOST MARY DESIGNED BY ELFBAR branded electronic cigarettes.

126. Defendant iMiracle's activities alleged in this Count have been without license, permission, or authorization from VPR.

127. The activities of defendant iMiracle as set forth in this Count have been to the injury, detriment and irreparable harm to VPR.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff VPR Brands, LP prays for judgment against the Defendants iMiracle HK Limited and Heaven Gifts International Limited, that:

- a. Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 15 U.S.C. § 1114 and § 1125;
- b. Defendants be required to pay Plaintiff its damages including lost sales and Defendants' profits as provided in 15 U.S.C. § 1125;
- c. Enter a finding of willful patent infringement against defendant iMiracle under the patent asserted in this Complaint;
- d. Permanently enjoin defendant iMiracle from committing patent infringement;
- e. Award in favor of Plaintiff and against defendant iMiracle such damages as Plaintiff may have suffered but in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284;
- f. Award in favor of Plaintiff and against defendant iMiracle an enhancement of damages;
- g. Award in favor of Plaintiff for treble damages pursuant to 15 U.S.C. § 1117(a);
- h. Find that this is an exceptional case;

- i. Award Plaintiff its attorneys' fees against Defendants under 35 U.S.C. § 285 and 15 U.S.C. § 1117(a);
- j. Award Plaintiff its costs against Defendants,
- k. Plaintiff be awarded pre- and post-judgment interest; and
- l. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: December 27, 2022

Respectfully submitted,

/s/ Joel B. Rothman

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