

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

HYDROJUG INC., a Delaware corporation,

Plaintiff,

v.

FIVE BELOW, INC., a Pennsylvania corporation, and
GOSSI INC. dba GREEN CANTEEN, an Ohio limited
liability company.

Case No: 1:22-cv-728
Judge Pamela A. Barker

Defendants.

_____ /

MOTION FOR PRELIMINARY INJUNCTION UNDER FED. R. CIV. P. 65

Plaintiff Hydrojug, Inc. moves for preliminary injunction to stop Defendants Five Below, Inc. and Gossi Inc. (collectively “Defendants”) from: (a) continuing to infringe the HYDROJUG registered trademark with the AQUAJUG mark; and (b) unlawfully marketing and selling knock-off water bottle lid designs that infringe Hydrojug’s patent:



Defendants’ infringement has generated actual customer confusion—at least sixteen documented incidents in just the past few months. Aside from lost sales, Defendants’ actions have caused irreparable harm including loss of goodwill, price erosion, and damage to Hydrojug’s reputation that monetary compensation alone cannot repair.

Defendants have refused to stop their infringement and thus Hydrojug must seek this Court's assistance.

For these and other compelling reasons described in more detail in the accompanying memorandum, Hydrojug respectfully requests a preliminary injunction.

Respectfully submitted:

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BRIEF IN SUPPORT

I. INTRODUCTION

Given the similarity between defendants' oversized water bottle and Hydrojug's patented and trademarked bottle there can be no doubt that defendants are trying to deliberately confuse customers into buying their bottles mistakenly believing they are Hydrojug bottles. This willful infringement should be stopped.

Hydrojug sells oversized water bottles with a unique product design under its HYDROJUG mark. It was the first business to market with this innovative and distinctive product. Hydrojug owns several trademark registrations for its HYDROJUG mark and a design patent for the bottle's unique lid. Five Below and Gossi compete directly with Hydrojug by selling substantially identical bottles that mimic Hydrojug's product design, colors, logo, and word mark to deliberately confuse the consumers. Hydrojug thus has a very substantial likelihood of showing both trademark and patent infringement.

First, Defendants' use of the AQUAJUG mark is confusingly similar to Hydrojug's trademarked HYDROJUG mark. The marks and their commercial impressions are highly similar, particularly in their stylized form: both adopt a droplet-dumbbell-letter design with highly similar written elements suggesting "water jug." Also, the parties' goods are legally identical. Most significantly, Hydrojug presents **sixteen instances** of actual, documented customer confusion. This is overwhelming evidence of trademark infringement.

Second, Defendants' water bottle lids infringe Hydrojug's patent for its lid. The designs are substantially similar with the same shape, configuration, dimensions, apertures, and loops. Indeed, they were obviously designed to infringe Hydrojug's patent. Moreover, customers are currently confusing these products, thinking one to be the other.

Defendants’ compound infringements have a synergistic effect in generating the customer confusion evidenced in this brief. This confusion is itself irreparable harm and is attended by other irreparable harms to Hydrojug. These include loss of control, goodwill, and brand recognition in the market, price erosion, and damage to Hydrojug’s well-earned reputation for manufacturing a quality product. Indeed, one customer mistakenly contacted *Hydrojug* to complain that *Defendants’* confusingly similar jug was defective and broke—“I bought one at five below and I dropped it and it cracked wide open.” In another example, a Five Below purchaser responded to a Hydrojug advertisement and stated “I bought one at 5 below and it leaked. Took it back.” In response, a potential customer states “ohh ok i started to get one glad i didn’t.” These harms are enduring and cannot be corrected by monetary damages alone.

Moreover, the balance of harms and public interest without question favor an injunction.

Defendants’ infringement is self-inflicted and they have shown no signs of abating their willful infringement despite this suit. Thus, Defendant’s infringement and the irreparable harm it is causing will continue absent an injunction.

II. FACTURAL BACKGROUND

A. The Parties

Hydrojug is a domestic and global retailer of large water bottles for fitness.¹ Hydrojug started selling its signature, half-gallon water bottles in 2016, and thereafter expanded its product line to include water bottle sleeves, straws, electrolyte supplements, and other products. It markets under the HYDROJUG word and logo marks (collectively “the HYDROJUG Mark”). Hydrojug’s water bottles are sold through its website *thehydrojug.com*, Amazon.com, and many brick-and-

¹ Unless otherwise cited, facts are from the accompanying Declaration of Hayden Wadsworth (“Wadsworth Decl.”), and the exhibits thereto.

mortar retail stores such as, for example, TJ Maxx, an “off-price” retailer. Hydrojug’s water bottles typically sell for between \$10 and \$20. Significantly, Hydrojug does not sell its products to or through Five Below.


Five Below is a nationwide discount retailer that emphasizes products with a cost of \$5 or less. Five Below conducts sales through over 1000 brick and mortar retail locations and an ecommerce website—www.fivebelow.com. See https://en.wikipedia.org/wiki/Five_Below. Gossi (dba “Green Canteen”) supplies Five Below. See Complaint, ECF 1, at Ex. C. In March 2022, Five Below began selling (in stores and online) Gossi-supplied, AQUAJUG-branded oversized water bottles *substantially identical* to Hydrojug’s, at a price of \$5:




See also Complaint, ECF 1 & Ex. C. (Hereinafter, the AQUAJUG-branded bottles are referred to as the “Accused Products”.) The Accused Products mimic Hydrojug’s product design, color scheme (teal, pink, gray, and black), logo, and word mark.

B. Trademark Infringement by Five Below and Gossi

Hydrojug has federally registered the HYDROJUG Mark in both word and stylized form:

U.S. Reg. #	Mark	Goods & Services	First Use	Filing Date	Reg. Date
5414493		reusable plastic water bottles sold empty	1.13.17	4.21.17	2.27.18

5870021	HYDROJUG	drinking straws; drinking straws of plastic; insulating sleeve holder for bottles; insulating sleeve holders made of neoprene for jars, bottles or cans; reusable plastic water bottles sold empty	1.13.17	1.29.19	9.24.19
6015313		drinking straws; drinking straws of plastic; insulating sleeve holder for bottles; insulating sleeve holders made of neoprene for jars, bottles or cans; and on-line retail store services featuring hydration products and accessories, namely, water bottles, drinking bottles for sports, and bottle accessories including sleeves, carriers, and straws; on-line retail store services featuring hydration products and accessories, namely, water bottles, drinking bottles for sports, and bottle accessories including sleeves, carriers, and straws	1.13.17	7.9.19	3.17.20

See Complaint, ECF 1, at ¶ 10 & Ex. A.

Hydrojug has extensively advertised the HYDROJUG mark, spending millions of dollars over each of the last three years on platforms like Instagram and Facebook. Hydrojug’s advertising and sales success has garnered substantial recognition and following of the brand. For example, Hydrojug has obtained an active and engaged following of over 469,000 people on Instagram and over 164,000 people in Facebook. Moreover, last year Hydrojug was covered by Forbes and recognized as No. 33 within the Inc. 5000. As a result, customers associate these oversized water bottles with Hydrojug.

Hydrojug’s products may be purchased directly through Instagram and Facebook from photos, videos, and links. Five Below also markets products on Instagram and Facebook and has a Facebook “Shop” through which customers can buy its products. A basic Google search for “Hydrojug” shows the Accused Products for sale next to Hydrojug’s products. Hydrojug is aware of **sixteen** recent instances of actual customer confusion caused by the Accused Products. See Declaration of Mandy Hyer (“Hyer Decl.”), at ¶ 11 and Ex. 1 (#1 - #16). These include:

- Comments on the Hydrojug Addicts Facebook page displaying Five Below/AQUAJUG water bottles and stating that they are from Hydrojug;

“I think it is hydrojug.” (#1)

- Five Below customers contacting Hydrojug to follow-up on their Five Below purchases;

“I bought one at five below and I dropped it and it cracked wide open.” (#6)

- Facebook and Instagram responses to Hydrojug advertising—where Hydrojug’s water bottles are displayed—stating that they are available for purchase and/or were actually purchased at Five Below at much lower cost; and

“They have these at 5 below” (#2)

“Five below sells the same one for 5 bucks” (#3)

“I just seen this exact hydro jug at five below...5.00 3 different colors. . . .same size and logo.” (#4)

“Ya’ll can spend \$5 at five below for this” (#7)

“I just got one at five below for \$5” (#8)

“Five Below got these” (#9)

“Got the same jug at 5 below for \$5” (#10)

“These are at Five Below!” (#11)

“I bought one at 5 below and it leaked. Took it back.” [response:] *“ohh ok I started to get one glad i didn’t”* (#13)

- Facebook and Instagram responses to Hydrojug advertising stating that the HYDROJUG and AQUAJUG marks are the same (*see id.*, Example Nos. 4 & 12).

“I got the same exact jug from 5 and below with the same hydro jug symbol on the front.” (#12)

“I just seen this exact hydo jug [sic] at five below...same size and logo” (#4)

“literally just bought this exact one at five below today...for \$5 ... it’s the same brand and logo so it’s theirs [Hydrojug’s]” (#15)

“5 below has these for \$5 . . . same brand” (#16)

These are just examples found publicly without conducting any formal discovery. Hydrojug is confident that ongoing investigation and/or discovery will reveal many more instances of actual customer confusion from the Accused Products.

Each party sells identical products online and in brick-and-mortar retail locations. *See* Wadsworth Decl., at ¶¶ 4-5 & 15-17. The parties market heavily on social media—including Instagram and Facebook—where the products are offered for sale and where actual confusion is documented herein. Even a basic internet search shows the parties’ products for sale together.

C. Patent Infringement by Five Below and Gossi

Hydrojug’s portfolio of patents and pending patents include U.S. D887,202_(CONTAINER LID) (“the ‘202 Patent”) for its water bottle lid. *See* Complaint, ECF 1, at ¶ 11 & Ex. B. The Accused Products incorporate Hydrojug’s design in the ‘202 Patent:

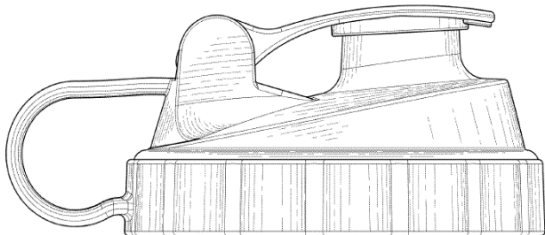
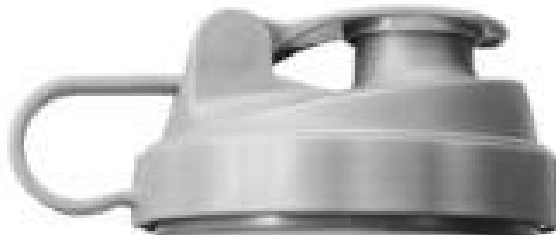


FIG. 4

Figure 4, ‘202 Hydrojug Patent



Gossi/Five Below Aquajug

The Accused Products have the same shape, configuration, dimensions, apertures, and loops as those claimed in the design of the ‘202 Patent. They are, quite simply, knockoffs designed to trade off on Hydrojug’s marketing, goodwill, and reputation.

III. PROCEDURAL BACKGROUND

On April 18, 2022, Hydrojug sent cease-and-desist letters to Five Below’s General Counsel and Gossi’s CEO via personal email. Hydrojug complained of defendant’s trademark and patent infringement and requested that Defendants stop selling the Accused Products. ***Defendants did***

not stop selling the Accused Products, but responded through counsel. The parties' counsel thereafter briefly engaged in settlement discussions. No agreement was reached. ***Defendants continued to sell the Accused Products.*** On May 5, 2022, Hydrojug filed this action. *See* ECF 1. Afterwards, Hydrojug diligently sought service of process of the Defendants, which was completed by May 26, 2022. Defendants then obtained new (current) counsel and requested a 30-day extension to answer. Hydrojug consented. ***Yet, confoundingly, Defendants continue to sell the Accused Products.*** Actual confusion and irreparable harm are occurring and Hydrojug needs a preliminary injunction to prevent further harm.

IV. PRELIMINARY INJUNCTION STANDARD

Courts consider four factors when deciding whether to grant a preliminary injunction:

(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of an injunction.

S. Glazer's Dist. of Ohio v. Great Lakes Brewing Co., 860 F.3d 844, 849 (6th Cir. 2017).

V. DISCUSSION

A. Hydrojug has a Substantial Likelihood of Success on the Merits

1. Hydrojug shows trademark infringement through rights in its mark and a likelihood of confusion based on actual confusion.

Hydrojug establishes trademark infringement with valid rights in its mark and likelihood of confusion grounded in extensive evidence that shows actual confusion.

A party proves trademark infringement by showing (1) that it owns a trademark, (2) that the infringer used the mark in commerce without authorization, and (3) that the use of the alleged infringing trademark is likely to cause confusion among consumers regarding the origin of the goods offered by the parties.

AWGI v. Trucking Co., 998 F.3d 258, 264 (6th Cir. 2021) (quotations and citations omitted).

Hydrojug owns rights in the HYDROJUG Mark pursuant to U.S. Reg. Nos. 5414493, 5870021, and 6015313. The registrations create a presumption that the HYDROJUG mark is protectable and distinctive. 15 U.S.C. §1057(b). The HYDROJUG Mark has been in use in interstate commerce since at least as early as January 2017 in connection with Hydrojug's oversized water bottles and related goods and accessories. Hydrojug continues to use the mark today. Defendants are using their AQUAJUG mark without Hydrojug's authorization.

Likelihood of confusion is shown here by actual confusion among other factors.

To determine whether consumers are likely to be confused about the source of a mark, the court considers eight factors: (1) the strength of the plaintiff's mark; (2) relatedness of the goods or services; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) likely degree of purchaser care; (7) defendant's intent in selecting the mark; and (8) likelihood of expansion of the product lines or services.

AWGI, 998 F.3d at 264 (internal quotations and citations omitted). Significantly, “[n]othing shows the likelihood of confusion more than the fact of actual confusion.” *Id.* (emphasis added).

Examination of the factors here shows likelihood of confusion based on actual confusion.

a. The HYDROJUG Mark is conceptually and commercially strong.

The Hydrojug Mark is strong both conceptually and commercially. “The strength-of-the-mark factor focuses on the distinctiveness of a mark and its recognition among the public.” *Id.* (internal quotations and citations omitted). First, the Hydrojug Mark is conceptually strong because it is at least suggestive in word form and even more distinctive in its stylized form. “Marks are often classified in categories of generally increasing distinctiveness: (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful. Suggestive, arbitrary, and fanciful marks are inherently distinctive and are entitled to protection.” *Id.* Marks that are registered by the USPTO without proof of secondary meaning are presumed distinctive as suggestive, arbitrary, or fanciful (as opposed to descriptive), and therefore strong. *Leelanau Wine Cellars, Ltd. v. Black &*

Red, Inc., 502 F.3d 504, 513-14 (6th Cir. 2007). Stylized marks (e.g. logos) are even more distinctive/strong. *See Time, Inc. v. Petersen Pub. Co.*, 173 F.3d 113, 118 (2d. Cir. 1999) (“[T]he law of trademark accords stronger protection to the stylized version. . . .”); *see also Daddy’s Junky Music Stores, Inc. v. Big Daddy’s Family Music Center*, 109 F.3d 272, 284 (6th Cir. 1997) (“The more distinct a mark, the more likely is the confusion resulting from its infringement and therefore, the protection it is due.”).

The HYDROJUG Mark has been fully examined and federally registered by the USPTO in both word and stylized forms. These registrations were obtained without any showing of secondary meaning. Accordingly, the HYDROJUG Mark is at least suggestive (if not more distinctive) and conceptually strong.

Second, the HYDROJUG Mark is commercially strong because Hydrojug has advertised it extensively and products under the mark have been highly successful. “Proof of marketing may demonstrate commercial strength.” *AWGI*, 998 F.3d at 264. Advertising expenditures alone, or shown in connection with commercial success, may prove commercial strength. *Id.*; *see also Kibler v. Hall*, 843 F.3d 1068, 1074 (6th Cir. 2016). Here, Hydrojug has spent tens of millions of dollars in advertising in the last three years, has acquired hundreds of thousands of social media followers, and been nationally recognized by Forbes and Inc. 5000. *See Wadsworth Decl.*, at ¶¶ 11-12.

b. The goods are legally identical.

As oversized water bottles that are basically knock-offs, the Accused Products are legally identical to Hydrojug’s goods for purposes of confusion analysis. AQUAJUG’s water bottles even incorporate Hydrojug’s patented lid design.

c. *The marks are **very** highly similar.*

The marks at issue are extremely similar. “Similarity of marks is a factor of considerable weight.” *Daddy’s Junky Music Stores*, 109 F.3d at 283. Here, the marks are highly similar in overall appearance, meaning, and commercial impression, as well as visually and phonetically. Specifically, the prefixes of the written elements (HYDRO- and AQUA-) consist of two syllables and suggest “water.” The suffixes are the same, -JUG. In their stylized form, both marks adopt a combined droplet-dumbbell design with a single and similar looking letter (H vs. A) inside. Moreover, the very highly similar word marks are placed below the other design elements and emphasize (or bold) the first portion thereof. The resemblance is unmistakable and explains the actual confusion instances set forth in more detail below.

d. *There is **actual** confusion among customers and the general public.*

Attached with its motion, Hydrojug submits at least *sixteen* specific instances of demonstrated actual customer confusion between the competing products, and has reason to believe a great deal more will be revealed during this action. *See* Decl. of Mandy Hyer. **Again, “[n]othing shows the likelihood of confusion more than the fact of actual confusion.”** *AWGI*, 998 F.3d at 264 (emphasis added). Relevant confusion includes that of purchasers, as well as the general public. *Champions Golf Club, Inc. v. Champions Golf Club*, 78 F.3d 1111, 1119 (6th Cir. 1996).

A single instance of actual confusion may be enough to find in Plaintiff’s favor on this factor. *Innov. Ventures, LLC v. N2G Dist., Inc.*, 763 F.3d 524, 536 (6th Cir. 2014); *see also Daddy’s Junky Music Stores*, 109 F.3d at 284 (finding district court erred in holding that single actual confusion instance didn’t increase likelihood of confusion); *AWGI*, 998 F.3d at 267 (upholding actual confusion from 5 instances).

Hydrojug's at least sixteen instances of actual confusion represent overwhelming proof of likelihood of confusion, particularly given Defendants' recent product release and the early, pre-discovery stage of this action. The statements show textbook confusion:

"I think it is hydrojug."

"I got the same exact jug from 5 and below with the same hydro jug symbol on the front."

"I just seen this exact hydo jug [sic] at five below...same size and logo"

"Five below sells the same one for 5 bucks"

"I bought one at 5 below and it leaked. Took it back." [response:] "ohh ok I started to get one glad i didn't"

"literally just bought this exact one at five below today...for \$5 ... it's the same brand and logo so it's theirs [Hydrojug's]"

"5 below has these for \$5 . . . same brand"

See Hyer Decl., at Ex. 1. "[A]n almost overwhelming amount of proof would be necessary to refute such proof." *Caliber Auto. Liquidators, Inc.*, 605 F.3d 931 at n. 28 (11th Cir. 2010) (quoting *World Carpets, Inc. v. Dick Littrell's New World Carpets*, 438 F.2d 482, 489 (5th Cir. 1971)). Hydrojug is confident that more actual confusion evidence will be found from Defendants as this action proceeds. More importantly, actual confusion and irreparable harm will continue absent injunctive relief.

e. The parties use the same marketing channels.

The parties are direct competitors. See *Daddy's Junky Music Stores*, 109 F.3d at 282 ("[I]f the parties compete directly by offering their goods or services, confusion is likely if the marks are sufficiently similar."). Specifically, each party sells legally identical products online and in brick-and-mortar retail locations. See Wadsworth Decl., at ¶¶ 5-15 & 17-19. The parties market heavily on social media—including Instagram and Facebook—where the products are offered for sale and

where actual confusion is documented herein. Even a basic Google search for “Hydrojug” shows the parties’ products for sale together. In their Answer, Defendants disingenuously deny that the parties compete. *See* ECF 15, pg. 4, ¶ 29.

f. Degree of purchaser care.

It may be presumed that the purchasers exercise only an ordinary level of caution in purchases of water bottles of the type at issue because they are in a common category of goods and bought at a relatively low price. *See AWGI*, 998 F.3d at 267-68. This supports a likelihood of confusion. Even if purchasers were to exercise a greater degree of care, this would not prevent confusion here because the parties’ marks are so similar. *See id.*

g. Defendants reveal bad faith intent to misappropriate Hydrojug’s good will.

Defendants’ comprehensive copying of so much of Hydrojug’s product design, mark, logo, and colors shows bad faith intent to capitalize on Hydrojug’s reputation and good will. “If a party chooses a mark with the intent of causing confusion, that fact alone may be sufficient to justify an inference of confusing similarity.” *Daddy Junky Music Stores*, 109 F.3d at 286. “Direct evidence of intentional copying is not necessary to prove intent.” *Id.*

[U]se of a mark with knowledge of another’s prior use of the mark supports an inference of intentional infringement. . . . where trademarks have been long in use and widely advertised, it is presumed that the infringer had knowledge of the marks.

Wynn Oil Co. v. Am. Way Serv. Corp., 943 F.2d 595, 603 (6th Cir. 1991) (“Moreover, defendants had constructive notice of the mark through its registration.”). Here, the HYDROJUG mark has been used, registered, and widely advertised for years.

Moreover, Defendants’ decision to persist with sales—*after* each of Hydrojug’s cease and desist letters, the filing of this action, and follow-up discussions with counsel—further supports Defendants’ willful, intentional infringement. *Id.* (finding intentional infringement where “defendants continued to use the mark after being notified of [Plaintiff’s] prior use.”); *see also W.*

Union Holdings, Inc. v. Haideri Paan & Cigarettes Corp., 2020 U.S. Dist. LEXIS 38788, 2020 WL 1061653, at *3 & *7 (E.D.N.Y. Mar. 5, 2020) (continuing to use trademark after receiving cease-and-desist letter sufficient to create presumption of intent to confuse market).

h. Likelihood of expansion of product lines or services

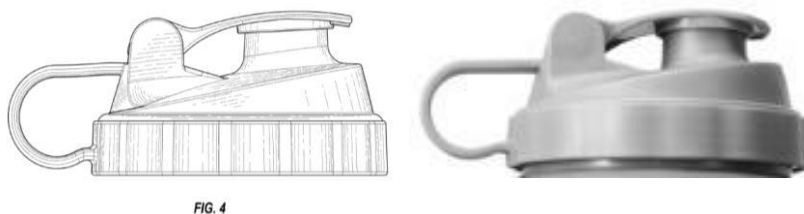
Defendants' expansion into Hydrojug's niche of oversized water bottles is not a likelihood, it is a reality. This factor weighs in favor of likelihood of confusion.

2. Hydrojug shows patent infringement because Defendants' lids are identical to Hydrojug's patented design.

Hydrojug also has a substantial likelihood of showing design patent infringement.

The "ordinary observer" test is used to determine whether a design patent has been infringed. . . . The test inquires whether an accused design appears "substantially the same" as a patented design, such that "an ordinary observer, giving such attention as a purchaser usually gives," would be induced "to purchase one supposing it to be the other."

Super-Sparkly Safety Stuff, LLC v. Skyline USA, Inc., 2020 U.S. App. LEXIS 38852, at *5 (Fed. Cir. Dec. 11, 2020). Defendants' lids infringe because they are identical to Hydrojug's patented design. They have the same shape, configuration, dimensions, apertures, and loops. Moreover, ordinary purchasing customers are currently confusing the two products.



B. Irreparable Harm Results from Defendants' Multifaceted Infringements.

Defendants' compounded infringements result in irreparable harm. First, Hydrojug is entitled to a statutory presumption of irreparable harm from Defendants' trademark infringement. *See* 15 U.S.C. § 116(a). Second, as to patent infringement, irreparable harm may be shown by loss of revenue, brand recognition, goodwill, market position, and price erosion. *See i4i Ltd.*

Partnership v. Microsoft Corp., 598 F.3d 831, 862 (Fed. Cir. 2010); *Lego v. Zuru, Inc.*, 700 Fed. Appx. 823, 834 (Fed. Cir. 2020). Defendants’ multiple infringements overlap in effect and each contribute towards the demonstrated confusion, reputational harm and loss of control, brand recognition, and goodwill in the market. Additionally, Defendants’ design patent infringement is causing price erosion, in large part, because Defendants are discount sellers and offer their knock-off product at a fraction of the cost of Hydrojug’s superior quality product. Therefore, there is a substantial threat of irreparable harm absent injunction.

C. The balance of harm favors Hydrojug’s requested injunction.

The balance of equities weighs heavily in Hydrojug’s favor. Should an injunction not issue, Hydrojug would continue to be irreparably harmed, including but not limited to, ongoing customer confusion, reputational harm and loss of control, loss of Hydrojug goodwill in the market, and price erosion of its water bottles. Moreover, Hydrojug is entitled to the exclusive use of its intellectual property (trademark and patent) rights, and a preliminary injunction would preserve these. On the other hand, the requested injunction would not unreasonably interfere with Defendants’ business. Defendants could sell non-infringing products, under a non-infringing mark, using their own designs and works. Any losses to Defendants in failing to respect Hydrojug’s intellectual property rights are a result of the Defendants’ own wrongdoing. This “self-inflicted” harm, when balanced against the loss of Hydrojug’s irreparable harm, tips the balance of hardships in favor of granting injunctive relief. *See, e.g., Anderson v. TOL, Inc.*, 927 F.Supp.2d 475, 488 (M.D. Tenn. 2013) (holding defendants “harm is self-inflicted and is the natural consequence of its infringing activity”).

D. The public interest is furthered by issuance of an injunction.

The public interest is furthered by issuance of an injunction here. The public interest favors granting the preliminary injunction to protect Hydrojug’s intellectual property rights and to protect

consumers from being misled. *See Lorillard Tobacco Co. v. Amouri's Grand Foods, Inc.*, 453 F.3d 377, 383 (6th Cir. 2006) (holding preliminary injunction would advance two fundamental purposes of trademark law: preventing consumer confusion and deception in the marketplace and protecting the trademark holder's property interest in the mark."); *Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.2d 1311, 1348 (Fed. Cir. 2006) ("[a]bsent any other relevant concerns . . . the public is best served by enforcing patents that are likely valid and infringed.").

VI. INJUNCTIVE RELIEF SOUGHT

Hydrojug seeks an order temporarily and preliminarily enjoining Defendants, their agents, servants, and any and all parties acting in concert with any of them from:

- A. using the AQUAJUG Mark, or any similar variations thereof;
- B. using any trademark that imitates or is confusingly similar to the HYDROJUG Mark, or is likely to cause confusion, mistake, deception, or public misunderstanding as to the origins of Defendants' goods or their relatedness to Hydrojug; and
- C. engaging in trademark infringement, unfair competition, false designation of origin, or other activities that misappropriate Hydrojug's trademark rights;
- D. making, using, offering to sell, or selling the Accused Products (as identified in the complaint) and any other water bottle sleeve design that infringes the '202 Patent;
- E. directly or indirectly infringing in any manner any of the claims of the '202 Patent;
- F. from aiding, assisting or abetting any other party in the acts prohibited by (A) through (E) above; and
- G. directing that Defendants file with the Court and serve upon Hydrojug's counsel within three (3) days after entry of such judgment a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with such Order.

VII. CONCLUSION

Hydrojug has a substantial likelihood of success in establishing trademark and patent infringement by Defendants. Hydrojug is being irreparably harm through actual consumer confusion, and this irreparable harm will continue absent injunction. The balance of harms favors Hydrojug because Defendants' harm is self-inflicted. The public interest in preventing consumer confusion weights in favor of injunction. A preliminary injunction is proper, warranted, and requested.

DATED: July 22, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing MOTION FOR PRELIMINARY INJUNCTION was filed and transmitted via EM-ECF to the below counsel of record on July 22, 2022:

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