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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

Thomas A. Person §  
3705 Cypress Springs Place §  
Louisville, KY 40245 §

Plaintiff §

v. §

Civil Action No. 4:20-CV-212

Cigar Reserve LLC §  
333 South State Street V-308 §  
Lake Oswego, OR 97034 §

JURY TRIAL DEMANDED

Collett Enterprises, Incorporated §  
c/o Darren Collett §  
101 W. Tipton St, Ste. C §  
Seymour, IN 47274 §

Brian Kurland §  
17010 Chapin Way §  
Lake Oswego, OR 97034 §

Chanda Kurland §  
17010 Chapin Way §  
Lake Oswego, OR 97034 §

Defendants §

**COMPLAINT FOR PATENT INFRINGEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Thomas A. Person (“Plaintiff”) files this Complaint against Defendants Cigar Reserve LLC, Collett Enterprises, Incorporated, Brian Kurland and Chanda Kurland (“Defendants”) asserting causes of action for patent infringement, and seeking recovery of damages, attorneys’ fees, costs, expenses, prejudgment interest and post-judgment interest.

## **INTRODUCTION**

1. Plaintiff Thomas A. Person comes before this Court due to the Defendants Cigar Reserve LLC, Collett Enterprises, Incorporated, Brian Kurland and Chanda Kurland (referred to herein collectively as “Defendants”) willful infringement of Mr. Person’s patented technology relating to cigar spills.

2. U.S. Patent 8,507,070 entitled “Cedar spill” was issued on August 13, 2013, naming Thomas A. Person as the inventor. Mr. Person is the current owner of U.S. Patent 8,507,070. Defendants are selling cigar spills that infringe U.S. Patent 8,507,070. Defendants’ willful infringement of Mr. Person’s patent rights will cause Mr. Person irreparable harm and substantial monetary damages. Mr. Person seeks an injunction, treble damages and attorneys’ fees for Defendants’ refusal to respect Mr. Person’s intellectual property rights.

3. U.S. Patent D664,292 entitled “Cedar spill for a cigar” was issued on July 24, 2012, naming Thomas A. Person as the inventor. Mr. Person is the current owner of U.S. Patent D664,292. Defendants are selling cigar spills that infringe U.S. Patent D664,292. Defendants’ willful infringement of Mr. Person’s patent rights will cause Mr. Person irreparable harm and substantial monetary damages. Mr. Person seeks an injunction, treble damages and attorneys’ fees for Defendants’ refusal to respect Mr. Person’s intellectual property rights.

## **THE PARTIES**

4. Plaintiff Thomas A. Person is a resident with a principal residence in Jefferson County, Kentucky.

5. On information and belief, Defendant Cigar Reserve LLC is an Oregon limited liability company with its principal place of business in Lake Oswego, OR, and offers Cigar

Reserve cigar spills for retail sale through on-line marketplace sites <https://cigarreserve.com> and <https://www.Amazon.com> and <https://www.ebay.com>.

6. On information and belief, Defendant Collett Enterprises, Incorporated is a domestic for-profit corporation registered in Indiana with principal offices located at 101 W. Tipton St., Seymour, IN 47274, and is doing business under the assumed name Smoker Friendly.

7. On information and belief, Defendant Brian Kurland is a member of Cigar Reserve LLC and an owner of Cigar Reserve LLC and is in control of Cigar Reserve LLC.

8. On information and belief, Defendant Chanda Kurland is a member of Cigar Reserve LLC and an owner of Cigar Reserve LLC and is in control of Cigar Reserve LLC.

#### **JURISDICTION and VENUE**

9. This action arises under the Patent Laws of the United States, 35 U.S.C. §1 *et. seq.*

10. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

11. On information and belief, this Court has personal jurisdiction, general and specific, over Defendant Collett Enterprises, Incorporated because Collett Enterprises, Incorporated is a regular and established place of business where defendants have committed acts of infringement. (28 U.S.C. §1400(b))

12. On information and belief, this Court has personal jurisdiction, general and specific, over Defendant Cigar Reserve LLC because Cigar Reserve LLC is a supplier of products to Collett Enterprises, Incorporated, and has committed acts of infringement through Collett Enterprises, Incorporated, and, therefore, has contacts with the Southern District of Indiana, such that the exercise of specific or general jurisdiction over Cigar Reserve LLC in the

Southern District of Indiana would comport with traditional notions of due process. Copy of screenshot listing Cigar Reserve LLC Retailer Locator for Indiana is provided in **Exhibit A**.

13. On information and belief, this Court has personal jurisdiction, general and specific, over Defendant Brian Kurland because Mr. Kurland is a member of Cigar Reserve LLC and an owner of Cigar Reserve LLC and is in control of Cigar Reserve LLC, including supplying products to Collett Enterprises, Incorporated, and, therefore, has contacts with the Southern District of Indiana, such that the exercise of specific or general jurisdiction over Brian Kurland in the Southern District of Indiana would comport with traditional notions of due process.

14. On information and belief, this Court has personal jurisdiction, general and specific, over Defendant Chanda Kurland because Ms. Kurland is a member of Cigar Reserve LLC and an owner of Cigar Reserve LLC and is in control of Cigar Reserve LLC, including supplying products to Collett Enterprises, Incorporated, and, therefore, has contacts with the Southern District of Indiana, such that the exercise of specific or general jurisdiction over Chanda Kurland in the Southern District of Indiana would comport with traditional notions of due process.

15. Venue is proper in this district under 28 U.S.C. §§1391 (b), (c), and (d) 28 U.S.C. §1400(b).

### **BACKGROUND**

16. On August 13, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent 8,507,070 titled “Cedar spill”. U.S. Patent 8,507,070 is currently active and all maintenance fees have been paid. A copy of U.S. Patent 8,507,070 is provided in **Exhibit B**.

17. Mr. Person owns all right, title and interest in U.S. Patent 8,507,070.

18. On July 24, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent D664,292 titled “Cedar spill for a cigar”. U.S. Patent D664,292 is currently active. A copy of U.S. Patent D664,292 is provided in **Exhibit C**.

19. Mr. Person owns all right, title and interest in U.S. Patent D664,292.

20. On or about August 13, 2013 Mr. Person became aware that Cigar Reserve LLC was offering for sale a cedar spill for a cigar. Although different in design than the cigar spill shown in the figures accompanying U.S. Patent 8,507,070, after assessment of the product Mr. Person reasonably believed that the Cigar Reserve LLC product infringed claims 1, 2, 3, 4, 5, 6, 8, and 12 of U.S. Patent 8,507,070.

21. On or about October 29, 2013, Mr. Person spoke by telephone with Mr. Kurland and informed him that the Cigar Reserve LLC cigar spill fell within the scope of one or more claims of U.S. Patent 8,507,070. Mr. Person offered Mr. Kurland a non-exclusive license for the right to practice under U.S. Patent 8,507,070.

22. On or about November 12, 2013, Mr. Person sent a proposed license agreement to Mr. Kurland via e-mail. Mr. Kurland did not execute the license. In response Mr. Kurland indicated he was represented by counsel, Mr. Marc Baumgartner of Baumgartner Patent Law.

23. On or about January 9, 2014, Attorney Joan L. Simunic sent a letter via fax to Mr. Baumgartner demanding that Mr. Kurland and Cigar Reserve immediately cease and desist from continued manufacturing and marketing of the Cigar Reserve cedar spill.

24. On or about March 16, 2014, in response to a telephone discussion with Mr. Baumgartner, Ms. Simunic sent an e-mail to Mr. Baumgartner setting forth the list of claims that were allegedly infringed by the Cedar Reserve cigar spill.

25. On or about April 10, 2014, Mr. Kurland notified Mr. Person and Ms. Simunic that he was no longer represented by Mr. Baumgartner and requested that communication be directly with Mr. Kurland.

26. Between about April 17, 2014, and May 27, 2014, terms for a license agreement were negotiated between Mr. Person and Mr. Kurland.

27. On or about May 31, 2014, Mr. Kurland agreed to license U.S. Patent 8,507,070. On or about June 16, 2014, Mr. Person fully executed the Exclusive License Agreement between Thomas A. Person and Brian Kurland (hereinafter "License"). The License expired on December 31, 2014.

28. On or about December 26, 2014, the License term was extended until December 31, 2015.

29. On or about November 30, 2015, the License term was extended until December 31, 2016.

30. On or about December 30, 2016, Ms. Simunic notified Mr. Kurland via email that his license would terminate effective 12:01 a.m. January 1, 2017, and that he could not continue to make, sell, offer for sale, or use without purchasing from an authorized licensee, the claimed cigar spill. The email was acknowledged by Mr. Kurland.

31. On or about January 5, 2017, Ms. Simunic sent a letter via email to Mr. Kurland demanding that Mr. Kurland, Cigar Reserve and Valentia Cigars immediately cease and desist from continued manufacturing and marketing of the claimed cedar spill.

32. On or about October 3, 2020, advertisements for Cigar Reserve cedar wood spills were found on website marketplaces Ebay and DealDrop. The Ebay offerings are being sold by seller kurl82, who is located in Lake Oswego, Oregon, and they indicate that 256 boxes of 50

count spills have sold and that 190 boxes of 25 count spills have been sold. DealDrop offers discounts for Cigar Reserve Cedar Spills with a “Get Deal” link that directs the customer to Cigar Reserves’ website at <https://cigarreserve.com/>.

33. The cedar wood spills offered through Ebay and DealDrop appear to be identical to the Cedar Reserve cedar wood spills sold between August 13, 2013 and January 5, 2017, and fall within the scope of claims 1, 2, 3, 4, 5, 6, 8, and 12 of U.S. Patent 8,507,070.

34. On or about October 3, 2020, advertisements for Cigar Reserve cedar wood spills were found on the website marketplace Amazon. The cedar wood spills are listed as Amazon items B083QXBSJT. The B083QXBSJT product is packaged in a Cigar Reserve gold box and the product shown is of an identical design as the product covered by U.S. Patent D664,292. The composition and dimensions of the product appear to fall within the scope of claims 1, 2, 3, 4, 5, 6, 8, 10, 11, and 12 of U.S. Patent 8,507,070.

35. On or about October 3, 2020, advertisements for Cigar Reserve cedar wood spills were found on the website marketplace Amazon. The cedar wood spills are listed as Amazon items B083QX2RB1. The B083QX2RB1 product is packaged in a Cigar Reserve gold box and the product shown is of an identical design as the product covered by U.S. Patent D664,292. The composition and dimensions of the product appear to fall within the scope of claims 1, 2, 3, 4, 5, 6, 8, 10, 11, and 12 of U.S. Patent 8,507,070.

36. On or about October 3, 2020, advertisements for Cigar Reserve cedar wood spills were found on the website marketplace Amazon. The cedar wood spills are listed as Amazon items B0899P6QN4. The B0899P6QN4 product is packaged in a Cigar Reserve gold box and the product shown is of an identical design as the product covered by U.S. Patent D664,292. The

composition and dimensions of the product appear to fall within the scope of claims 1, 2, 3, 4, 5, 6, 8, 10, 11, and 12 of U.S. Patent 8,507,070.

37. The accused cigar spills are not a staple article or commodity of commerce suitable for substantial non-infringing use.

**COUNT ONE  
PATENT INFRINGEMENT**

38. Plaintiff Person incorporates by reference the allegations of paragraphs 1 – 37 above, as if fully alleged herein.

39. In contravention of one or more subsections of 35 U.S.C. §271, Defendants, without authority, have and are continuing to directly infringe, contributorily infringe and/or actively induce infringement of one or more claims of U.S. Patent 8,507,070, either literally or under the doctrine of equivalents, by, including but not limited to, making, using, offering to sell, selling, or importing the accused cigar spills in or into the United States and/or causing the accused cigar spills to be made, used, offered for sale, sold in, or imported into the United States.

40. At least as of the filing of this suit, Defendants have actual notice of U.S. Patent 8,507,070 and are infringing U.S. Patent 8,507,070 with knowledge of Mr. Person's patent rights. The filing of this Complaint also constitutes notice to Defendants of U.S. Patent 8,507,070 under 35 U.S.C. §287.

41. Defendants' infringing conduct described above is willful and deliberate.

42. Mr. Person has been damaged by Defendants' infringing activities and will continue to be damaged unless enjoined by this Court.



**COUNT TWO  
PATENT INFRINGEMENT**

43. Plaintiff Person incorporates by reference the allegations of paragraphs 1 – 42 above, as if fully alleged herein.

44. In contravention of one or more subsections of 35 U.S.C. §271, Defendants, without authority, have and are continuing to directly infringe, contributorily infringe and/or actively induce infringement of one or more claims of U.S. Patent D664,292, either literally or under the doctrine of equivalents, by, including but not limited to, making, using, offering to sell, selling, distributing or importing the accused cigar spills in or into the United States and/or causing the accused cigar spills to be made, used, offered for sale, sold in, distributed in or imported into the United States.

45. At least as of the filing of this suit, Defendants have actual notice of U.S. Patent D664,292 and are infringing U.S. Patent D664,292 with knowledge of Mr. Person's patent rights. The filing of this Complaint also constitutes notice to Defendants of U.S. Patent D664,292 under 35 U.S.C. §287.

46. Defendants' infringing conduct described above is willful and deliberate.

47. Mr. Person has been damaged by Defendants' infringing activities and will continue to be damaged unless enjoined by this Court.

**PRAYER FOR RELIEF**

Wherefore, Mr. Person respectfully requests entry of judgment in his favor and prays for the following relief:

A. That Defendants be adjudged to have infringed one or more claims of U.S. Patent 8,507,070;

B. That Defendants be adjudged to have infringed one or more claims of U.S. Patent D664,292;

C. That Defendants and all related entities and their officers, agents, employees, representatives, successors, assigns and all persons in active concert or participation with any of them, directly or indirectly, be preliminarily and permanently enjoined from making, using, offering to sell, selling, distributing or importing the infringing products in the United States or causing the infringing products to be made, used, offered for sale, sold in, distributed in or imported into the United States;

D. That Defendants account for damages sustained by Mr. Person as a result of Defendants' infringement of U.S. Patent 8,507,070, including both pre- and post-judgment interest and costs as fixed by this Court under 35 U.S.C. §284;

E. That Defendants account for damages sustained by Mr. Person as a result of Defendants' infringement of U.S. Patent D664,292, including both pre- and post-judgment interest and costs as fixed by this Court under 35 U.S.C. §284;

F. That Defendants be adjudged to have willfully and deliberately infringed U.S. Patent 8,507,070 and that the damages resulting from Defendants' willful and deliberate violation of the Patent Laws be trebled pursuant to 35 U.S.C. §284;

G. That Defendants be adjudged to have willfully and deliberately infringed U.S. Patent D664,292 and that the damages resulting from Defendants' willful and deliberate violation of the Patent Laws be trebled pursuant to 35 U.S.C. §284;

H. That this case be declared an exceptional case within the meaning of 35 U.S.C. §285 and that Mr. Person be awarded his reasonable attorneys' fees;

I. That Mr. Person be awarded his costs, attorneys' fees, and expenses incurred in this action pursuant to applicable state and federal laws; and

J. That the Court grant Mr. Person such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Mr. Person demands a trial by jury on all issues so triable.

Dated: October 15, 2020

Respectfully submitted,

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