

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT

FENF, LLC,)	
)	
Plaintiff,)	Civil Action No.: 2:25-cv-10450
)	
vs.)	
)	
GUANGZHOU NEW DESIGN)	JURY TRIAL DEMANDED
BIOTECHNOLOGY CO., LTD)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff FenF, LLC (“FenF”), by its undersigned attorneys, alleges the following for its Complaint against Defendant Guangzhou New design Biotechnology Co., Ltd (“Defendant”).

Parties

1. FenF is a limited liability company organized and existing under the laws of Michigan and having a place of business located at 8155 Huron River Drive, Dexter, Michigan 48130.

2. On information and belief, Defendant is a Chinese company having an address at Room 101 building 6 No.265 Chigang west road, Haizu District, Gangzhou, Guangdong.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338 because this action arises under the trademark laws of the United States (Title 15 Chapter 22 of the United States Code).

4. This Court has personal jurisdiction over Defendant because Defendant directly targets business activities toward consumers in the United States, including Michigan through, at least, its ecommerce presence. Defendant has committed acts of trademark infringement and dilution giving rise to the cause of action raised by this Complaint in Michigan and in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c)(3) because Defendant is not a resident of the United States and therefore may be sued in any judicial district.

Common Allegations

6. FenF sells foot-therapy products that are designed to treat various foot and toe ailments including hammertoes, flat feet, bunions, poor circulation, plantar fasciitis, and crossed toes.

7. FenF sells a line of Yoga Toes® products, including a Yoga Toes® GEMS® product (hereafter “the GEMS® product”), in various on-line outlets

including through its website (www.yogatoes.com) as well as through on-line retailers such as Amazon.com.

8. The GEMS® product sold by FenF includes upstanding posts made of an elastic material. Each of the upstanding posts has a faceted gemstone handle at a free end thereof. A representative photograph of the GEMS® product is shown below in photograph A.



A: FenF's GEMS® Product

9. FenF's GEMS® product has been featured on television shows such as *Rachel Ray*, *Dr. Oz* and *The Today Show* featuring Kathy Lee and Hoda.

10. FenF's GEMS® product has also been featured in publications such as *The Wall Street Journal*, *New York Magazine*, and *Oprah Magazine*.

11. FenF has spent over \$5 Million dollars in promoting its Yoga Toes® products including its GEMS® product.

12. As a result of FenF's sales, advertising, and the quality and uniqueness of its GEMS® products, FenF has been the number 1 seller on Amazon in its product category for over 3 years and the number 2 seller on Amazon for over 5 years.

13. FenF has acquired value, name and brand recognition, and goodwill in the use of its gemstone handle configuration in connection with its GEMS® product as a result of continual and substantial advertising, promotion, and interstate commercial activity related to its GEMS® product that dates back to at least December 2010.

14. FenF has been the exclusive seller of foot therapy products having upstanding posts with a faceted gemstone handle at a free end thereof since it began selling its GEMS® product.

15. Many other sellers have tried selling foot therapy products having gemstone handle configurations that violate FenF's trademark rights on eCommerce platforms such as Amazon and eBay. FenF, through a rigorous enforcement effort has successfully stop infringing sales.

16. FenF is the owner of protectable trade dress for a foot-therapy product that includes gemstone handles, and has obtained a Federal Trademark Registration, Registration No. 5,098,981, for the gemstone handle design ("the '981 trademark registration"). A true and correct copy of the '981 trademark registration is attached

to this Complaint as Exhibit A. The '981 trademark registration has become incontestable as set forth in Section 15 of the Lanham Act, 15 U.S.C. §1065.

17. As a result of its substantial advertising, exposure, and sales FenF's registered trade dress in its registered gemstone handles is widely recognized by the general consuming public as the source of Plaintiff's toe stretchers.

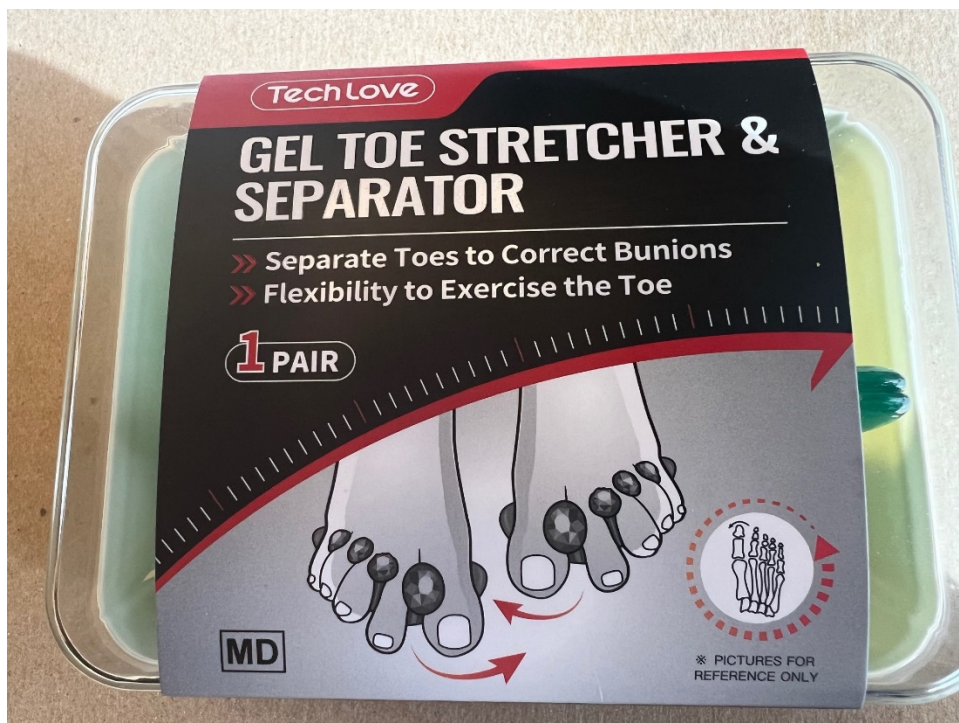
18. FenF has been the exclusive user of a gemstone handle design for toe stretchers for over 15 years. Over that time, FenF has sold multiple millions of toe stretchers, for multiple millions of dollars, embodying its registered gemstone design throughout the United States, Canada, and Europe.

19. FenF's registered gemstone handle design is recognized by the consuming public as originating from FenF.

20. As a result, FenF's registered gemstone handle trade dress, and has become famous.

21. Defendant advertises, offers for sale, and sells a toe stretcher under the designation "Tech Love Gel Toe Stretcher & Separator." Defendant's toe stretcher features upstanding posts made of an elastic material where each of the upstanding posts has a gemstone handle at a free end thereof.

22. Defendant's packaging prominently emphasizes a gemstone handle design on a toe stretcher as shown:



23. Defendant's toe stretchers feature a faceted gemstone handle design on the free ends of upstanding posts as shown:



**Count I - Violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114
(Infringement of Trademark Registration No. 5,098,981)**

24. FenF repeats and realleges the allegations contained in paragraphs 1 through 23 as if fully set forth herein.

25. The incontestable status of the mark of the '981 is conclusive evidence of the validity of the mark, that FenF owns the mark, and FenF's exclusive right to use the mark in commerce.

26. Defendant has used, and is continuing to use, in interstate commerce and without authorization from FenF, a reproduction, counterfeit, copy and/or colorable imitation of the gemstone handle design of FenF's incontestable '981 trademark registration through its advertising, promotion, distribution, and offering for sale of its Tech Love Gel Toe Stretcher & Separators, which include upstanding posts having gemstone handles on the free ends thereof.

27. Defendant's use in commerce of a reproduction, counterfeit, copy and/or colorable imitation of FenF's '981 trademark registration in connection with its advertising, promotion, distribution, and offering for sale of the Tech Love Gel Toe Stretcher & Separator is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant's Tech Love Gel Toe Stretcher & Separator, or as to Defendant's affiliation with, connection to, approval by, sponsorship by, or association with FenF.

28. Defendant's use of FenF's registered trademark in connection with the use of faceted gemstone handles as part of the Tech Love Gel Toe Stretcher & Separator in interstate commerce has caused, is causing, and will continue to cause damage to FenF's business, reputation, goodwill, profits, and the strength of FenF's federally registered incontestable trade dress rights embodied in the '981 trademark Registration.

29. Defendant's actions constitute infringement of FenF's federally registered trademark for the gemstone handle in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114(a).

30. On information and belief, and by virtue of the widespread exposure and success of FenF's GEMS® product, Defendant was actively aware of FenF and its trademark rights in the gemstone handles of FenF's GEMS® product when Defendant began selling the Tech Love Gel Toe Stretcher & Separator, yet proceeded anyway to use a reproduction, counterfeit, copy and/or colorable imitation of FenF's '981 trademark registration in the Tech Love Gel Toe Stretcher & Separator, and is continuing to do so, thus rendering Defendant's use of FenF's registered incontestable trademark willful and deliberate.

**Count II - Violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c)
(Dilution by Blurring)**

31. FenF repeats and realleges the allegations contained in paragraphs 1 through 30 as if fully set forth herein.

32. FenF's gemstone handle trademark is distinctive and a famous mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

33. FenF's gemstone design that is the subject of FenF's '981 trademark registration became distinctive and famous prior to the Defendant's acts alleged herein.

34. Defendant's use of a reproduction, counterfeit, copy and/or colorable imitation of FenF's '981 trademark registration has diluted and will, unless enjoined, continue to dilute the distinctive quality of FenF's famous gemstone handle trademark.

35. On information and belief, and by virtue of the widespread exposure, success, and fame of FenF's gemstone trade dress, Defendant was actively aware of FenF and its trademark rights in the gemstone trade dress yet proceeded anyway to use a reproduction, counterfeit, copy and/or colorable imitation of FenF's gemstone trade dress thus rendering Defendant's, use of FenF's registered incontestable trademark willful and deliberate.

36. Defendant's acts have already caused FenF irreparable damage and will, unless enjoined by this Court continue to so damage FenF, which has no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, FenF respectfully requests that this Court enter a judgment that:

A. Finds Defendant's use in commerce of a reproduction, counterfeit, copy and/or colorable imitation of FenF's gemstone handles on toes stretchers that are the subject of FenF's '981 registration infringes the '981 trademark registration in violation of 15 U.S.C. § 1114;

B. Finds Defendant has violated Section 43(c) of the Lanham Act having caused dilution by blurring;

C. Awards FenF profits gained by Defendant as a result of Defendant's trademark infringement and trademark dilution, increased to an amount this Court deems just, pursuant 15 U.S.C. § 1117;

D. Awards FenF actual damages sustained as a result of Defendant's infringement and dilution, increased by up to three times, pursuant 15 U.S.C. § 1117;

E. Awards FenF its costs and any additional damages to which FenF is entitled as a result of Defendant's infringement and dilution;

F. Finds this case to be exceptional and awards FenF its reasonable attorney fees pursuant 15 U.S.C. § 1117;

G. Orders Defendant and its officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with it, be preliminarily and permanently enjoined from infringing the '981 trademark registration;

H. Orders Defendant and its officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with it, be preliminarily and permanently enjoined from diluting the FenF's gemstone handle trademark;

I. Orders Defendant to recall from any distributors, shippers, resellers, retailers, or wholesalers any and all advertising, products, packaging, or any other items that infringe the '981 trademark registration;

J. Orders Defendant to deliver to FenF any and all advertising, products, packaging, or any other items that infringe the '981 trademark registration or that dilute FenF's gemstone handle trademark;

Respectfully submitted,

Dated: February 14, 2025

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JURY TRIAL DEMANDED

FenF demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: February 14, 2025

By: /s/ Richard W. Hoffmann

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