

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO. 08cv1634-BTM(AJB)	DATE FILED 09/05/08	U.S. DISTRICT COURT Southern District of California
PLAINTIFF Smoothreads, Inc., a California corp., dba \$2.95 Guys		DEFENDANT AddVenture Products, Inc., a California corp.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See attached complaint	6 D 439,157	11
2 5,042,227	7 D 439,157	12
3 D 441,282	8 D 445,671	13
4 D 442,476	9 D 452,649	14
5 D 457,009	10 D 454,297	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 D 451,787	6 D 455,341		11
2 D 456,224	7 Total - 45 Design Pat's.		12
3 D 431,184			13
4 D 431,186			14
5 D 431,456			15

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK W. Samuel Hamrick, Jr.	(BY) DEPUTY CLERK	DATE

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Attorneys for Plaintiff SMOOTHREADS, INC.

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SMOOTHREADS, INC., a California
corporation, d/b/a \$2.95 GUYS,

Plaintiff,

v.

ADDVENTURE PRODUCTS, INC., a
California corporation,

Defendant.

CASE NO. **08 CV 1634 L LSP**

COMPLAINT

1. Declaration of Utility Patent Invalidity
[28 U.S.C. §2201]
2. Declaration of Design Patent Invalidity
[28 U.S.C. §2201]
3. Lanham Act False Advertising
[15 U.S.C. §1125(a)]
4. Unfair Competition
[Cal. Bus. Prof. Code §§17200 *et. seq.*]

JURY TRIAL DEMANDED

COMPLAINT

ORIGINAL

OR

1 Plaintiff SMOOTHREADS, INC., a California corporation, d/b/a \$2.95 GUYS, by way of
2 complaint against Defendant ADDVENTURE PRODUCTS, INC., a California corporation, alleges
3 the following on information and belief:

4 **JURISDICTION AND VENUE**

5 1. This Complaint arises under the patent laws of the United States (35 U.S.C. §§101
6 *et. seq.*), declaratory judgment laws of the United States (28 U.S.C. §§2201, *et seq.*), trademark and
7 false advertising laws of the United States (15 U.S.C. §§1051, *et seq.*), and the unfair competition
8 laws of the state of California (Cal. Bus. & Prof. Code §§17200, *et seq.*).

9 2. This Court has original jurisdiction over the first and second causes of action for
10 patent invalidity pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331. This Court has original
11 jurisdiction over the third cause of action for false advertising pursuant to 15 U.S.C. §1121(a) and
12 28 U.S.C. §1331. This Court has original jurisdiction over the fourth cause of action for unfair
13 competition pursuant to 28 U.S.C. §1338(b). This Court has supplemental jurisdiction over the
14 fourth cause of action for unfair competition pursuant to 28 U.S.C. §1367(a).

15 3. Venue is proper in this district under 28 U.S.C. §1400(b) and 28 U.S.C. §§1391(b)
16 and (c). This Court has personal jurisdiction over defendant and venue is proper in this district
17 because, *inter alia*, (a) defendant resides in this district, (b) defendant or its agents are doing business
18 in this district, (c) a substantial part of defendant's wrongful acts or omissions giving rise to
19 plaintiff's claims occurred in this district, and (d) the harm caused by defendant's wrongful acts or
20 omissions occurred in this district and defendant knew that said harm would occur in this district.

21 **THE PARTIES**

22 4. Plaintiff SMOOTHREADS, INC. d/b/a \$2.95 GUYS ("\$2.95 Guys") is a California
23 corporation with principal place of business in Poway, California.

24 5. Defendant ADDVENTURE PRODUCTS, INC. ("AVP") is a California corporation
25 with principal place of business in San Diego, California.

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COMPLAINT

1 **BACKGROUND**

2 **AVP's Anti-Competitive Conduct**

3 6. Defendant AVP is one of many compressed t-shirt companies in the United States.
4 Other compressed t-shirt companies include, but are not limited to, plaintiff \$2.95 Guys, Creative
5 Custom Tees, Inc., Simply Smashing, Inc., and Whitson Wells PMG, LLC.

6 7. These claims arise out of AVP's anti-competitive conduct. Part of this
7 anticompetitive conduct consists of obtaining patents for compressed t-shirt packaging that are
8 nothing more than common, pre-existing designs. AVP obtains these design patents by, *inter alia*,
9 failing to disclose to the United States Patent and Trademark Office that the designs supposedly
10 "invented" by AVP's president, Mr. Alan Davis, are commonplace both within and outside of the
11 compressed t-shirt industry. AVP then repeatedly sues its competitors upon these design patents
12 in an attempt to extort money from them and/or put them out of business.

13 8. AVP's anti-competitive conduct also includes its repeated suits against its competitors
14 for the infringement of a utility patent issued to inventor Wayne M. Merry on August 27, 1991,
15 Patent No. 5,042,227 (the "Utility Patent"). On information and belief, the Utility Patent expires on
16 December 15, 2009. AVP acquired its rights in the Utility Patent, if any, on October 3, 2005. On
17 information and belief, AVP acquired the Utility Patent for the primary purpose of utilizing the
18 litigation process to extort money from its competitors, including but not limited to plaintiff \$2.95
19 Guys, and put them out of business. AVP and its competitors had been selling compressed t-shirts
20 for years before AVP acquired the Utility Patent. On information and belief, AVP does not utilize
21 the utility patent in connection with the manufacture of its compressed t-shirts.

22 9. On information and belief, AVP did not invent the compressed t-shirt and holds only
23 one utility patent for the compression of woven sheet articles, which is identified above. Regardless,
24 AVP has also sought to gain an unfair advantage over its competitors by making false and/or
25 misleading statements in its website, catalogs, and/or advertisements that AVP "created" or
26 "invented" the original compressed t-shirt.

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28 COMPLAINT

1 AVP's Prior Lawsuits

2 10. On March 1, 2004, AVP sued plaintiff \$2.95 Guys in the Southern District of
3 California, case number 04cv00435 (the "First Action"), for the purported infringement of the
4 following of AVP's alleged design patents: (1) D451,797; (2) D431,187; (3) D439,151; (4)
5 D431,186; (5) D442,856; (6) D464,876; (7) D441,282; (8) D431,185; (9) D411,799; (10) D431,184;
6 (11) D431,774; (12) D439,153; (13) D439,152; (14) D445,671; (15) D451,009; (16) D451,010; (17)
7 D451,011; (18) D452,649; (19) D451,380; (20) D454,060; (21) D456,244; (22) D455,341; (23)
8 D455,646; (24) D456,243; (25) D454,059; (26) D459,984; (27) D459,985; and (28) D462,610. In
9 the same action, AVP sued Creative Custom Tees for the purported infringement of the following
10 of AVP's alleged design patents: (1) D431,186; (2) D442,856; and (3) D455,070.

11 11. In the First Action, AVP did not claim that \$2.95 Guys or Creative Custom Tees, Inc.
12 infringed any utility patent owned by AVP.

13 12. AVP and \$2.95 Guys settled AVP's claims against \$2.95 Guys in the First Action.
14 On information and belief, AVP and Creative Custom Tees, Inc. settled AVP's claims against
15 Creative Custom Tees in the First Action. The First Action was dismissed with prejudice on
16 December 7, 2004.

17 13. Also on March 1, 2004, AVP sued Simply Smashing, Inc. in the Southern District of
18 California, case number 04cv00437, for the purported infringement of the following of AVP's
19 alleged design patents: (1) D441,282; (2) D442,476; (3) D451,009; (4) D451,797; (5) D456,244; (6)
20 D449,981; (7) D431,187; (8) D439,151; (9) D431,186; (10) D464,876; (11) D455,070; (12)
21 D451,010; (13) D452,649; (14) D454,060; (15) D455,341; (16) D455,646; (17) D456,243; (18)
22 D459,984; and (19) D448,989. AVP did not claim that Simply Smashing, Inc. infringed any utility
23 patent owned by AVP. On information and belief, AVP and Simply Smashing, Inc. settled AVP's
24 claims against Simply Smashing, Inc.

25 14. On March 29, 2005, AVP sued plaintiff \$2.95 Guys in the Southern District of
26 California, case number 05cv00629 (the "Second Action"), for, *inter alia*, the purported
27 infringement of the following of AVP's alleged design patents: (1) D411,799; and (2) D423,931.

1 15. In the Second Action, AVP did not claim that \$2.95 Guys infringed any utility patent
2 owned by AVP.

3 16. On October 6, 2005, AVP and \$2.95 Guys entered into a settlement agreement
4 regarding the Second Action. The Second Action was dismissed with prejudice on February 2, 2006.

5 17. After AVP filed the Second Action, it allegedly acquired the rights to the Utility
6 Patent. The Utility Patent is for the compression of "woven" sheet articles. The Utility Patent
7 specifies a compression pressure for 100% cotton woven sheet articles of between 1,400 and 2,100
8 psi. The Utility Patent also claims that the woven sheet articles compressed thereunder can be
9 returned to their "original un-compacted condition by manipulation thereof without the addition of
10 any liquid."

11 18. On March 22, 2007, AVP sued Simply Smashing, Inc. in the Southern District of
12 California, case number 07cv00499, for, *inter alia*, the purported infringement of the Utility Patent
13 and the following of AVP's alleged design patents: (1) D441,282; (2) D442,476; (3) D451,009; (4)
14 451,797; and (5) D456,224. Simply Smashing, Inc. counterclaimed against AVP for, *inter alia*,
15 unfair business practices, unfair competition, false marketing, and false advertising. On or around
16 February 25, 2008, AVP and Simply Smashing settled their respective claims. The case was
17 dismissed on March 3, 2008.

18 19. On October 18, 2007, AVP sued Mr. Robert Weinberg and Whitson Wells PMG,
19 LLC in the Southern District of California, case number 07cv02024, for the purported infringement
20 of the Utility Patent and the following of AVP's alleged design patents: (1) D431,184; (2) D431,186;
21 (3) D431,456; (4) D439,151; (5) D439,153; (6) D441,282; (7) D445,671; (8) D451,009; (9)
22 D452,649; (10) D454,297; and (11) D455,341. The case is still pending.

23 20. On October 18, 2007, AVP sued plaintiff \$2.95 guys in the Southern District of
24 California, case number 07cv2025 (the "Third Action") for the purported infringement of the Utility
25 Patent and the following of AVP's alleged design patents: (1) D431,184 and (2) D445,671. AVP
26 alleges infringement of the Utility Patent despite the facts that the compressed t-shirts sold by
27 plaintiff \$2.95 Guys are not woven, are not compressed at between 1,400 and 2,100 psi, and require

1 the addition of water to be returned to their original state. AVP has stated that the purpose of the
2 Third Action is to put \$2.95 Guys out of business.

3 **FIRST CAUSE OF ACTION**
4 (Declaration of Utility Patent Invalidity)
5 (28 U.S.C. §2201)

6 21. \$2.95 Guys incorporates by reference the allegations set forth in paragraphs 1 through
7 20 of this Complaint as though fully set forth in this cause of action.

8 22. AVP claims to be the owner of all right, title and interest to United States Patent No.
9 5,042,227, issued to Wayne M. Merry on August 27, 1991 (the "Utility Patent"), including the right
10 to sue and recover damages for infringements thereof.

11 23. AVP has asserted that products manufactured and/or sold by \$2.95 Guys infringe the
12 Utility Patent.

13 24. On information and belief, the Utility Patent is invalid and void under 35 U.S.C.
14 §§101, 102, 103, and/or 112.

15 25. There is an actual and substantial controversy between AVP and \$2.95 Guys
16 regarding the validity of the Utility Patent. This controversy is evidenced by, *inter alia*, AVP's claim
17 in the immediate action that \$2.95 Guys has infringed the Utility Patent and \$2.95 Guys' affirmative
18 defense that the Utility Patent is invalid.

19 26. Pursuant to 28 U.S.C. §2201, \$2.95 Guys seeks a declaration that the Utility Patent
20 is invalid.

21 **SECOND CAUSE OF ACTION**
22 (Declaration of Design Patent Invalidity)
23 (28 U.S.C. §2201)

24 27. \$2.95 Guys incorporates by reference the allegations set forth in paragraphs 1 through
25 26 of this Complaint as though fully set forth in this cause of action.

26 28. AVP claims to be the owner of all right, title and interest to various United States
27 Design Patents for compressed fabric article packaging (the "Design Patents"), including the right
28 to sue and recover damages for infringements thereof. The Design Patents include the following:

#	<i>U.S. Patent No.</i>	<i>Issue Date</i>	<i>Inventor</i>	<i>Design Description</i>
1	D411,799	07/06/1999	Alan Davis	VCR Shape
2	D423,931	05/02/2000	Alan Davis	Combination Package
3	D431,184	09/26/2000	Alan Davis	Bottle Shape
4	D431,185	09/26/2000	Alan Davis	Guitar Shape
5	D431,186	09/26/2000	Alan Davis	Light Bulb Shape
6	D431,187	09/26/2000	Alan Davis	Pointed Star Shape
7	D431,456	10/03/2000	Alan Davis	House Shape
8	D431,773	10/10/2000	Alan Davis	Jet Airplane Shape
9	D431,774	10/10/2000	Alan Davis	Tree Shape
10	D439,151	03/20/2001	Alan Davis	Tractor / Semitrailer Shape
11	D439,152	03/20/2001	Alan Davis	Van Shape
12	D439,153	03/20/2001	Alan Davis	Fish Shape
13	D441,282	05/01/2001	Alan Davis	Numeral One (1) Shape
14	D442,476	05/22/2001	Alan Davis	Guitar Shape
15	D442,856	05/29/2001	Alan Davis	Light Bulb Shape
16	D445,671	07/31/2001	Alan Davis	Necked Bottle Shape
17	D448,989	10/09/2001	Alan Davis	Egg Shape
18	D449,981	11/06/2001	Alan Davis	Rounded Star Shape
19	D451,009	11/27/2001	Alan Davis	Capsule Shape
20	D451,010	11/27/2001	Alan Davis	Bat Shape
21	D451,011	11/27/2001	Alan Davis	Saw Shape
22	D451,380	12/04/2001	Alan Davis	Screwdriver Shape
23	D451,796	12/11/2001	Alan Davis	Racket Shape
24	D451,797	12/11/2001	Alan Davis	Doughnut Shape
25	D452,649	01/01/2002	Alan Davis	Helmet Shape
26	D454,058	03/05/2002	Alan Davis	Key Shape
27	D454,059	03/05/2002	Alan Davis	Telephone Shape
28	D454,060	03/05/2002	Alan Davis	Hammer Shape
29	D454,061	03/05/2002	Alan Davis	Apple Shape
30	D454,297	03/12/2002	Alan Davis	Tractor / Trailer Shape

COMPLAINT

#	<i>U.S. Patent No.</i>	<i>Issue Date</i>	<i>Inventor</i>	<i>Design Description</i>
31	D454,298	03/12/2002	Alan Davis	Butterfly Shape
32	D454,488	03/19/2002	Alan Davis	Cross Shape
33	D455,070	04/02/2002	Alan Davis	Soda Bottle Shape
34	D455,341	04/09/2002	Alan Davis	Shoe Shape
35	D455,646	04/16/2002	Alan Davis	Foot Shape
36	D456,243	04/30/2002	Alan Davis	Shield Shape
37	D456,244	04/30/2002	Alan Davis	Flag Shape
38	D459,984	07/02/2002	Alan Davis	Bowling Pin Shape
39	D459,985	07/09/2002	Alan Davis	Tooth Shape
40	D460,350	07/16/2002	Alan Davis	Wedge Shape
41	D462,261	09/02/2003	Alan Davis	Map Shape
42	D462,610	09/10/2002	Alan Davis	Dollar Sign Shape
43	D464,876	10/29/2002	Alan Davis	USA Map Shape
44	D469,347	01/28/2003	Alan Davis	Dollar Sign Shape
45	D471,799	03/18/2003	Alan Davis	Doughnut Shape

29. On information and belief, the Design Patents are not limited to those listed above. \$2.95 Guys reserves the right to designate additional Design Patents if it becomes aware of any additional Design Patents during the course of discovery.

30. The supposed "inventor" of the Design Patents, Alan Davis, is the president of AVP.

31. AVP has asserted, both against \$2.95 Guys and others, that products manufactured and/or sold that are a colorable imitation of any of the Design Patents are infringing. AVP has sued various parties, including \$2.95 Guys, Creative Custom Tees, Inc., Simply Smashing, Inc., Whitson Wells PMG, LLC, and Robert Weinberg, for the infringement of one or more Design Patents.

32. AVP's multiple lawsuits and allegations of infringement, as set forth above, have demonstrated its preparedness and willingness to enforce and litigate its alleged rights in the Design Patents.

33. AVP has, through its conduct set forth above, created the apprehension that \$2.95 Guys will be sued if it manufactures or sells compressed t-shirts in any shape that AVP determines

1 is a colorable imitation of any of the Design Patents. AVP has therefore coerced \$2.95 Guys into not
2 manufacturing or using any design that is similar to the Design Patents, which has placed \$2.95 Guys
3 at a significant competitive disadvantage and damages its business.

4 34. On information and belief, the Design Patents, and each of them, are invalid and void
5 under 35 U.S.C. §§101, 102, 103, 112, and/or 171.

6 35. On information and belief, AVP obtained the Design Patents, and each of them, by,
7 *inter alia*, failing to disclose to the United States Patent and Trademark Office that the designs
8 supposedly "invented" by Alan Davis are commonplace both within and outside of the compressed
9 t-shirt industry.

10 36. On information and belief, the designs reflected in the Design Patents, and each of
11 them, are not the result of the exercise of the inventive or originaive faculty. On information and
12 belief, all Alan Davis has done by way of the Design Patents, and each of them, is to simply design
13 packaging for compressed t-shirts that resemble existing and well known forms.

14 37. On information and belief, the Design Patents, and each of them, derive commercial
15 value from their resemblance to existing and well known forms.

16 38. There is an actual and substantial controversy between AVP and \$2.95 Guys
17 regarding the validity of the Design Patents. AVP's position regarding the validity of the Design
18 Patents, and it demonstrated willingness to enforce and litigate the same, has put \$2.95 Guys in the
19 position of either exposing itself to litigation or refraining from behavior which \$2.95 Guys believes
20 it is entitled to do.

21 39. Pursuant to 28 U.S.C. §2201, \$2.95 Guys seeks a declaration that each Design Patent
22 is invalid.

23 **THIRD CAUSE OF ACTION**
24 (Lanham Act False Advertising)
(15 U.S.C. §1125(a))

25 40. \$2.95 Guys incorporates by reference the allegations set forth in paragraphs 1 through
26 39 of this Complaint as though fully set forth in this cause of action.

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28 COMPLAINT

1 41. On information and belief, AVP has made false and/or misleading statements in
2 interstate commerce, including that AVP "created" or "invented" the original compressed t-shirt, and
3 other representations and/or practices that deceive the public regarding AVP's products.

4 42. AVP's false and/or misleading statements actually deceived and/or have the tendency
5 to deceive a substantial segment of the consuming public.

6 43. AVP's deception is material, in that it is likely to influence the purchasing decisions
7 of the consuming public.

8 44. Upon information and belief, AVP's false and/or misleading statements were made
9 willfully and intentionally, with the knowledge that said statements were false and/or misleading and
10 had the tendency to deceive a substantial segment of the consuming public and influence their
11 purchasing decisions.

12 45. AVP's false and/or misleading statements have put \$2.95 Guys at a competitive
13 disadvantage, and \$2.95 Guys has been or is likely to be injured by AVP's false and/or misleading
14 statements. Any harm to \$2.95 Guys will continue unless AVP's conduct is enjoined by the Court.

15 46. Pursuant to 15 U.S.C. §1116, \$2.95 Guys requests an injunction against AVP to
16 prevent the violation of 15 U.S.C. §1125(a) and directing AVP to file with the Court and serve on
17 \$2.95 Guys a report, in writing and under oath, setting forth in detail the manner and form in which
18 AVP has complied with the injunction.

19 47. Pursuant to 15 U.S.C §1117, \$2.95 Guys is entitled and seeks to recover

- 20 a. Any and all damages sustained by \$2.95 Guys;
- 21 b. Any and all profits of AVP as a result of its acts complained of herein;
- 22 c. Treble profits and damages;
- 23 d. Costs of the action; and
- 24 e. Reasonable attorney fees, as provided for by statute.

25 **FOURTH CAUSE OF ACTION**
26 (Unfair Competition)
(Cal. Bus. Prof. Code §§17200 *et. seq.*)

27 48. \$2.95 Guys incorporates by reference the allegations set forth in paragraphs 1 through
28

1 47 of this Complaint as though fully set forth in this cause of action.

2 49. This cause of action is brought pursuant to Cal. Bus. & Prof. Code §17200, *et seq.*

3 50. AVP has committed and continues to commit an unlawful, unfair or fraudulent
4 business act or practice within the meaning of Cal. Bus. & Prof.. Code §17200.

5 51. AVP has engaged and continues to engage in unfair, deceptive, untrue or misleading
6 advertising within the meaning of Cal. Bus. & Prof.. Code §§17200 and/or 17500.

7 52. AVP has committed and continues to commit an act prohibited by Cal. Bus. & Prof.
8 Code §17500.

9 53. Pursuant to Cal. Bus. & Prof. Code §17203, \$2.95 Guys seeks:

10 a. Such orders or judgments, including the appointment of a receiver, as may be
11 necessary to prevent the use or employment by AVP of any practice which
12 constitutes unfair competition;

13 b. Restitution to \$2.95 Guys of any money or property, real or personal, which
14 may have been acquired by means of AVP's unfair competition.

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17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff \$2.95 Guys prays for judgment and relief on all causes of action,
19 as more specifically detailed in each cause of action, against defendant AVP as follows:

20 1. A declaration that United States Patent No. 5,042,227 is invalid;

21 2. A declaration that United States Patent No. D411,799 is invalid;

22 3. A declaration that United States Patent No. D423,931 is invalid;

23 4. A declaration that United States Patent No. D431,184 is invalid;

24 5. A declaration that United States Patent No. D431,185 is invalid;

25 6. A declaration that United States Patent No. D431,186 is invalid;

26 7. A declaration that United States Patent No. D431,187 is invalid;

27 8. A declaration that United States Patent No. D431,456 is invalid;

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COMPLAINT

- 1 9. A declaration that United States Patent No. D431,773 is invalid;
- 2 10. A declaration that United States Patent No. D431,774 is invalid;
- 3 11. A declaration that United States Patent No. D439,151 is invalid;
- 4 12. A declaration that United States Patent No. D439,152 is invalid;
- 5 13. A declaration that United States Patent No. D439,153 is invalid;
- 6 14. A declaration that United States Patent No. D441,282 is invalid;
- 7 15. A declaration that United States Patent No. D442,476 is invalid;
- 8 16. A declaration that United States Patent No. D442,856 is invalid;
- 9 17. A declaration that United States Patent No. D445,671 is invalid;
- 10 18. A declaration that United States Patent No. D448,989 is invalid;
- 11 19. A declaration that United States Patent No. D449,981 is invalid;
- 12 20. A declaration that United States Patent No. D451,009 is invalid;
- 13 21. A declaration that United States Patent No. D451,010 is invalid;
- 14 22. A declaration that United States Patent No. D451,011 is invalid;
- 15 23. A declaration that United States Patent No. D451,380 is invalid;
- 16 24. A declaration that United States Patent No. D451,796 is invalid;
- 17 25. A declaration that United States Patent No. D451,797 is invalid;
- 18 26. A declaration that United States Patent No. D452,649 is invalid;
- 19 27. A declaration that United States Patent No. D454,058 is invalid;
- 20 28. A declaration that United States Patent No. D454,059 is invalid;
- 21 29. A declaration that United States Patent No. D454,060 is invalid;
- 22 30. A declaration that United States Patent No. D454,061 is invalid;
- 23 31. A declaration that United States Patent No. D454,297 is invalid;
- 24 32. A declaration that United States Patent No. D454,298 is invalid;
- 25 33. A declaration that United States Patent No. D454,488 is invalid;
- 26 34. A declaration that United States Patent No. D455,070 is invalid;
- 27 35. A declaration that United States Patent No. D455,341 is invalid;

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COMPLAINT

- 1 36. A declaration that United States Patent No. D455,646 is invalid;
- 2 37. A declaration that United States Patent No. D456,243 is invalid;
- 3 38. A declaration that United States Patent No. D456,244 is invalid;
- 4 39. A declaration that United States Patent No. D459,984 is invalid;
- 5 40. A declaration that United States Patent No. D459,985 is invalid;
- 6 41. A declaration that United States Patent No. D460,350 is invalid;
- 7 42. A declaration that United States Patent No. D462,261 is invalid;
- 8 43. A declaration that United States Patent No. D462,610 is invalid;
- 9 44. A declaration that United States Patent No. D464,876 is invalid;
- 10 45. A declaration that United States Patent No. D469,347 is invalid;
- 11 46. A declaration that United States Patent No. D471,799 is invalid;
- 12 47. \$2.95 Guys recover damages in an amount to be proven at trial;
- 13 48. \$2.95 Guys recover AVP's profits in an amount to be proven at trial;
- 14 49. \$2.95 Guys recover up to treble damages and/or profits, as allowed by statute, in an
15 amount to be proven at trial;
- 16 50. An injunction against AVP to prevent the violation of 15 U.S.C. §1125(a);
- 17 51. An order enjoining AVP from continuing to engage, use, or employ any unlawful,
18 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising
19 and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
20 Business and Professions Code;
- 21 52. Restitution to \$2.95 Guys of any money or property, real or personal, which may
22 have been acquired by means of AVP's unfair competition
- 23 53. Attorney fees pursuant to, *inter alia*, 15 U.S.C. §1117 and California Code of Civil
24 Procedure §1021.5;
- 25 54. Costs of this suit;
- 26 55. Pre-judgment and post-judgment interest, as permitted by the Court or under statute;
- 27 56. A jury trial on all claims so triable; and

28 COMPLAINT

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58. Such other and further relief as the Court may deem necessary or appropriate.

Dated: September 5, 2008

Respectfully submitted by,

LAW OFFICES OF DARREN J. QUINN
DARREN J. QUINN
ALEXANDER E. PAPAETHIMIOU



Alexander E. Papaethimiou

12702 Via Cortina, Suite 105
Del Mar, CA 92014
Telephone: (858) 509-9401

Attorneys for Plaintiff SMOOTHREADS, INC.

DEMAND FOR A JURY TRIAL

1
2 Plaintiff SMOOTHREADS, INC. d/b/a \$2.95 GUYS demands a trial by jury on all causes
3 of action so triable.

4 Dated: September 5, 2008

Respectfully submitted,

5 LAW OFFICES OF DARREN J. QUINN
6 DARREN J. QUINN
7 ALEXANDER E. PAPAETHIMIOU

8 

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9 12702 Via Cortina, Suite 105
10 Del Mar, CA 92014
11 Telephone: (858) 509-9401

Attorneys for Plaintiff SMOOTHREADS, INC.

JS44

(Rev. 07/80)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1979, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SMOOTHREADS, INC., a California corporation, d/b/a \$2.95 GUYS

DEFENDANTS

2008 SEP -5 PM 1:38
ADDVENTURE PRODUCTS, INC., a California corporation

SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

BY: [Signature] DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

**Darren J. Quinn
LAW OFFICES OF DARREN J. QUINN
12702 Via Cortina, Suite 105
Del Mar, CA 92014**

ATTORNEYS (IF KNOWN)

'08 CV 1634 L LSP

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff
- Federal Question (U.S. Government Not a Party)
- U.S. Government Defendant
- Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only))

- | | | | | | |
|---|-----------------------------|------------------------------|---|-----------------------------|------------------------------|
| Citizen of This State | <input type="checkbox"/> PT | <input type="checkbox"/> DEF | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> PT | <input type="checkbox"/> DEF |
| Citizen of Another State | <input type="checkbox"/> PT | <input type="checkbox"/> DEF | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> PT | <input type="checkbox"/> DEF |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> PT | <input type="checkbox"/> DEF | Foreign Nation | <input type="checkbox"/> PT | <input type="checkbox"/> DEF |

IV. CAUSE OF ACTION (WRITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

copyright infringement and breach of contract Declaratory Relief Injunctive of Patent 428 USCS 2201

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Napsenic Instruments <input type="checkbox"/> 150 Recovery of Development & Enforcement of Judgments <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Devt. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 164 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Breach Liability	PERSONAL INJURY <input type="checkbox"/> 219 Airplane <input type="checkbox"/> 219 Airplane Product Liability <input type="checkbox"/> 228 Assault, Libel & Slander <input type="checkbox"/> 230 Federal Employees' Liability <input type="checkbox"/> 240 Marine <input type="checkbox"/> 245 Marine Product Liability <input type="checkbox"/> 250 Motor Vehicle <input type="checkbox"/> 255 Motor Vehicle Product Liability <input type="checkbox"/> 260 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 621 Drug Related Source of Property 21 USC001 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 670 Labor <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Unl. Relations <input type="checkbox"/> 730 Labor/Unl. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Referral 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 420 Copy right <input type="checkbox"/> 430 Patent <input type="checkbox"/> 435 Trademark SOCIAL SECURITY <input type="checkbox"/> 440 HIA (1958) <input type="checkbox"/> 450 Black Lung (923) <input type="checkbox"/> 460 DIWC/DIWW (405(g)) <input type="checkbox"/> 465 SSID Title XVI <input type="checkbox"/> 465 SS (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 471 (RS - Third Party 26 USC 7429)	<input type="checkbox"/> 480 State Reapportionment <input type="checkbox"/> 490 Antitrust <input type="checkbox"/> 495 Banks and Banking <input type="checkbox"/> 496 Commerce/CCU, Maritime <input type="checkbox"/> 498 Appraisal <input type="checkbox"/> 499 Indefinite Influenced and Comp. Organizations <input type="checkbox"/> 510 Subactive Service <input type="checkbox"/> 515 Scientific/Commodities (Exchange) <input type="checkbox"/> 575 Customer Challenge (2 USC <input type="checkbox"/> 581 Agricultural Act <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 596 Appeal of Fed. Determination Under Equal Access to Justice <input type="checkbox"/> 598 Constitutionality of State <input type="checkbox"/> 599 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Ten to Land <input type="checkbox"/> 245 Ten Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 448 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence; Habeas Corpus <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge when

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.P. 23

DEMAND \$

Check YES only if demanded in complaint.

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions)

JUDGE

Docket Number

DATE

9/5/08

SIGNATURE OF ATTORNEY OF RECORD

#350 #154738 SAC 9/5/08

ORIGINAL

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 154738 - TC
* * C O P Y * *
September 05, 2008
13:47:12**

Civ Fil Non-Pris

USAD #: 08CV1634
Judge.: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: BC2322

Total-> \$350.00

**FROM: SMOOTHREADS, INC
VS
ADVENTURE PRODUCTS**