

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Think Green Limited d/b/a Haakaa,

Plaintiff,

v.

Medela AG and Medela LLC,

Defendants.

CASE No. 21-5445

JURY TRIAL DEMANDED

COMPLAINT

NATURE OF THE CASE

This is an action for (among other things) relief from the theft of ideas and designs by a company whose slogan is “Medela Cares,” but whose conduct in the marketplace speaks differently. Medela’s conduct includes a boast to its customers at product launch in August 2021 that it was coming after Plaintiff’s product design and market share. In an email blast upon launch of its knockoff manual breast pump product, Defendants announced: “Step aside Haakaa. We’ll take it from here.” Plaintiff brings suit because enormous global companies are not simply allowed to “take it” when a more innovative (though much smaller) company succeeds in the marketplace with an award-winning design that outclasses Defendants’ existing product offerings.

Plaintiff Think Green Limited d/b/a Haakaa (“Haakaa”) complains of Medela AG and Medela LLC (collectively, “Medela” or “Defendants”) as follows:

JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. §§ 1331, 1332, 1338(a) and 1367 because this is an action for infringement of Haakaa’s patent rights, for violation of Section 43(a) of the Lanham Trademark Act, 15 U.S.C. § 1125(a), and for violation of Illinois law prohibiting unjust enrichment and deceptive trade practices.

2. Defendants are subject to personal jurisdiction in Illinois and in this judicial district and division because they have transacted business here by selling, offering to sell, or distributing maternity care products (including the Silicone Breast Milk Collector) that violate Haakaa's intellectual property rights. Defendant Medela LLC is organized under the laws of Delaware and is headquartered in this judicial district, Medela LLC thus resides in Illinois. Defendants are also reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can purchase infringing products. Defendants have targeted sales from Illinois residents by operating an online store that offers shipping to Illinois, and upon information and belief, have sold infringing products to residents of Illinois. The Defendants are also committing tortious acts in Illinois.

3. Venue is proper under the general federal venue statute, 28 U.S.C. § 1391(d), and under the specific venue provision relating to patent-infringement cases, 28 U.S.C. § 1400(b).

PARTIES

4. Haakaa is a small mom-and-pop New Zealand company headquartered in Auckland, New Zealand. Haakaa owns and has standing to sue for infringement of United States Patent No. D808,006, entitled "Breast Pump" (Exhibit A, hereinafter referred to as the "patent-in-suit").

5. Medela AG is a Swiss company with headquarters in Baar, Switzerland. Medela has at least 18 subsidiaries worldwide, including Medela LLC, which is a Delaware company headquartered in McHenry, Illinois, also with facilities in Elgin, Illinois, in this judicial district. Defendants have previously and are presently making, using, selling, offering for sale, and/or importing into the United States breast pumps that infringe the patent-in-suit. Defendants have infringed the patent-in-suit either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271 and 289. Defendants have annual revenues exceeding US\$550 million.

6. Defendants operate an online storefront at <https://www.medela.us/breastfeeding/products/breast-pumps/silicone-breast-milk-collector> with a “BUY ONLINE” button that permits online purchasing of the infringing Silicone Breast Milk Collector through Amazon.com, Target.com and BuybuyBaby.com. Since September 2021, Defendants have also placed the Silicone Breast Milk Collector into retail channels such as at physical Target stores throughout the United States and elsewhere, including this judicial district.

BACKGROUND

7. Haakaa owns the patent-in-suit and has worked diligently to commercialize the inventions claimed within it. Haakaa co-founder, company director and designer Shuting Zhang perfected a sleek, consumer-friendly ornamental design embodied in the patent -in-suit as shown in one of the patent figures, below:



8. As a result of Haakaa’s commercialization efforts, Haakaa has experienced dramatic commercial success worldwide with its embodiments of this patent – the Generation 2 Breast Pump

(the “Haakaa Pump”). The Haakaa Pump is Haakaa’s largest selling product and amounts to 60.5% of its total sales. It is a pillar of Haakaa’s business.

9. The Haakaa Pump has become synonymous with the Haakaa brand. Since its release in 2017, the Haakaa Pump has become known among nursing mothers simply as their “Haakaa.” Nursing mothers cherish their “Haakaas,” and recognize it as a groundbreaking, pleasing and ergonomic ornamental design that visually conveys concepts of motherhood, simplicity and comfort.

10. The Haakaa brand is well-recognized throughout the United States and the world for manufacture and supply of innovative and environmentally friendly maternity products. Haakaa has accumulated substantial goodwill and reputation in its trading name “Haakaa,” earning it a zealous following among moms. The Haakaa brand was born from Ms. Zhang’s unique struggles in motherhood, and the infuriating absence of marketplace offerings designed with women’s needs in mind. She started to design and create products with a focus on making these women’s lives easier. After her products started gaining commercial traction, she and her husband founded Think Green Limited as a corporate vehicle to manufacture and sell the products. The Haakaa Pump is a direct outgrowth of Ms. Zhang’s mom-centric efforts.

11. The Haakaa Pump has won substantial and meaningful industry praise and awards, including: Winner - What to Expect: Feeding Award - Best Manual Breast Pump (USA, 2020, 2021); Winner - BabyCentre Love It Award - Best Affordable Breast Pump (USA, 2021); Winner - PureWow Happy Kid Award - Breastfeeding Must-Have (USA, 2021); Gold Winner - OHbaby! - Best Manual Breast Pump (New Zealand, 2018, 2020); Gold Winner - OHbaby! - Best Portable Product (New Zealand, 2020); Gold Winner - National Parenting Product Awards - Best Breast Pump (Ireland, 2019, 2020, 2021); Winner - Ovia Health Family Awards - Best Manual Breast Pump (USA, 2020); Winner - Ovia Health Family Awards - Best Wearable Breast Pump (USA, 2020); Winner - Smart Parenting Village Mom & Baby Picks - Manual Breast Pump (the Philippines,

2018); Gold Winner - Made For Mums Awards - Breast Pump (the UK, 2018); Winner - Supermom Awards - Best Single Breast Pump for Home Use (Singapore, 2018); Winner - Baby Innovation Award - Feeding (Netherlands, 2018); Winner - Babystuf Consumer Award - World of Kids Feeding (Netherlands, 2018); Finalist - Kind + Jugend Innovation Award (Germany, 2018); Winner - Family Choice Awards - Babies and Parenting (the USA, 2018); and Finalist - What to Expect: Mom Must-Have Award (USA, 2017).

12. Haakaa publicizes and advertises the Haakaa Pump within its strong online and social media presence, and elsewhere. Though it is a small family company, Haakaa has 95,000 followers on its general Facebook account, 7,500 followers on its U.S. Facebook account, and 125,000 followers on its U.S. Instagram account. The most prevalent Haakaa product discussed and seen within this social media is the Haakaa Pump.

13. Starting in August 2021, Defendants began advertising and selling their infringing breast pumps: the Medela Silicone Breast Milk Collector. To an ordinary observer, those accused

devices appear substantially and confusingly similar to claimed aspects of Haakaa's patented design (*i.e.*, the surface shape), and to Haakaa's commercial product:



Patent -in-suit Figure 9



Medela Infringing Product



Haakaa Pump



Medela Infringing Product

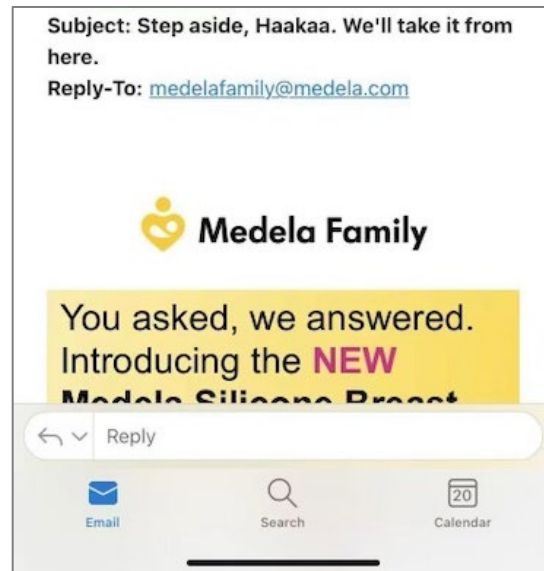
14. Ornamental similarities include:

- the straight elevation where the shield rises in the back up from the collector;
- the slight small degree angle of the front part of the shield compared to horizontal;
- the depression shape internal to the rear of the shield;
- the overall bulge and shape of the collector;
- the rounded rib about two-thirds of the way up on the collector;
- the flared base with extending semi-circular small tab;
- the concave union between the flared base and collector;
- the general proportions of the elements compared to one another; and
- a ridge pattern on the small tab.

15. Defendants also (egregiously) have promoted their infringing Silicone Breast Milk Collector by boasting about their having “taken” the Haakaa Pump. Defendants posted on their

Instagram account and emailed their customer base in August 2021, to promote their release of the new infringing product, using the following respective imagery and text:

Medela's email to its customer base



Medela's Instagram Posts



16. Defendants have 141,000 followers on their United States Instagram account. It is reasonable to assume that Defendants' email blast was sent to a similar number of recipients. Viewers of these aggressive advertisements included consumers considering purchase of either the Haakaa Pump or the infringing Silicone Breast Milk Collector. Social media is particularly important to potential consumers of Haakaa's products, because of the desire of new moms to use the right products and to be judged well on their choices.

17. Haakaa owns distinctive, aesthetic, non-functional trade dress in its Haakaa Pump. Haakaa has used and highlighted this trade dress consistently in its marketing, including on its website located on the Internet, *e.g.*, at <https://haakaa.com> and <http://www.haakaausa.com/>.

18. The trade dress of the Haakaa Pump is recognizable by (among other things) the first-of-its-kind three-part shield-collector-base configuration, wherein the collector is bulbous yet fits underneath the outer diameter of the shield and contains an ornamental rib in its top part, while the base flares out from the bottom of the collector bulb to meet the surface upon which the whole unit rests.

19. The Haakaa Pump trade dress symbolizes the quality of Haakaa products, and has become distinctive to Haakaa through widespread use and advertising, which has exposed it to many people, especially in the maternity care industry. Haakaa has used the Haakaa Pump trade dress in a consistent and continuous fashion in commerce though its website, in marketing material, and on social media.

20. The Haakaa Pump trade dress is aesthetic and non-functional, and through consistent and continuous use and expenditure of approximately \$8.5 million marketing budget per year (large for a mom-and-pop business), it has come to identify the Haakaa products, and a substantial portion of the consuming public recognizes the trade dress and associates it with Haakaa and its products. The trade dress has become an asset of substantial value and is strongly associated

with a single product line and source. The Haakaa Pump has been featured in several publications since release, including Vouge, Essence, US Weekly, OK! USA, Ohbaby, Parents, and Nature Parenting, and has won numerous industry and consumer awards (named in a preceding paragraph). The Haakaa Pump thus has a trade dress that has acquired a secondary meaning.

21. Defendants have copied and used the Haakaa Pump trade dress in connection with their advertising and marketing of the confusingly similar accused devices in interstate commerce with the intention of misleading, deceiving or confusing consumers as to the origin of the accused products while trading on Haakaa's reputation and good will.

22. The infringement by Defendants of the Haakaa Pump trade dress is likely to cause confusion, deception, and mistake among consumers and potential consumers of the Haakaa product.

23. By letter dated 20 August 2021, Haakaa's solicitors wrote to Defendants to (among other things) put them on notice of various infringements of Haakaa's intellectual property rights and to request, as an interim step, undertakings to cease using the "Haakaa" brand name. By way of a letter of response from its lawyers dated 20 August 2021, Defendants confirmed that they would refrain from referring to "Haakaa" in their marketing, website, and social media posts

24. Haakaa has also raised the issue of the infringing Silicone Breast Milk Collector with Amazon. In response, Amazon for some time removed the infringing pump from its online marketplace. However, even over the short period that the infringing pump was available on Amazon, Haakaa dropped from first to the fourth in top sellers of baby products on Amazon, and Defendants adopted aggressive pricing to undercut the Haakaa Pump, despite Defendants customarily being a supplier of more expensive products.

25. The short experience with Amazon indicates that it is inevitable that Haakaa will lose its market share and potential customers if Defendants are not restrained from selling the infringing Silicone Breast Milk Collector – which is likely to have irreparable consequences for Haakaa.

26. Defendants through their conduct are: attempting to use Haakaa’s intellectual property to springboard their own commercial enterprise to the detriment of Haakaa (forcing Haakaa to compete against its own design, at higher prices than Defendants); and causing Haakaa to lose the benefit of innovation in the Haakaa Pump, the ability to advertise the uniqueness of the Haakaa Pump and the benefit of the exclusivity provided by the patent-in-suit; thus depriving Haakaa of commercial opportunities.

27. Defendants’ conduct also threatens Haakaa’s status and standing and reputation among its distributors, business partners and consumers as an innovator. If Haakaa cannot credibly communicate to its stream of commerce that it is the originator and designer of innovative products that are protectible through the legal system, this effectively renders protection of innovation (such as patents and trade dress) worthless and opens the floodgates for other competitors to copy the Haakaa Pump. This would be the end of Haakaa’s business.

28. In these circumstances, Haakaa cannot adequately be compensated for Defendants’ infringement of Haakaa’s intellectual property by way of damages alone.

Additional Marketplace Facts

29. The Haakaa Pump has a suggested and actual retail price of \$20.99 (5oz.) and \$19.99 (4oz. / 100ml), as listed and offered on the Haakaa.com website.

30. The Medela.us website claims that the Medela Silicone Breast Milk Collector has a suggested retail price of \$19.99 (3.4oz. / 100ml). However, clicking the “BUY ONLINE” button discloses an actual retail price of \$14.99 through three e-commerce marketplaces (Amazon, Target and buybuyBABY).

31. Defendants’ three e-commerce marketplaces (Amazon, Target and buybuyBABY) are identical to three of Haakaa’s four e-commerce marketplaces.

32. Defendants as competitors have therefore mimicked not only Haakaa’s product, but also Haakaa’s supply channels, while undercutting on price using Haakaa’s own rightful design.

33. Defendants’ webpage selling the Silicone Breast Milk Collector contains the following FAQ:

Is the Medela Silicone Breast Milk Collector a similar product to other brands silicone breast pump?

Yes. While both the Medela Silicone Breast Milk Collector and what other brands call a silicone breast pump work the same way, Medela’s Silicone Breast Milk Collector has been designed to include three **anti-spill** features; a clip-on lanyard for added security, a secure suction base to reduce tipping over and double leak proof protection with the silicone stopper and lid!

34. The foregoing statement is false and/or misleading, because Haakaa offers its Haakaa Pump with all available anti-spill features that Defendants do.

35. A “clip-on lanyard” is not an “anti-spill” feature, and during use might actually promote spilling.

36. A “secure suction base” comes with both the Haakaa Pump and the Medela Silicone Breast Milk Collector. This is not a product feature distinction.

37. “[D]ouble leak proof protection with the silicone stopper and lid” is available with both the Haakaa Pump and the Medela Silicone Breast Milk Collector, since Haakaa offers a secure-fit Haakaa Silicone Breast Pump Cap, as well as a silicone stopper, each for separate purchase or (in the stopper case) also available in a combined kit with the pump itself. This is not a product feature distinction.

38. Defendants’ Medela.us webpage for Products / Breast Pumps features a photograph of the Medela Silicone Breast Milk Collector adjacent the following text:

As the #1 mom and doctor recommended breast pump brand*, Medela provides the best in **research**-based breast milk feeding products. We are committed to supporting every mom's breast milk feeding journey and innovating beyond the mechanics of pumping breast milk, considering how it fits into her life and common challenges: from initiating breast milk with our hospital-grade Symphony® pump to expressing milk during the occasional break from baby using the Harmony® manual breast pump and exclusive pumping with our premium personal use pumps like Pump in Style® with MaxFlow™ and Freestyle Flex™. All of Medela's pumps feature **research**-based 2-Phase Expression® technology, known for helping moms pump more milk faster**.

39. Defendants' Medela.com webpage for Our Products states that "Medela's breastfeeding products are based on more than 20 years of evidence-based **research** into the life-giving benefits of breast milk."

40. The foregoing statements are false and/or misleading, because on information and belief, Defendants' development and release of the Medela Silicone Breast Milk Collector was not "research-based" or "based on more than 20 years of evidence-based research." Defendants copied Haakaa and Haakaa's award-winning success, rather than conduct research.

COUNT I

DESIGN PATENT INFRINGEMENT

41. Haakaa repeats and realleges the allegations contained in paragraphs 1 through 40 of this complaint as if fully set forth herein.

42. Defendants have infringed and continue to infringe the patent -in-suit either directly or indirectly through acts of contributory infringement or inducement in violation of 35 U.S.C. §§ 271 and 289 by making, using, selling, importing and/or offering to sell infringing products, namely the Medela Silicone Breast Milk Collector. Additional infringing models may be identified through discovery.

43. Defendants' infringement, contributory infringement and/or inducement to infringe has injured Haakaa and it, therefore, is entitled to recover damages adequate to compensate it for

such infringement, but in no event less than a reasonable royalty. On information and belief, Defendant has had knowledge of the patent -in-suit, and its infringement has been willful.

44. Defendants' infringement, contributory infringement and/or inducement to infringe has injured and will continue to injure Haakaa, unless and until this Court enters an injunction, which prohibits further infringement and specifically enjoins further manufacture, use, sale, importation and/or offer for sale of products or services that come within the scope of the patent - in-suit.

COUNT II
FEDERAL TRADE DRESS INFRINGEMENT/UNFAIR COMPETITION

45. Haakaa repeats and realleges the allegations contained in paragraphs 1 through 44 of this complaint as if fully set forth herein.

46. Defendants' activities complained of herein constitute infringement of Haakaa's trade dress and unfair competition in violation of 15 U.S.C. § 1125(a) to the injury and detriment of Haakaa.

47. As a direct and proximate result of Defendants' infringement, Haakaa has suffered and will continue to suffer loss of income, profits and good will and defendants will continue to unfairly acquire income, profits, and good will.

COUNT III
FALSE ADVERTISING / UNFAIR COMPETITION

48. Haakaa repeats and realleges the allegations contained in paragraphs 1 through 47 of this complaint as if fully set forth herein.

49. Defendants' activities complained of herein constitute false advertising and unfair competition in violation of 15 U.S.C. § 1125(a) to the injury and detriment of Haakaa.

50. As a direct and proximate result of Defendants' false advertising, Haakaa has suffered and will continue to suffer loss of income, profits and good will and defendants will continue to unfairly acquire income, profits, and good will.

COUNT IV
UNJUST ENRICHMENT

51. Haakaa repeats and realleges the allegations contained in paragraphs 1 through 50 of this complaint as if fully set forth herein.

52. Defendants' activities complained of herein constitute unjust enrichment, as Defendants have unjustly retained a benefit to Haakaa's detriment (moneys from sales of Silicone Breast Milk Collector products), and Defendants' retention of the benefit violates the fundamental principles of justice, equity and good conscience.

53. Defendants obtained and retained such benefits through unethical, egregious and bad faith marketplace activities including (1) launching a product in competition with Haakaa that uses Haakaa's design, while boasting that Haakaa should step aside because Defendants would "take it" from here; (2) copying Haakaa's design for such new product; (3) following Haakaa's lead in its selection of retail channels, to ensure that the copied product would sell side-by-side with the original Haakaa product at the same channels; (4) advertising the copied product as based on "research" when that was not true because it was instead copied from Haakaa's award winning design; (5) advertising "anti-spill" product differentiation when both companies offer product configurations with the same "anti-spill" capabilities; (6) doing all of the above as a much larger company targeting the primary product of a much smaller company to obtain immediate market share diversion through undercutting of Haakaa's price while effectively selling Haakaa's own product; and (7) acting in a manner calculated to force Haakaa out of business and reduce competition by "taking" Haakaa's design and forcing Haakaa to compete against its own innovations.

54. As a direct and proximate result of Defendants' unjust enrichment, Haakaa has suffered and will continue to suffer loss of income, profits and good will and defendants will continue to unfairly acquire income, profits, and good will.

COUNT V
ILLINOIS DECEPTIVE TRADE PRACTICES ACT
815 ILCS 510/2

55. Haakaa repeats and realleges the allegations contained in paragraphs 1 through 54 of this complaint as if fully set forth herein.

56. Defendants' activities complained of herein constitute deceptive trade practices in violation of 815 ILCS 510/2 to the injury and detriment of Haakaa, particularly subsections (2), (5), (7), (8) and (12).

57. As a direct and proximate result of Defendants' deceptive trade practices, Haakaa has suffered and will continue to suffer loss of income, profits and good will and defendants will continue to unfairly acquire income, profits, and good will.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Haakaa requests a trial by jury on all issues presented that can properly be tried to a jury.

PRAYER FOR RELIEF

THEREFORE, Haakaa asks this Court to enter judgment against Defendants and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An injunction preliminarily and permanently prohibiting further infringement, inducement and contributory infringement of the patent-in-suit;

B. An injunction preliminarily and permanently prohibiting further infringement of Haakaa's trade dress;

C. An award of damages adequate to compensate Haakaa for the infringement that has occurred, together with prejudgment interest from the date infringement began;

D. All other damages permitted by 35 U.S.C. § 284;

E. Additional damages as expressly provided for in the case of a design patent under 35 U.S.C. § 289;

F. Additional damages as expressly provided for in the case of Lanham Act violations under 15 U.S.C. §§ 1116-18, including a permanent injunction enjoining Defendants' acts of trade dress infringement; recovery of Defendants' profits, any damages sustained by Haakaa, the costs of the action; compelled corrective advertising and an injunction against future false advertising; and destruction of the infringing articles;

G. An injunction preliminarily and permanently prohibiting against acts found to constitute deceptive trade practices;

H. Disgorgement of profits from Defendants' unjust enrichment;

I. A finding that this case is exceptional and an award to Haakaa of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

J. An award of costs; and

K. Such other and further relief as this Court or a jury may deem proper and just.

Dated: October 13, 2021

Respectfully submitted,

/s/Robert P. Greenspoon

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