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Filing date: **10/02/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92072083
Party	Defendant FIUS Distributors LLC
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Submission	Motion to Suspend for Civil Action
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Signature	/Rachel A. Rice/
Date	10/02/2019
Attachments	Motion to Suspend With Consent_FIUS.pdf(91671 bytes ) Exhibit A Complaint 92072083.pdf(748950 bytes )

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

In the matter of Trademark Trial and Appeal Board  
Cancellation No. 92072083

Mark : DREAMWAVE  
Registration Number : 4,592,881  
Filing Date : January 30, 2014  
Registration Date : August 26, 2014

Family Inada Co., Ltd. )  
 )  
Petitioner, )  
 )  
v. ) Cancellation No. 92072083  
 )  
FIUS Distributors LLC. )  
 )  
Registrant. )

**MOTION TO SUSPEND PROCEEDINGS WITH CONSENT**

By submission of this request, Registrant, pursuant to 37 CFR § 2.117(a), respectfully request that the proceedings in the above-identified matter be suspended pending the final outcome of *Family Inada Co., Ltd. v. FIUS Distributors LLC*, Case Number 19-925-CFC filed in the United States District Court for the District of Delaware on May 17, 2019.

1. The identified civil action between Petitioner and Registrant involves the same trademarks at issue in this cancellation proceeding, the two actions involve substantially similar issues of law and fact, and a decision by the federal district court may have bearing on this cancellation proceeding. A copy of the complaint filed in the identified civil action is attached hereto as Exhibit A.

2. On October 2<sup>nd</sup>, 2019, counsel for Petitioner consented to this Motion to Suspend Proceedings.

WHEREFORE, Registrant respectfully requests that the Board enter an order suspending the proceedings until a final determination is made in the identified civil action.

Respectfully submitted,

Date: October 2, 2019

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**CERTIFICATE OF FILING**

I hereby certify that this Motion to Suspend Proceedings with Consent was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on October 2, 2019.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the attached Motion to Suspend Proceedings with Consent has been served upon Petitioner, via its counsel, by email, on September 30, 2019 to the following:

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## **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FAMILY INADA Co., Ltd.

Plaintiff,

v.

FIUS DISTRIBUTORS LLC, D.B.A. INADA  
USA, D.B.A. FURNITURE FOR LIFE,

Defendant.

Civil Action No.

**JURY TRIAL DEMANDED**

**COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiff Family Inada Co., Ltd. (“Family Inada”), by and through its attorneys, brings this action against the defendant FIUS Distributors LLC, d.b.a. INADA USA, d.b.a. Furniture for Life (“FIUS”). As grounds for this complaint, Family Inada alleges the following:

**NATURE OF THE ACTION**

1. This is an action for trademark infringement and unfair competition arising under the trademark laws of the United States, 15 U.S.C. §§ 1125(a), 1064, 1092, 1119 and 1120, 28 U.S.C. § 2201 *et seq.* and under the common law and deceptive and unfair trademark practices laws of the State of Delaware, Delaware Deceptive Trade Practices Act, Del. Code Ann. tit. 6 § 2532, related to hold-over licensee FIUS’ sale of the infringing DreamWave massage chair (the “Infringing Product”), which intentionally and willfully uses the protectable trademarks of Family Inada and is causing actual confusion in the marketplace.

2. Family Inada, who is the maker of the iconic INADA DREAMWAVE luxury massage chair, has been a world leader in in the field of massage chairs for over 50 years, including in the United States. FIUS, who has for a decade operated under the name Inada USA as Family Inada’s sole U.S. distributor and licensee, is now hijacking the valuable DREAMWAVE

trademarks to launch a competing massage chair line. As a hold-over licensee, FIUS' conduct is an infringement of Family Inada's valuable rights. Moreover, FIUS actions are causing, and will continue to cause, tremendous harm to Family Inada. Indeed, it is apparent that FIUS' intent is to confuse consumers into believing that FIUS, not Family Inada, is the company behind the iconic DREAMWAVE massage chair so it can take for itself the sterling reputation Family Inada's products have created. Thus FIUS' willful efforts to sow confusion and unfairly compete with its former licensor must be stopped.

### **THE PARTIES**

3. Plaintiff Family Inada is a corporation duly organized under the laws of Japan with its principal place of business at 2-1-3 Nishimiyahara, Yodogawa-ku, Osaka, Japan.

4. Defendant FIUS is a limited liability company duly organized under the laws of the State of Delaware with its principal place of business at 2125 32nd Street, Boulder, CO, United States.

5. Defendant FIUS operates its business under the trade name Inada USA in the State of Colorado.

6. Defendant FIUS operates its business under the trade name Furniture For Life in the State of Colorado.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367 and 15 U.S.C. § 1121 because this is an action for trademark infringement and related unfair competition claims under federal law.

8. This Court has personal jurisdiction over FIUS because FIUS is a Delaware limited liability company.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is subject to personal jurisdiction in this District.



## FACTS

### *Family Inada's History and Relationship with Licensee FIUS*

10. Founded in 1962 by Mr. Nichimu Inada, Family Inada has been a world leader in the field of massage chairs for over 50 years.

11. Indeed, Mr. Inada has the honor of inventing the first automatic shiatsu massage chair out of his workshop in Osaka Japan, and ever since has made it his mission to bring the health benefits of massage chairs to customers around the world.

12. Family Inada does business around the world under the housemark INADA.

13. In the United States, it owns incontestable U.S. Trademark registration Nos. 4,252,717 for **INADA** and 3,882,670 for , and U.S. Registration No. 4,638,977 for , which are all for use in connection with “massage apparatus” among other goods (collectively the INADA Housemark). *See* Ex. A.

14. Due to Family Inada's storied history of literally creating the massage chair industry, and its sterling reputation for leading innovation ever since, the INADA Housemark is synonymous with high quality and industry leadership.

15. Indeed, INADA branded products are regularly marketed as The World's Best Massage Chair®.

16. While Family Inada had been selling INADA branded massage chairs in the United States for some time, in 2007 it partnered with Mr. Clifford Levin to grow the INADA brand in the United States.



17. Together, along with other investors, Family Inada and Mr. Levin formed a company named FIUS Distributors LLC. Mr. Levin is the Manager of FIUS. Currently, Family Inada is a shareholder in FIUS.

18. The name FIUS, which is an acronym for Family Inada United States, was chosen to reflect that the purpose of this company was to act as the U.S. distributor of massage chairs manufactured by Family Inada.

19. Mr. Levin requested that FIUS be permitted to do business under the INADA Housemark to leverage Inada's tremendous reputation in the massage chair industry. Family Inada agreed, and gave FIUS license to make broad use of the INADA Housemark and do business as "Inada USA," which Family Inada saw as growing the INADA brand in the United States. FIUS has been doing business under the INADA Housemark since at least as early as 2009.

20. FIUS would eventually register the domain name InadaUSA.com, where it used the INADA Housemark to distribute Family Inada chairs. Samples over time of this website are attached as Exhibit B.

21. The parties, however, did not enter into a formal licensing agreement.

22. In the relationship, Family Inada entirely controlled the nature of the products, the design of new products, product quality, and product manufacture. Family Inada also had the final say on branding, although it reasonably considered the advice of FIUS, which it partnered with precisely because of its understanding of the U.S. furniture marketplace.

23. FIUS understood that Family Inada was the owner of the INADA Housemark and that it was operating with Family Inada's permission to use the Inada USA mark. Family Inada exercised control over FIUS' use of INADA Housemark by controlling the nature of the products

FIUS sold. FIUS acceded to Family Inada's requirements and standards with respect to the use of the INADA Housemark.

24. Family Inada would wholesale its INADA massage chairs to FIUS, who would then either sell them to dealers (such as furniture stores) or end consumers under the INADA house mark.

25. As part of this deal, it was FIUS' responsibility to market and advertise INADA massage chairs, provide customer service, and administer the warranty for the products in the United States. All of these activities, however, have been carried out under the INADA house mark and the "Inada USA" trade name, so consumers associate both the goods and services with Family Inada.

26. The warranty page of the InadaUSA.com website states "[a]t *Inada*, we are committed to delivering the best massage chair experience money can buy. As part of this commitment, we provide buyers with the industry's finest and most comprehensive massage chair warrantee available." *See* Ex. B, p. 78.

27. Indeed, FIUS' offices and flagship showroom were even branded with the INADA House mark, and FIUS employees — including Mr. Levin — regularly wore shirts and nametags that featured the INADA House mark:



Ex. C, Visit to Inada USA Headquarters (May 30, 2014) (screen capture).



Ex. D, CES 2013 Interview with Inada USA's CEO, Cliff Levin *available at* <https://www.youtube.com/watch?v=bNGKeEAuFw0> (Jan 11, 2013) (screen capture).


*The INADA DREAMWAVE Chair*

28. After nearly a decade of painstaking research and development, design, refinement, and testing, in 2007 Family Inada was set to unveil its newest flagship, ultra-luxury massage chair under the brand name SOGNO, which means “dream” in Italian.

29. It shared its plans and demonstrated the massage chair to its U.S. partner, Mr. Levin.

30. The SOGNO massage chair was equipped with innovative proprietary functions previously unknown to the massage chair industry. One of such functions included creating a pattern of a figure 8 with the seat to create the sensation of being rocked by a gentle undulating wave. This innovative function quickly became one of the most popular functions among the users.

31. Mr. Levin proposed that Family Inada call this innovative massage feature the “DreamWave Technology.” In early 2008, Family Inada took this suggestion under advisement and named this innovative massage feature the “DreamWave” technology.

32. Reflecting the popularity of the “DreamWave” technology, in or about February 2008, Inada further decided to brand the model itself the INADA SOGNO DREAMWAVE and created the  logo that Family Inada affixed to the INADA SOGNO DREAMWAVE chairs.

33. Each INADA SOGNO DREAMWAVE chair was marked by Family Inada with the INADA Housemarks and the INADA SOGNO DREAMWAVE Mark. A representative image of a label affixed to the chair is below:



34. In the United States, FIUS promoted INADA SOGNO DREAMWAVE chair as a Family Inada chair, touting its “Proprietary Inada DreamWave Technology.” For example:



See Ex. B, pg. 3, InadaUSA.com (April 17, 2010 Archive.org capture) (emphasis added).

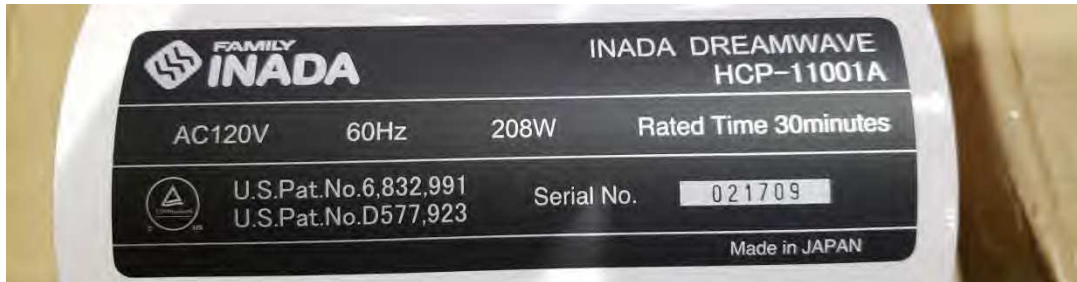
35. The INADA SOGNO DREAMWAVE chair was featured at the Consumer Electronics Show (“CES”) in 2009, where it generated a great deal of attention on the show floor for its innovative design and cutting edge technology. It would also be honored with an Innovation Award by the show’s organizers. Thereafter, the INADA SOGNO DREAMWAVE chair quickly became Inada’s top selling model in the United States, and one of the most revered and esteemed massage chairs on the market.

36. At CES 2009, Mr. Levin gave an interview as the “president of the U.S. division for Inada Massage Chairs” where he discussed the Inada Sogno chair and stated “the Inada Sogno offers something we call DreamWave Technology.” See Ex. E, Transc. at p. 2.

37. In or around 2013, when Family Inada was contemplating an updated version of its SOGNO DREAMWAVE chair, FIUS proposed that challenges in pronouncing the SOGNO name may be holding this product back and suggested shortening the name to INADA DREAMWAVE. Family Inada took this recommendation under advisement and ultimately agreed, shortening the name to INADA DREAMWAVE.

38. Family Inada and its licensee FIUS also worked together to create a three-line design mark, [REDACTED], which would be affixed to each INADA DREAMWAVE chair that Inada manufactured. While FIUS proposed the initial design, it was unacceptable to Family Inada's designer, and thus Family Inada modified the design to the form that was adopted.

39. Family Inada first affixed the INADA DREAMWAVE mark and the [REDACTED] logo to Family Inada manufactured chairs in 2014. Each INADA DREAMWAVE chair included, among others, a label that featured the INADA HOUSEMARK and INADA DREAMWAVE marks, for example:

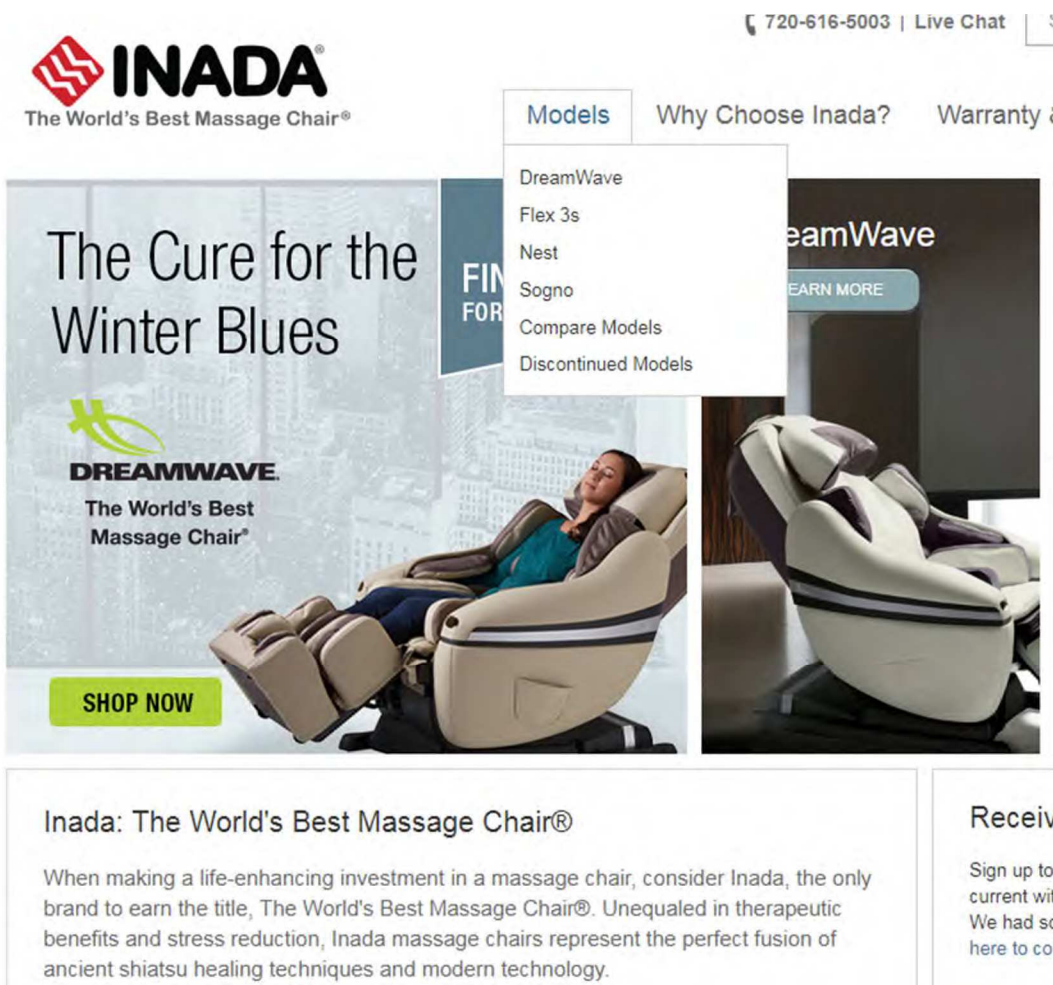


40. FIUS acquired the domain name DreamWave.com without the knowledge of Family Inada, to which it eventually redirected traffic from InadaUSA.com. From approximately 2017 through the end of 2018, FIUS branded the DreamWave.com website with the INADA Housemark and used this website to exclusively sell Inada chairs.

41. Tellingly, throughout the history of the chair, both Family Inada and FIUS understood the DREAMWAVE mark to be first a technology mark and then a model designation of an



INADA chair, and it was clearly marketed as such. Indeed, the INADA branded dreamwave.com website, which FIUS used exclusively to sell and market Inada chairs, makes this fact abundantly clear:



Ex. F. DreamWave.com (Archive.org capture, Feb. 24, 2018).

42. The product page for the INADA DREAMWAVE model also refers to it as the “Inada DreamWave Massage Chair” and states that “[a]ll of Inada’s industry leadership and innovation has been leading to this. Introducing the DreamWave® by Inada, culminating years of research, testing, and uncompromising attention to detail and design.” *Id.* at D.

43. Then, after touting the benefits and technology of the Inada DreamWave chair, the website states “[i]t’s all part of what makes Inada the World’s Best Massage Chair®.” *Id.*

44. Likewise, the operating manual for these products made abundantly clear that the DREAMWAVE is a model of Family Inada chair:



See Ex. G, Operating Manual (red annotations added).

45. For over ten years, FIUS sold INADA DREAMWAVE branded chairs under the Inada USA trade name in the United States as the sole distributor of these goods, marketing this products under the INADA housemark.

46. Consumers encountering the marketing materials inevitably understood that DREAMWAVE was a model of INADA chair, which was the intended result.

47. As a dealer interviewing Mr. Hays, FIUS' Vice President of Sales, states "a lot of you are probably familiar with the word DreamWave. *DreamWave has traditionally been associated with the Inada DreamWave* massage chair in the past..." Ex. E, Transc., p. 1: 11 – 13 (emphasis added).

#### ***FIUS' IMPROPER REGISTRATION OF THE DREAMWAVE MARK***

48. In 2014 FIUS and Family Inada discussed applying to register the trademark DREAMWAVE. Family Inada believed that this brand was reasonably protected by its common law rights arising out of the mark's use and strong industry association with the INADA Housemark, and thus did not believe that registration to be necessary. Family Inada, however,



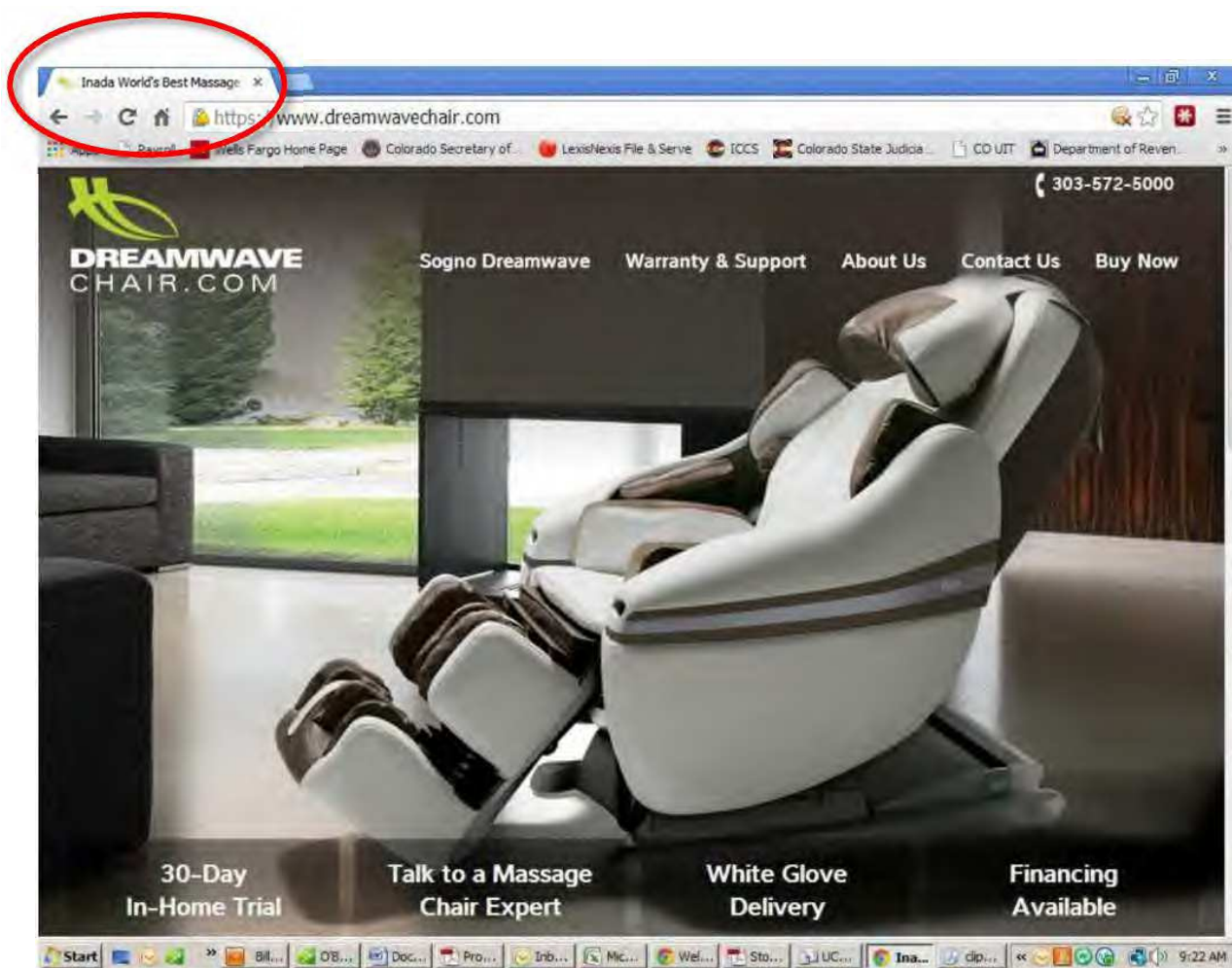
would have considered filing an application if FIUS reimbursed it for the expenses. Family Inada believed that FIUS agreed with its decision to rely on common law rights, as there was no further discussions about registering this mark.

49. On or about January 30, 2014, FIUS, without knowledge or authorization of Family Inada, by and through its attorney declared or caused its attorney to file a trademark application for the DREAMWAVE mark covering “[m]assage apparatus; electric massage apparatus; electric massage chairs for medical use; electric massage chairs for household use” in Class 10, listing FIUS Distributors, LLC as the owner. FIUS further caused its attorney to declare:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; *he/she believes the applicant to be the owner of the trademark/service mark sought to be registered*, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; *to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce*, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

See Ex. H.

50. Concurrently, FIUS, without knowledge or authorization of Family Inada, submitted or caused its attorney to submit the specimen below:



See Ex. I (annotation added).

51. Nowhere in the application, did FIUS disclose that Family Inada is the licensor and owner of the DREAMWAVE mark, or that FIUS did not have the appropriate authorization to apply for the DREAMWAVE mark.

52. Based on these misrepresentations regarding ownership to the USPTO in connection with the DREAMWAVE application on January 30, 2014, the USPTO issued a registration certificate on August 26, 2014 with Registration No. 4,592,881 on the Principal Register. See Ex. J.

53. Family Inada continues to use the DREAMWAVE mark and has never assigned the mark to any third party, including FIUS.

***FIUS' IMPROPER REGISTRATION OF THE FLEX 3S MARK***

54. Similar to the INADA DREAMWAVE chair, Family Inada has been the manufacturer of the FLEX 3S massage chair, and exclusively using the FLEX 3S mark on massage chairs in various countries, including the United States, since 2014. Family Inada invented the FLEX 3S mark and was the first party to apply the mark to massage chairs.

55. FIUS has been the sole distributor of the FLEX 3S massage chair manufactured by Inada since its introduction to the marketplace. FIUS marketed and sold the FLEX 3S massage chairs under the INADA Housemark on the INADA branded DreamWave.com and InadaUSA.com websites. FLEX 3S is presented as a model of INADA massage chair. *See Ex. K.*

56. FIUS knows or should have known that Family Inada exclusively owns the FLEX 3S mark.

57. However, on or about October 28, 2014, FIUS, without knowledge or authorization of Family Inada, filed an application in the name of FIUS Distributors LLC DBA Inada USA for the FLEX 3S mark under the Use in Commerce basis, covering “[m]assage chairs with built-in massage apparatus” in Class 10. FIUS declared the following in the application under penalty of perjury:

***The signatory believes that:*** if the applicant is filing the application under 15 U.S.C. Section 1051(a), ***the applicant is the owner of the trademark/service mark sought to be registered;*** the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and ***such use by the applicant's related company or licensee inures to the benefit of the applicant;*** the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. ***The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near***

*resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.* The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

See Ex. L (emphasis added).

58. Concurrently, FIUS, without knowledge or authorization of Family Inada, submitted or caused its attorney to submit various specimens including:

# Flex 3S



HCP-S373A

Thank you for purchasing the FLEX 3S.  
You can enjoy various types of massage for relieving or soothing fatigue.  
We hope the FLEX 3S will be a valued partner in your daily health preservation for many years to come.

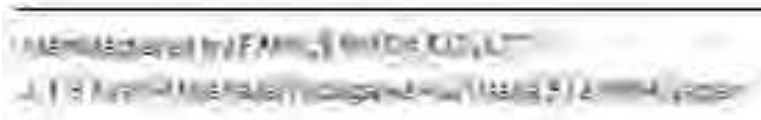


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See Ex. M at pg. 2-3 (annotation added)

59. In the same manufacture’s manual used as a specimen to improperly obtain a registration for the FLEX 3S mark, it clearly states that the FLEX 3S chairs are manufactured by Family Inada, and nowhere in the manual, does FIUS’ name appear.



Ex. M at pg. 65.

60. Nowhere in the application did FIUS disclose that Family Inada is the licensor of the FLEX 3S mark, or that FIUS did not have the appropriate authorization to apply for the FLEX 3S mark.

61. Based on these misrepresentations regarding ownership to the USPTO in connection with the FLEX 3S application on October 28, 2014, the USPTO issued a registration certificate on June 16, 2015 with Registration No. 4,755,840 on the Principal Register. Ex. N.

62. Notably, FIUS specifically lists that the owner of the mark is “DBA Inada USA”. See Ex. O.

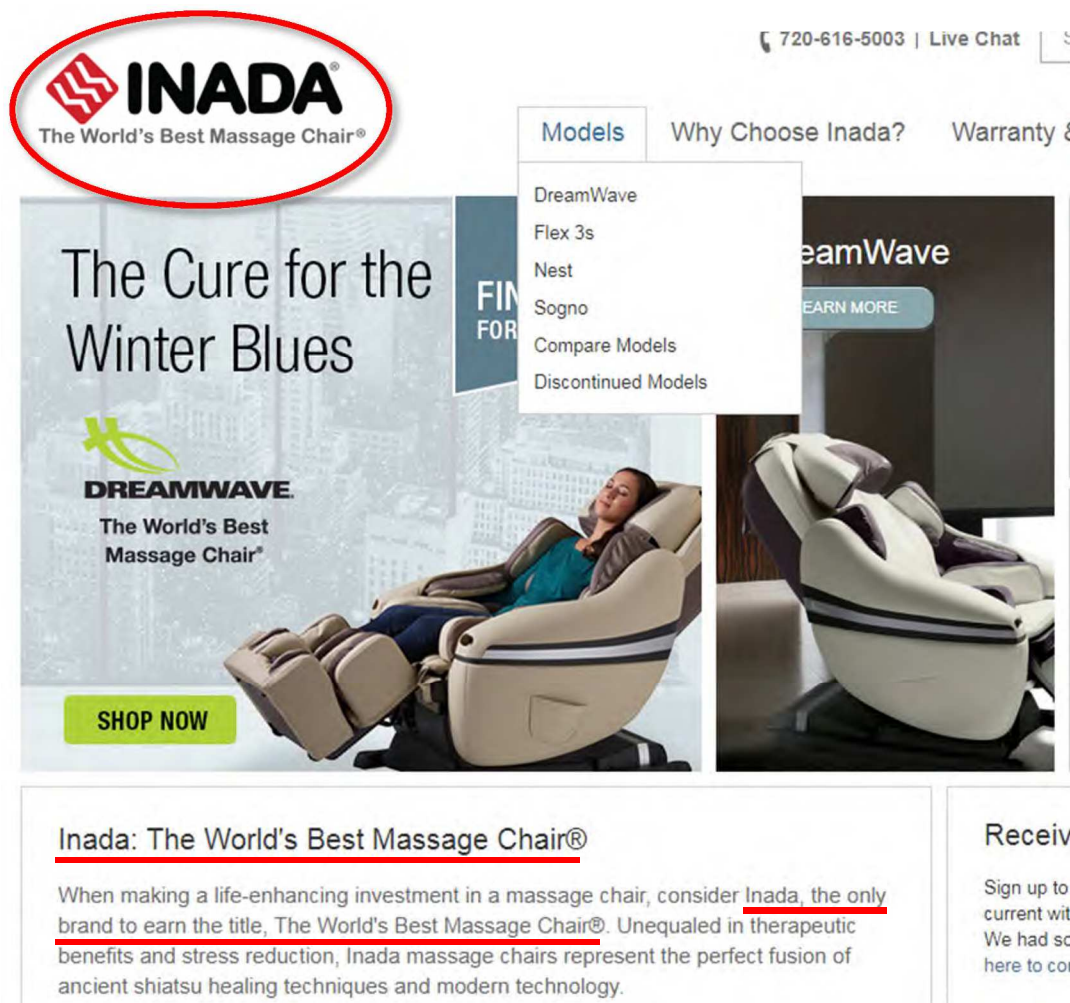
63. Family Inada continues to use the FLEX 3S mark and has never assigned the mark to any third party, including FIUS.

***FIUS’ IMPROPER REGISTRATION OF THE SLOGAN THE WORLD’S BEST  
MASSAGE CHAIR***

64. The slogan THE WORLD’S BEST MASSAGE CHAIR (“WBMC mark”) has been used exclusively on Family Inada massage chairs in various countries, including the United States, since at least as early as 2009.

65. Since adoption, the WBMC mark has used in conjunction with the INADA Housemark on websites, marketing materials, product manuals, and other media to indicate an

association between the INADA Housemark and the WBMC mark and convey the message that Family Inada makes the World's Best Massage Chair. For example:



Ex. P, pg. 22 (annotations added).

66. On information and belief, consumers understand that the WBMC mark is synonymous with the INADA Housemark and refers to Family Inada.

67. FIUS has been the sole distributor of various massage chairs manufactured by Inada, and knows or should have known that Family Inada exclusively owns the WBMC mark by virtue of it being used in conjunction with the INADA Housemark.

68. However, on or about June 6, 2011, FIUS, without knowledge or authorization of Family Inada, filed an application based on Use in Commerce in the name FIUS Distributors,

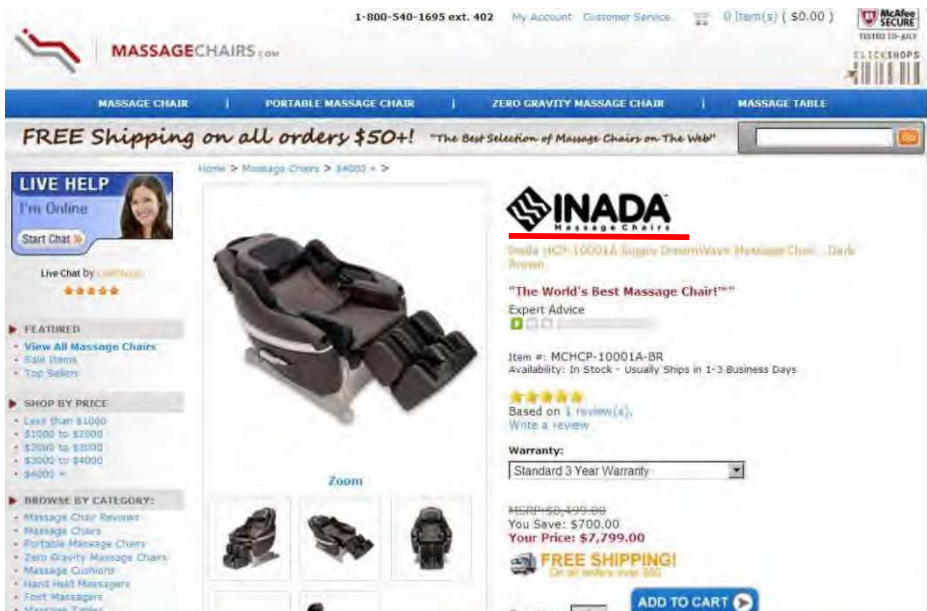
LLC DBA Inada Massage Chairs to register the slogan THE WORLD'S BEST MASSAGE CHAIR, covering “[e]lectric massage apparatus for household use; [m]assage chairs; [m]assage chairs with built-in massage apparatus” in Class 10. In this application, FIUS declared under penalty of perjury:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; ***he/she believes the applicant to be the owner of the trademark/service mark sought to be registered***, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; ***to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce***, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

*See Ex. Q (emphasis added).*

69. On or about July 19, 2012, after its initial specimen was refused by the USPTO, concurrently with its petition to revive an abandoned application, FIUS, without knowledge or authorization of Family Inada, submitted or caused its attorney to submit various specimens including:





See Ex. R, pg. 3.

70. Nowhere in the application, did FIUS disclose that Family Inada is the licensor of the WBMC mark, or that FIUS did not have the appropriate authorization to apply for the WBMC mark.

71. Based on these misrepresentations regarding chairs ownership to the USPTO in connection with the WBMC mark on July 6, 2011 and July 19, 2012, the USPTO registered the mark on the supplemental register, issuing a registration certificate on September 8, 2012 with Registration No. 4,211,730. Ex. S.

72. Notably, FIUS specifically lists that the owner of the mark is “DBA Inada Massage Chairs.” See Ex. T.

73. On May 1, 2018, FIUS file a Section 8 declaration for the WBMC registration, and submitted the following specimen:



4/26/2018

Inada DreamWave Massage Chairs

720-616-5003 | Contact Us



## DreamWave

The World's Best Massage Chair® offers a true shiatsu massage experience that you can enjoy every day.

**FREE White Glove Delivery - Save \$450**  
**Hurry! Offer Ends April 30.**

\* REVIEWS

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### The World's Best Massage Chair®

The DreamWave® by Inada delivers a true shiatsu massage session—a transcendent relaxation experience you can enjoy every day, anytime, in your own home. Unrivaled in quality and precision engineering, Inada massage chairs offer the perfect start—or end—to the day. Here are just some of the reasons why Inada is recognized above all other brands as The World's Best Massage Chair®.

**Proprietary body scan technology** personalizes the massage to the specific location of your shiatsu points. A truly customized massage.

**Auto-adaptive design conforms to users** between 5' and 6'5"—the broadest height range on the market! Headrest location, shoulder width and leg length all automatically adjust to your specific profile.

**A total body massage** with over 100 active air cells and 1,200 inches of body coverage.

**Mimics the sensation of human hands** while relieving neck pain, back pain and tense shoulders through shiatsu-style acupressure massage and gentle neck traction.

**Easy-to-use remote control** allows for a selection of eight pre-programmed massage sessions and over 1,000 manual massage combinations.

#### TESTIMONIALS

"This chair exceeds everything promised! The variety of options makes this chair the best of all massage chairs we've tried. We feel it's worth the money. We've had ours for a year with no problems whatsoever. One of the best decisions we ever made."  
**John M. — Erie, PA**

"The Inada DreamWave is without a doubt, the very best massage chair on the market. I could not be happier with this purchase. I never knew I could be so enthusiastic over a chair. Thanks Inada, for improving my quality of life!"  
**Keith — CA**

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[https://store.dreamwave.com/pages/best-massage-chair?gclid=Cj0KCQjw8YXXBRDXARIsAMzsQuVW9vV048h8Tb31Fx6yKwgr9x1TnPnE\\_2et864id6cYzjAvTxmgsJf](https://store.dreamwave.com/pages/best-massage-chair?gclid=Cj0KCQjw8YXXBRDXARIsAMzsQuVW9vV048h8Tb31Fx6yKwgr9x1TnPnE_2et864id6cYzjAvTxmgsJf)

See Ex. U (annotations added)

74. Likely based on FIUS' continued misrepresentation regarding ownership and use of the WBMC mark, the USPTO accepted the specimen and allowed the registration to be maintained. *See* Ex. V.

75. Family Inada continues to use the slogan THE WORLD'S BEST MESSAGE CHAIR and has never assigned the mark to any third party, including FIUS.

***FIUS' IMPROPER APPLICATION FOR THE DREAMWAVE MARK IN CLASS 20***

76. On or about September 28, 2018, FIUS, without knowledge or authorization of Family Inada, declared the following in a new application for the DREAMWAVE mark covering "[m]attresses; [p]illows" in Class 20:

To the best of the signatory's knowledge and belief, ***no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.***

*See* Ex. W (the "Class 20 DREAMWAVE Application").

77. The Class 20 DREAMWAVE Application is currently pending before the USPTO. The Class 20 DREAMWAVE Application was assigned Serial No. 88/135,682.

78. Given that Family Inada owns the DREAMWAVE mark for related goods, including but not limited to massage chairs, FIUS' application for the DREAMWAVE mark for "[m]attresses; [p]illows" proceeds to registration, such use of the DREAMWAVE mark will cause consumer confusion.


79. FIUS continuously failed to disclose to Family Inada any of the improperly and fraudulently obtained registrations and application for marks owned by Family Inada. In addition to failing to disclose these unauthorized trademark applications and registrations, FIUS regularly failed to disclose material business information to its shareholder and licensor, including pertinent financial and operating information and its decision to invest business

resources in selling competing products, such as massage chairs from other Japanese manufacturers and, as Family Inada would come to learn, by secretly developing a competing, Chinese manufactured massage chair.

***FIUS' Launch of a Competing, Infringing Enterprise Under DREAMWAVE Brand***

80. When it arrived at CES in January 2019, Family Inada was surprised to see that FIUS was operating a large DREAMWAVE branded booth, as Family Inada had heard of no such plans. When Mr. Hanada, Family Inada's Assistant Manager, investigated further, he found that this booth was not selling INADA chairs.

81. Instead, it quickly became apparent that FIUS was using Inada's DREAMWAVE brand to launch a competing business enterprise, which aimed to hijack Family Inada's valuable goodwill and unfairly trade on the reputation and iconic status of the INADA DREAMWAVE chair. Pictures of the infringing booth and products are attached as Exhibit X.

82. On information and belief, FIUS began plans to misappropriate the DREAMWAVE trademark in 2017, when it began the process of designing a competing, Chinese manufactured massage chair in secret. Each chair features both the DREAMWAVE mark and the  logo.

83. FIUS did not tell Family Inada of its plans to launch a competing business under the DREAMWAVE mark, despite the fact that Family Inada is a shareholder of FIUS.

84. On information and belief, at the start of the CES 2019 show, FIUS also changed the www.dreamwave.com website — which it had used for years to sell the full line of INADA branded chairs — to sell the infringing chairs. Notably, it did nothing to dispel the longstanding association between this website and Inada, and instead touted its new chair's alleged Japanese design and engineering.

85. Moreover, during CES 2019, FIUS was actively misdirecting consumers from the Inadausa.com website with bait-and-switch tactics. In particular, the “Why Choose DreamWave” page of store.inadausa.com, which touts Inada’s 50 year history of setting the standard for luxury massage chairs — stated “for more information on DreamWave massage chairs and the features that make them the best in the world, visit us at www.dreamwave.com. See Ex. Y, store.inadausa.com (Jan. 10, 2019; Jan. 14, 2019). When customers clicked on the link, however, they were directed to the FIUS website selling the infringing chairs.

86. FIUS’ conduct at CES 2019 caused rampant confusion. Furniture dealers and customers approached Mr. Hanada to inquire after the “new” DREAMWAVE chair, believing that it was an Inada product or why no other Inada chairs were featured at the DREAMWAVE booth.

87. In an interview conducted at CES with Mr. Levin, a dealer stated “can you talk about the DreamWave name, *I know there is some confusion whether it’s an Inada chair, or whether it’s made by Inada*, or how the DreamWave name came to be....” See Ex. Z, Transc., pg. 2, ll. 19-21. In response, Mr. Levin claimed that his company owned the trademark; he pointedly avoided saying that Family Inada was not involved in the design and manufacture of the new chair, and instead refers to Inada as “our manufacturer.” *Id.*, Transc., pg. 2, ll. 22-3; pg. 3, l. 2.

88. Since CES, FIUS has taken further steps to misappropriate Family Inada’s goodwill and cachet in the DREAMWAVE trademark. This includes rebranding the INADA DREAMWAVE chair as the DREAMWAVE CLASSIC, and selling it next to the “new DreamWave” and as part of the DREAMWAVE “category.” Ex. AA.

89. FIUS has intentionally removed the INADA branding from the marketing and promotional materials for the purported DREAMWAVE CLASSIC. On information and belief,

FIUS is misrepresenting the origin of these chairs to cause consumers to believe that they originate with FIUS.

90. On information and belief, FIUS has removed the INADA branding from the chairs it is marketing as the DREAMWAVE CLASSIC.

91. On information and belief, FIUS has caused its retailers to remove the INADA branding from the DREAMWAVE CLASSIC chair and to tell consumers that FIUS is the origin of these chairs.

92. In interviews, FIUS' VP of sales explicitly trades on Inada's reputation to target Family Inada's "loyal followers":

"Of course, the DreamWave Classic [i.e., the INADA DREAMWAVE] that you alluded to earlier has been in the market for 10 years and really we believe *is an iconic massage chair* in the premium massage chair category, *something certainly that is recognized*. So for those *loyal followers* or those people that have owned DreamWave in the past, this is something that's *been long awaited, the release of a new Dream Wave.*"

Ex. E, Transc. at p. 2: 3- 7 (emphasis added).

93. Notably, the interviewer indicates his actual confusion when discussing warranty repairs by stating that "*Inada's fantastic that way*" and attributing the lack of customer complaints in part to the fact that "the product is that good and doesn't have a high failure rate." *See id.* at p. 6: 15; 18-9. This is true of INADA chairs, but totally unknown with respect to the FIUS' new Chinese manufactured chairs.

94. FIUS is also engaged in bait-and-switch tactics on the internet. A Google search for "DreamWave chair" returns numerous references to Inada and the INADA DREAMWAVE, including:

**Inada DreamWave chair**

<https://www.dreamwavechair.com/> ▼

The **Inada DreamWave** chair combines Shiatsu master massage movements with Japanese engineering ingenuity for a full-body massage proven to enhance ...

[DreamWave](#) · [Contact Us](#) · [About Us](#)

*See* Ex. BB. When consumers click this link, however, they are taken to the infringing dreamwave.com website.

95. Moreover, FIUS has further blurred the lines between its new competing business and Family Inada to further confuse consumers and trade on Family Inada's goodwill. This includes claiming Furniture for Life is the "parent company" of Inada USA — it is not. It is merely another D/B/A for FIUS that was introduced in 2016.

96. It also inexplicably claims that "Inada is a registered trademark of Furniture for Life," which is also clearly false.

97. On information and belief, FIUS is telling its retailers that Family Inada is closing its doors and is in the process of going bankrupt. This is false and intended to further unfairly compete with Family Inada.

98. Family Inada objected to FIUS' infringement of the DREAMWAVE Trademarks immediately in a demand letter sent on January 10, 2019, two days after the CES show started, indicating that that its use of the DREAMWAVE mark on non-Inada manufactured chairs was unauthorized, beyond the scope of the license to use the DREAMWAVE trademark, and a trademark infringement. FIUS did not cease its infringement.

99. Given FIUS continued non-compliance and its reverse passing-off of the INADA DREAMWAVE chair as the DREAMWAVE CLASSIC, Family Inada terminated FIUS' license to use the DREAMWAVE trademark altogether on May 17, 2019.

**FIRST CLAIM FOR RELIEF**

**(FEDERAL TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,  
FALSE ADVERTISING, FALSE ASSOCIATION, AND UNFAIR COMPETITION –15**

**U.S.C. § 1125(a)**

100. The allegations contained in paragraphs 1 through 99 are incorporated herein by reference.

101. This claim is brought under 15 U.S.C. § 1125(a).

102. Family Inada has continuously and extensively used the DREAMWAVE mark since at least as early as 2008, and thus owns common law rights to the trademark DREAMWAVE.

103. Family Inada is the owner of DREAMWAVE trademark, which has been used continuously as a model designation and technology designation for an INADA chair, and which has been associated with the INADA Housemark by the purchasing public.

104. Family Inada has continuously and extensively used the INADA Marks long prior to Defendant's marketing, distribution, offer for sale and sale of the Infringing Product.

105. By acts and omissions set forth above, Defendant has infringed and continues to infringe Family Inada's rights in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a). Defendant's use of the DreamWave mark in connection with massage chairs identical to Family Inada's first-used DREAMWAVE Mark for identical goods, offered within the very same industry confuses, misleads, and deceives members of the public into believing that Family Inada has allowed, sponsored, approved, or licensed Defendant to provide competing goods, or that Defendant is in some way connected to or affiliated with Family Inada.

106. FIUS is a hold-over licensee of the DREAMWAVE trademark, who has made an unauthorized use of the DREAMWAVE trademark on non-Inada good and who has continued to use the DREAMWAVE trademark after its license to do so has been terminated.

107. Any such confusion would result in injury or have a direct impact on Family Inada's reputation and its ability to market its own products and services under the DREAMWAVE Mark.

108. Furthermore, any defect, objection, or fault found with Defendant's products or services would negatively impact and seriously injure the reputation Family Inada has established for its high-quality products and related services offered under the DREAMWAVE Mark and the INADA Marks.

109. Defendant's activities are being carried out willfully, with constructive and actual notice of Family Inada's prior rights in and to the DREAMWAVE Mark and the INADA Marks.

110. Family Inada has been and will continue to be irreparably injured by Defendant's conduct. Family Inada cannot be adequately compensated for these injuries by monetary remedies alone, and Family Inada has no adequate remedy at law for Defendant's infringement of its rights.

## **SECOND CLAIM FOR RELIEF**

### **(FEDERAL UNFAIR COMPETITION - 15 U.S.C. § 1125(a))**

111. The allegations contained in paragraphs 1 through 110 are incorporated herein by reference.

112. This claim is brought under 15 U.S.C. § 1125(a).

113. Family Inada has continuously and extensively used the DREAMWAVE Mark since at least as early as 2008, and thus owns common law rights to the trademark DREAMWAVE.



114. Family Inada is the owner of DREAMWAVE trademark, which has been used continuously as a model designation and technology designation for an INADA chair, and which has been associated with the INADA Housemark by the purchasing public.

115. Family Inada has continuously and extensively used the INADA Marks long prior to Defendant's marketing, distribution, offer for sale and sale of the Infringing Product.

116. By acts and omissions set forth above, Defendant has infringed and continues to infringe Family Inada's rights in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a). Defendant's use of the DreamWave mark in connection with massage chairs identical to Family Inada's first-used DREAMWAVE Mark for identical goods, offered within the very same industry confuse, mislead, and deceive members of the public into believing that Family Inada has allowed, sponsored, approved, or licensed Defendant to provide competing goods, or that Defendant is in some way connected to or affiliated with Family Inada.

117. FIUS is a hold-over licensee of the DREAMWAVE trademark, who has made an unauthorized use of the DREAMWAVE trademark on non-Inada good and who has continued to use the DREAMWAVE trademark after its license to do so has been terminated.

118. Any such confusion would result in injury or have a direct impact on Family Inada's reputation and its ability to market its own products and services under the DREAMWAVE Mark and the INADA Marks. Furthermore, any defect, objection, or fault found with Defendant's products or services would negatively impact and seriously injure the reputation Family Inada has established for its high-quality products and services offered under the SUMMIT SERIES Marks.

119. Family Inada is also harmed by FIUS trading on the reputation of the iconic INADA DREAMWAVE chair to give its upstart business undeserved cachet in the luxury massage chair space.

**THIRD CLAIM FOR RELIEF**

**(REVERSE PASSING OFF Under 15 U.S.C. §1125(a))**

120. The allegations contained in paragraphs 1 through 119 are incorporated herein by reference.

121. The acts of Defendant complained above constitutes reverse passing off, or false designation of origin and/or affiliation in violation of 15 U.S.C. §1125(a).

122. These acts include, but are not limited to, where Defendant, without authorization from Family Inada, relabeled and/or obliterated the DREAMWAVE and/or INADA Marks from the INADA DREAMWAVE chairs, and offered to sell them as “Classic DREAMWAVE” chairs as if Defendant manufactured them or was the sole origin of the chairs.

123. Defendant’s sales of the infringing DREAMWAVE chairs confuse, mislead, and deceive members of the public into believing that FIUS is the origin of the DREAMWAVE Classic (*i.e.*, INADA DREAMWAVE) chair, when it is not.

124. Any such deception would result in injury or have a direct impact on Family Inada’s reputation and its ability to market its own products and services under the DREAMWAVE Mark and the INADA Marks.

**FOURTH CLAIM FOR RELIEF**

**(DELAWARE DECEPTIVE TRADE PRACTICE)**

125. The allegations contained in paragraphs 1 through 124 are incorporated herein by reference.

126. This claim is brought under the Delaware Deceptive Trade Practices Act, Del. Code Ann. tit. 6, §2532.

127. Defendant's unauthorized uses of the DREAMWAVE Mark and the INADA Marks have caused and will continue to cause confusion or misunderstanding as to the source or origin of Defendant's massage chair products and related services.

128. Defendant's unauthorized uses of the DREAMWAVE Mark and the INADA Marks will continue to create confusion or misunderstanding as to their affiliation, connection, association with, or endorsement by Family Inada.

129. Defendant's unauthorized uses of the DREAMWAVE Mark and the INADA Marks constitute a violation the Delaware Deceptive Trade Practices Act.

130. Defendant's violations of the Delaware Deceptive Trade Practices Act have caused Family Inada irreparable damage, loss, and injury, for which Family Inada has no adequate remedy at law.

131. Defendant's violations of the Delaware Deceptive Trade Practices Act also have caused Family Inada substantial monetary damage, loss, and injury, in an amount to be determined at the trial of this action.

132. Defendant's violations of the Delaware Deceptive Trade Practices Act will continue unless enjoined by this Court.

133. Defendant has violated and continues to violate the Delaware Deceptive Trade Practices Act knowingly and willfully, so as to justify the assessment of treble damages against them, in an amount to be determined at the trial of this action.

**FIFTH CLAIM FOR RELIEF**

**(COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION)**

134. The allegations contained in paragraphs 1 through 133 are incorporated herein by reference.

135. Family Inada has continuously and extensively used the DREAMWAVE Mark since at least as early as 2008, and thus owns common law rights to the trademark DREAMWAVE.

136. Family Inada is the owner of DREAMWAVE trademark, which has been used continuously as a model designation and technology designation for an INADA chair, and which has been associated with the INADA Housemark by the purchasing public.

137. Family Inada has continuously and extensively used the INADA Marks long prior to Defendant's marketing, distribution, offer for sale and sale of the Infringing Product.

138. FIUS is a hold-over licensee of the DREAMWAVE trademark, who has made an unauthorized use of the DREAMWAVE trademark on non-Inada good and who has continued to use the DREAMWAVE trademark after its license to do so has been terminated.

139. Defendant's acts constitute common law trademark infringement and unfair competition, and have caused and will continue to cause, unless restrained by this Court, confusion to the irreparable injury of Family Inada. Family Inada has no adequate remedy at law for this injury.

140. Upon information and belief, Defendant acted with full knowledge of Family Inada's use of, and common law rights in, the DREAMWAVE Mark and Inada Housemark and without regard to the likelihood of confusion of the public created by Defendant's activities.

141. Defendant's actions demonstrate an intentional, willful and malicious intent to trade on the goodwill associated with the DREAMWAVE mark and Inada Housemark to the great and irreparable injury of Family Inada.

142. As a result of Defendant's acts, Family Inada has been damaged in an amount not yet determined or ascertainable. At a minimum, however, Family Inada is entitled to injunctive relief, and to an accounting of Family Inada's profits, damages and costs. Further, in light of the deliberately fraudulent and malicious use of confusingly similar imitations of the DREAMWAVE mark and Inada Marks, and the need to deter Defendant from engaging in similar conduct in the future, Family Inada is entitled to punitive damages.

#### **SIXTH CLAIM FOR RELIEF**

##### **(CANCELLATION OF TRADEMARKS - §§ 15 U.S.C. 1064, 1092, 1119 and 1120)**

143. The allegations contained in paragraphs 1 through 142 are incorporated herein by reference.

144. This claim is brought under §§ 15 U.S.C. 1064, 1092, 1119 and 1120.

145. Upon information and belief, in its applications for federal trademark registrations submitted to the USPTO, Defendant swore pursuant to 15 U.S.C. § 1051(a) that it was the owner of the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR designations.

146. Upon information and belief, in its applications for federal trademark registrations submitted to the USPTO, Defendant swore pursuant to 15 U.S.C. § 1051(a) that it first used the DREAMWAVE Mark on February 8, 2008, FLEX 3S Mark on March 31, 2014, and THE WORLD'S BEST MASSAGE CHAIR on June 1, 2009.

147. Having been a licensee of the DREAMWAVE, FLEX 3S and THE WORLD'S BEST MASSAGE CHAIR marks, at the time Defendant submitted the applications for federal

registrations of the DREAMWAVE, DREAMWAVE Class 20, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR designations, Defendant knew or should have known that Family Inada was the beneficial owner of the applied-for designations and was the first to affix these marks to the registered goods for use in interstate commerce and that Defendant had no claim of ownership of the applied-for designations.

148. Upon information and belief, Defendant made these false statements with the intent to induce approval for the publication, the publication, and ultimately the registration of the applied-for designations.

149. Upon information and belief, Defendant knew or should have known at the time it filed the applications that the statements contained in the declarations and applications were false.

150. Upon information and belief, Family Inada believes that absent such false statements Defendant's applications would have been denied by the USPTO.

151. Upon information and belief, the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR registrations and the DREAMWAVE Class 20 application are *void ab initio* due to being filed by an entity who was not the legal and rightful owner thereof.

152. Family Inada has been damaged by Defendant's registration of the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR designations, as Family Inada is the rightful owner of these marks.

#### **SEVENTH CLAIM FOR RELIEF**

#### **(DECLARATORY RELIEF – § 28 U.S.C. 2201 et. seq.)**

153. The allegations contained in paragraphs 1 through 152 are incorporated herein by reference.

154. This claim is brought under the Federal Declaratory Judgment Act, § 28 U.S.C. 2201 et. sec.

155. There is an actual and justiciable case or controversy between the parties as a result of FIUS' claims of ownership over the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR marks. In addition, Defendant has made statements that challenge Family Inada's ownership rights in the said marks.

156. Family Inada is the exclusive owner of the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR marks, as evidenced by its open and notorious use in commerce of the marks – clearly known by Defendant since Defendant has been the distributor for the INADA chairs in the United States and the licensee of these marks.

157. Family Inada is therefore entitled to a declaration under § 28 U.S.C. 2201 et. sec. that Family Inada is the owner of the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR marks, and further that Defendant does not own said marks or have any ownership interests in said marks.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Family Inada, Co., Ltd. respectfully prays for the following relief against Defendant FIUS Distributors LLC as follows:

- a) An order declaring that Defendant's unauthorized use of the DREAMWAVE Mark and the INADA Marks violates the Lanham Act, 15 U.S.C. § 1125;
- b) An order permanently enjoining and restraining Defendant and those in active concert and participation with Defendant from:
  1. Further infringing, and/or making any use of the DREAMWAVE Mark and the INADA Marks, or any colorable imitations to advertise, promote, display,

sell, or offer any products and services in the massage chair and health care and wellness industry;

2. Representing or suggesting to any third party that Defendant or its products or services are affiliated with, sponsored by, licensed by, or otherwise associated with Family Inada, the DREAMWAVE Mark or the INADA Marks; and
  3. Otherwise unfairly competing with Family Inada;
- c) An order directing any other relief that the Court may deem appropriate to prevent the public from deriving any erroneous impression that any products or services by Defendant are authorized by Family Inada or are in any way related to Family Inada or its products and services;
- d) An order directing an accounting and judgment be rendered against Defendant for:
1. All profits received by Defendant as a result of Defendant's infringement and/or unfair competition of the DREAMWAVE Mark and the INADA Marks as provided for in 15 U.S.C. § 1117; and
  2. A award of treble damages to Family Inada for Defendant's willful and deliberate conduct, pursuant to 15 U.S.C. § 1117; and
  3. An award to Family Inada for costs, including reasonable attorneys' fees and disbursements in this action, pursuant to 15 U.S.C. §§ 1114 and 1117; and
- e) An order cancelling, or in the alternative transferring, the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR registrations and the DREAMWAVE Class 20 application.
- f) An order declaring that Family Inada is the owner of the DREAMWAVE, FLEX 3S, THE WORLD'S BEST MASSAGE CHAIR marks.



g) Any other relief that the Court finds warranted and just.

**JURY DEMAND**

Plaintiff Family Inada requests a jury trial on all issues so triable.

Dated: May 17, 2019

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