EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNDER THE WEATHER, LLC, Plaintiff, v. ABOVE & BEYOND BALLOONS, INC. Defendant.	CASE NO.: 1:17-cv-39 JUDGE: COMPLAINT JURY DEMAND

Plaintiff Under the Weather, LLC ("Under the Weather"), complains and alleges as follows against Defendant Above & Beyond Balloons, Inc. ("Above & Beyond" or "Defendant"):

NATURE OF THE ACTION

1. Inspired by countless weekends spent braving the elements to watch his children participate in outdoor sports, Eric Pescovitz set out to design a personal enclosure to protect the user from the elements. In 2010, this goal became a reality as Mr. Pescovitz started his company, Under the Weather, to promote and sell his inventive personal pop-up pods to the public.

2. Since 2010, Mr. Pescovitz has invested in intellectual property to protect his innovations and business. Such investments have resulted in seven issued United States design patents, with an additional twelve patent applications pending in the United States Patent and Trademark Office. Mr. Pescovitz has also invested to secure a U.S. registered trademark for UNDER THE WEATHER (the "UTW Registered Mark"). The success of Mr. Pescovitz's

business and his tireless promotion of his company and products has resulted in the UTW Registered Mark becoming a well-known and valued mark in the marketplace that the public readily associates with pop-up pods.

3. Despite the intellectual property rights of Under the Weather, its innovations have been the subject of widespread imitation by its competitors who have attempted to capitalize on Under the Weather's success. One such imitator is Above & Beyond, which markets and sells a pop-up pod that copies Under the Weather's inventive design and improperly used the UTW Registered Mark in violation of Under the Weather's intellectual property rights.

THE PARTIES

4. Under the Weather is an Ohio Limited Liability Company with a principal place of business located at 5218 Wooster Road, Cincinnati, Ohio 45241.

5. On information and belief, Above & Beyond is a California Corporation with a principal place of business located at 2400 Pullman Street, Santa Ana, California 92705.

6. On information and belief, Above & Beyond does business under the name EasyGo Products.

JURISDICTION AND VENUE

7. This is a civil action against Defendant Above & Beyond for patent infringement under the patent laws of the United States and for trademark infringement under the trademark laws of the United States.

8. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because it involves a federal question; under 28 U.S.C. § 1338 because it involves an Act to Congress related to patents and trademarks; and under 15 § U.S.C. 1121, because it involves a violation of the Lanham Act.

9. This Court has specific personal jurisdiction over Above & Beyond because, among other things, Above & Beyond has sold products in this judicial district and in Ohio that infringe Under the Weather's intellectual property rights; Above & Beyond continues to advertise through publicly available on-line retailers; and, on information and belief, continues to sell products in this judicial district and in Ohio that infringe Under the Weather's intellectual property rights.

10. This Court has general personal jurisdiction over Above & Beyond because, among other things, on information and belief, Above & Beyond regularly solicits and transacts business in Ohio and in this judicial district; Above & Beyond engages in a persistent course of conducting business in Ohio; and Above & Beyond derives substantial revenue from goods that infringe the patents-in-suit that are sold in Ohio and this judicial district.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

RELEVANT FACTS

12. Under the Weather is the owner of U.S. Patent No. D691,688 (the "'688 Patent"), which is titled "Personal Enclosure" and was duly and lawfully issued on October 15, 2013, to Eric Frank Pescovitz as inventor. A true and correct copy of the '688 Patent is attached hereto as Exhibit A. Under the Weather is the owner of all right, title and interest in the '688 Patent, including the right to sue and recover damages for infringement of the '688 Patent and obtain a preliminary or permanent injunction.

13. Under the Weather is the owner of U.S. Patent No. D691,689 (the "'689 Patent"), which is titled "Personal Enclosure Side" and was duly and lawfully issued on October 15, 2013, to Eric Frank Pescovitz as inventor. A true and correct copy of the '689 Patent is attached hereto as Exhibit B. Under the Weather is the owner of all right, title and interest in the '689 Patent,

including the right to sue and recover damages for infringement of the ‘689 Patent and obtain a preliminary or permanent injunction.

14. Under the Weather is the owner of U.S. Patent No. D691,690 (the “‘690 Patent”), which is titled “Personal Enclosure Front” and was duly and lawfully issued on October 15, 2013, to Eric Frank Pescovitz as inventor. A true and correct copy of the ‘690 Patent is attached hereto as Exhibit C. Under the Weather is the owner of all right, title and interest in the ‘690 Patent, including the right to sue and recover damages for infringement of the ‘690 Patent and obtain a preliminary or permanent injunction.

15. Under the Weather is the owner of U.S. Patent No. D711,996 (the “‘996 Patent,” and collectively with the ‘688, ‘689, and ‘690 Patents the “Patents-in-Suit”), which is titled “Personal Enclosure” and was duly and lawfully issued on August 26, 2014, to Eric Frank Pescovitz as inventor. A true and correct copy of the ‘996 Patent is attached hereto as Exhibit D. Under the Weather is the owner of all right, title and interest in the ‘996 Patent, including the right to sue and recover damages for infringement of the ‘996 Patent and obtain a preliminary or permanent injunction.

16. Under the Weather is the owner of a federal registration for the UTW Registered Mark, U.S. Registration No. 4106243. A true and correct copy of the Registration Certificate is attached hereto as Exhibit E.

17. Above & Beyond has sold and continues to sell a pop-up pod marketed as the “Climate Capsule Sport Shelter” (“Above & Beyond Pop-Up Pod”). On information and belief, Above & Beyond sells the Above & Beyond Pop-Up Pod in association with the name EasyGo Products. A true and accurate copy of a search webpage and product webpage from

Walmart.com are attached as Exhibit F. A true and accurate copy of product webpages from Amazon.com are attached as Exhibit G.

18. On information and belief, Above & Beyond has used the UTW Registered Mark in commerce in a manner that is likely to cause confusion, to cause a mistake, or deceive. A general search for "Under the Weather" on Amazon.com lists the Above & Beyond Pop-Up Pod as the first result, even above products whose actual title is "Under the Weather." A true and correct copy of a search webpage from Amazon.com is attached as Exhibit H. When a consumer conducts such a search with the intention of finding an Under the Weather pop-up pod, the consumer is likely to be confused, mistaken, or deceived by the search results when making a purchasing decision.

19. On information and belief, for its posting of the Above & Beyond Pop-Up Pod, Above & Beyond identified "Under the Weather" as keywords to be used by Amazon.com in Amazon.com's search algorithm to draw customers that are searching for an Under the Weather pop-up pod to the Above & Beyond Pop-Up Pod product page.

20. Above & Beyond has used a variation of the UTW Registered Mark in the title of its product listing on Amazon.com – Climate Capsule Sports Shelter - **The** **Weather** Tent You Sit **Under** Sports Pod (emphasis added). On information and belief, Amazon.com prioritizes the words in a product's title in its search algorithm; therefore, Above & Beyond crafted the title to further improve the positioning of the Above & Beyond Pop-Up Pod in Amazon.com search results for customers searching for an Under the Weather pop-up pod.

COUNT I

Infringement of the ‘688 Patent

21. Under the Weather incorporates by reference the allegations set forth in Paragraphs 1-20 of this Complaint as thought fully set forth herein.

22. Above & Beyond has infringed and continues to infringe the ‘688 Patent by using, selling, and/or offering to sell in the United States and/or importing into the United States the Above & Beyond Pop-Up Pod, which embodies the design covered by the ‘688 Patent.

23. On information and belief, Above & Beyond was aware of the ‘688 Patent prior to the filing of this Complaint.

24. On information and belief, Above & Beyond’s infringement of the ‘688 Patent has been and continues to be intentional, willful, and without regard to Under the Weather’s rights.

25. On information and belief, Above & Beyond has gained profits by virtue of its infringement of the ‘688 Patent.

26. Under the Weather has been, and continues to be, damaged by such infringement of the ‘688 Patent.

COUNT II

Infringement of the ‘689 Patent

27. Under the Weather incorporates by reference the allegations set forth in Paragraphs 1-26 of this Complaint as thought fully set forth herein.

28. Above & Beyond has infringed and continues to infringe the ‘689 Patent by using, selling, and/or offering to sell in the United States and/or importing into the United States the Above & Beyond Pop-Up Pod, which embodies the design covered by the ‘689 Patent.

29. On information and belief, Above & Beyond was aware of the ‘689 Patent prior to the filing of this Complaint.

30. On information and belief, Above & Beyond’s infringement of the ‘689 Patent has been and continues to be intentional, willful, and without regard to Under the Weather’s rights.

31. On information and belief, Above & Beyond has gained profits by virtue of its infringement of the ‘689 Patent.

32. Under the Weather has been, and continues to be, damaged by such infringement of the ‘689 Patent.

COUNT III

Infringement of the ‘690 Patent

33. Under the Weather incorporates by reference the allegations set forth in Paragraphs 1-32 of this Complaint as thought fully set forth herein.

34. Above & Beyond has infringed and continues to infringe the ‘690 Patent by using, selling, and/or offering to sell in the United States and/or importing into the United States the Above & Beyond Pop-Up Pod, which embodies the design covered by the ‘690 Patent.

35. On information and belief, Above & Beyond was aware of the ‘690 Patent prior to the filing of this Complaint.

36. On information and belief, Above & Beyond’s infringement of the ‘690 Patent has been and continues to be intentional, willful, and without regard to Under the Weather’s rights.

37. On information and belief, Above & Beyond has gained profits by virtue of its infringement of the ‘690 Patent.

38. Under the Weather has been, and continues to be, damaged by such infringement of the ‘690 Patent.

COUNT IV

Infringement of the ‘996 Patent

39. Under the Weather incorporates by reference the allegations set forth in Paragraphs 1-38 of this Complaint as thought fully set forth herein.

40. Above & Beyond has infringed and continues to infringe the ‘996 Patent by using, selling, and/or offering to sell in the United States and/or importing into the United States the Above & Beyond Pop-Up Pod, which embodies the design covered by the ‘996 Patent.

41. On information and belief, Above & Beyond was aware of the ‘996 Patent prior to the filing of this Complaint.

42. On information and belief, Above & Beyond’s infringement of the ‘996 Patent has been and continues to be intentional, willful, and without regard to Under the Weather’s rights.

43. On information and belief, Above & Beyond has gained profits by virtue of its infringement of the ‘996 Patent.

44. Under the Weather has been, and continues to be, damaged by such infringement of the ‘996 Patent.

COUNT V

Infringement of the UTW Registered Mark

45. Under the Weather incorporates by reference the allegations set forth in Paragraphs 1-44 of this Complaint as thought fully set forth herein.

46. On information and belief, Above & Beyond has used the UTW Registered Mark in commerce in connection with the sale, offering for sale, distributing and advertising of goods that compete directly with Under the Weather's pop-up pods.

47. Above & Beyond's use of the UTW Registered Mark creates a likelihood of confusion, mistake and/or deception as to the affiliation, connection, association, origin, sponsorship, approval, commercial activities, nature, characteristics, and qualities of the goods offered by Above & Beyond, all to the detriment of Under the Weather. On information and belief, Above & Beyond's conduct caused the public to believe that the Above & Beyond Pop-Up Pod is authorized, affiliated, sponsored, or associated with Under the Weather.

48. On information and belief, Above & Beyond's conduct is deliberate and intended to confuse the public as to the source of Above & Beyond's goods and to injure Under the Weather and reap the benefit of Under the Weather's goodwill associated with the UTW Registered Mark.

49. Above & Beyond has made profits to which it is not entitled. Above & Beyond's conduct has damaged Under the Weather, and Under the Weather is entitled to recover all damages, profits and advantages realized by Above & Beyond as a result of its unlawful conduct, as well as Under the Weather's costs of suit, pursuant to 15 U.S.C. § 1117.

50. On information and belief, Above & Beyond has acted with knowledge of Under the Weather's ownership of the UTW Registered Mark and with deliberate intention or reckless disregard to unfairly benefit from Under the Weather's goodwill in the UTW Registered Mark.

51. On information and belief, Above & Beyond's unlawful actions, were willful, with the result that Under the Weather is entitled to treble damages and an award of reasonable attorneys' fees against Above & Beyond, pursuant to 15 U.S.C. § 1117.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Under the Weather respectfully requests relief and judgment as follows:

1. A judgment that Defendant Above & Beyond has infringed each of the Patents-in-Suit;

2. Temporarily, preliminarily, and permanently enjoin Defendant Above & Beyond, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant Above & Beyond, from infringing the Patents-in-Suit;

3. Award Plaintiff Under the Weather its actual damages in an amount to be proved at trial and/or as otherwise provided by law, as a result of the infringement of the Patents-in-Suit;

4. Award Plaintiff Under the Weather the total profit realized by Defendant Above & Beyond as a result of the infringement of the Patents-in-Suit;

5. Award Plaintiff Under the Weather all of Defendant Above & Beyond's profits, pursuant to 35 U.S.C. § 289, together with prejudgment interest;

6. A judgment that Defendant Above & Beyond has infringed the UTW Registered Mark;

7. Temporarily, preliminarily, and permanently enjoin Defendant Above & Beyond, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant Above & Beyond, from infringing the UTW Registered Mark; and from using in any manner the UTW Registered Mark or any other words or arrangement similar thereto that may cause, or may be likely to cause, confusion, mistake, or deception by the public;

8. Award Plaintiff Under the Weather its actual damages in an amount to be proved at trial and/or as otherwise provided by law, as a result of the infringement of the UTW Registered Mark;

9. An accounting of Above & Beyond's profits pursuant to 15 U.S.C. § 1117;

10. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117; and

11. Award Plaintiff Under the Weather such other and further relief as is just and proper.

Dated: January 13, 2017

Respectfully submitted,

/s/*Risto Pribisich*

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DEMAND FOR JURY TRIAL

Plaintiff Under the Weather, LLC hereby makes demand for a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues of this lawsuit.

Dated: January 13, 2017

Respectfully submitted,

/s/*Risto Pribisich*
One of the Attorneys for Plaintiff
Under the Weather, LLC