

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Atari Interactive, Inc.,

Plaintiff,

v.

skinnyCorp, LLC d/b/a Threadless,

Defendant.

Civil Action No. 1:20-cv-10379

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Atari Interactive, Inc. (“Atari”), as and for its complaint against Defendant skinnyCorp, LLC d/b/a Threadless, LLC (“Threadless”), alleges as follows:

PARTIES

1. Atari is a Delaware corporation with its principal place of business in New York, New York.

2. Atari is informed and believes that Threadless is a Delaware limited liability company with its principal place of business in Chicago, Illinois.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. sections 1331 and 1338 because the action arises under the federal Lanham Act. *See* 15 U.S.C. §§ 1051, *et seq.*; 17 U.S.C. §§ 101, *et seq.* This Court also has supplemental jurisdiction pursuant to 28 U.S.C sections 1367 and 1338(b).

4. Venue in this district is proper under 28 U.S.C. section 1391 because Threadless is subject to personal jurisdiction here and Atari has suffered injury here.

5. This Court has personal jurisdiction over Threadless because Threadless regularly markets and sells goods, including certain goods at issue in this case, to customers in New York. In addition, this Court has personal jurisdiction over Threadless because Threadless intentionally directed the tortious conduct described below knowing that the effects would be felt by Atari in this judicial district.

GENERAL ALLEGATIONS

A. Atari Is an Iconic Video Game Brand.

6. Atari is one of the most famous video game brands in history. Founded in the early 1970s in California, Atari became the pioneer in the video game industry during the 1970s and continuing into the 1980s, developing and releasing (a) home video consoles—*e.g.*, the Atari 2600—that set new standards in design and function, and (b) a series of hit games—*e.g.*, Pong, Breakout, Asteroids, and many others.

7. Atari became known to relevant consumers and the public at large by its inherently distinctive trade name, as well as its inherently distinctive A-shaped or “Fuji” logo design. The Atari name and logo are depicted immediately below.



8. Atari has continued to market, promote, license, and sell products, including a catalog of more than 200 well-known games, worldwide under the Atari name and logo for over four decades.

9. Video gamers new and old recognize and revere Atari’s place as a very well-known and iconic pioneer of the video game industry.

10. Atari has expanded into a multi-platform, global interactive entertainment company, adapting many of its classic games for online platforms such as Facebook, smartphones, and tablets.

11. Atari has developed, promoted, and distributed new interactive entertainment and products, including a new VCS console (modeled off the design of the original 2600 unit) that raised more than \$3 million in crowd-funding and which is currently in production.

12. Atari has an active licensing business through which Atari has extended its brand into other media, merchandising, and publishing categories.

13. The Atari name, logo, and classic video games, consoles, and joysticks are valuable intellectual property owned by Atari.

14. Through commercial use and contractual agreements with its predecessors-in-interest, Atari is the owner of USPTO Registration No. 4,214,210 for the ATARI name and logo used in connection with, among other things, “printed matter, namely posters, stickers” and “articles of clothing”; and Atari is the owner of USPTO Registration No. 4,324,638 for the PONG name used in connection with, among other things “printed matter, namely posters, stickers” and “articles of clothing.” Appended hereto as Exhibits 1 and 2 are true and correct copies of the aforementioned trademark registrations.

15. Through extensive and continuous promotion and sales, unsolicited press, and word of mouth, Atari also owns common law rights in various trademarks and trade dress, including the *Atari* name and logo, the *Pong* mark, and the overall look and feel of the classic Atari 2600 game console and joystick.

B. Threadless Knowingly Infringes Upon Atari's Intellectual Property Rights by Creating, Manufacturing, and Distributing Large Quantities of Counterfeit Atari Clothing and Printed Material.

16. Threadless runs the website www.threadless.com, which solicits designs from visitors to print on a variety of apparel and other merchandise—from t-shirts and sweaters to mugs and posters—which Threadless then offers for sale. If a visitor to the site orders a product, Threadless processes the payment for the product, and then makes and ships—or directs a third-party to make and ship—the product to the purchaser. Threadless then splits the profits with the person who originally uploaded the design.

17. Threadless advertises, markets, creates, displays, offers for sale, sells, distributes, and profits from massive quantities of counterfeit Atari products. Many of the counterfeit products incorporate exact replicas of the registered ATARI trademark (name and logo) on products in the classes for which the marks are registered. Other counterfeit products incorporate easily identifiable depictions of the Atari 2600 console and joystick with the distinctive red button. A few examples are depicted below. Others are shown in Exhibit 3.



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