

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

NOTTINGHAM-SPIRK PARTNERS, LLC, )  
2200 Overlook Road, )  
Cleveland, OH 44106, and )

NOTTINGHAM-SPIRK DESIGN )  
ASSOCIATES, INC., )  
2200 Overlook Road, )  
Cleveland, OH 44106, )

Plaintiffs, )

v. )

HUFFY BICYCLE COMPANY, a division of )  
HUFFY CORPORATION, )  
901 Pleasant Valley Drive, )  
Springboro, OH 45066 )

Defendants. )

CASE NO.

JUDGE

**COMPLAINT**

**(JURY DEMAND ENDORSED  
HEREON)**

Plaintiffs Nottingham-Spirk Partners, LLC (hereinafter “NSP”) and Nottingham-Spirk Design Associates, Inc. (hereinafter “NSD”), for their Complaint against Hufffy Bicycle Company, a division of Hufffy Corporation (hereinafter “Hufffy”), state as follows:

**INTRODUCTION**

1. This case arises from Hufffy’s breach of a Royalty Agreement entered into between NSP and Hufffy in 2003.

2. Hufffy breached the Royalty Agreement by refusing to pay royalties owed to NSP and refusing to allow NSP to conduct a full audit of Hufffy’s books and records.

**PARTIES**

3. NSP is an Ohio limited liability corporation with its principal place of business in Cleveland, Ohio. NSD is an Ohio corporation with its principal place of business in Cleveland, Ohio. For over 45 years, NSP and NSD have been engaged in the business of inventing, designing, developing, and testing a wide variety of products for marketing by other businesses.

4. Huffly is an Ohio corporation with its principal place of business in Springboro, Ohio. Huffly is a division of Huffly Bicycle Company located in Miamisburg, Ohio. Huffly is engaged in the business of manufacturing, marketing, and selling primarily bicycles and other wheeled products.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to R.C. §2305.01.

6. This Court has personal jurisdiction over Defendant because, among other things, the causes of action in this Complaint arise from Defendant transacting business in the State of Ohio.

7. Venue in this Court is proper pursuant to Civ.R. 3(B)(3) and Civ.R. 3(B)(6).

8. The parties have consented to the jurisdiction of this Court.

### **GENERAL ALLEGATIONS**

#### **I. History of the Relationship between NSP, NSD, and Huffly**

##### **A. February 1, 2002 Agreement**

9. On February 1, 2002, NSD and Huffly entered into an agreement for NSD to provide design and product development services to Huffly in which NSD was to develop a new product pipeline that included new bikes and other wheeled goods. A true and accurate copy of the February 1, 2002 Revised Proposal between Huffly Bicycle Company and NSD (“February 1, 2002 Agreement”) is attached hereto as Exhibit 1 and incorporated by reference.

10. The February 1, 2002 Agreement discussed a “New Product Development Program” in which NSD would use its “ability to create, develop, invent, and source new innovative products” to expand Huffly’s product offerings in 3 main areas:

- Next Generation Bikes;
- New Wheeled Goods; and
- “Outside the Envelope” but consistent with Hufffy’s strengths.

*See* Exhibit 1, at p. 2.

11. NSD agreed to accept a reduced retainer fee for its product development services, and “to offset the reduced fee structure,” Hufffy agreed to pay a royalty to NSP “based on the net sales of any product developed as a result of this program, for the life of the products.” *See* Exhibit 1 at p. 2.

12. Hufffy agreed that it would enter into a mutually agreeable royalty contract prior to entry into the market with any of the innovative products designed by NSD under the new Product Development Program. *See* Exhibit 1, at p. 2.

#### **B. April 2003 Royalty Agreement**

13. As agreed in the February 1, 2002 Agreement, NSP and Hufffy entered into a Royalty Agreement in April 2003. A true and accurate copy of the Royalty Agreement between NSP and Hufffy, signed April 2003, (“Royalty Agreement”) is attached hereto as Exhibit 2 and incorporated by reference.

14. The Royalty Agreement acknowledged that NSP has provided “development services” to Hufffy to expand Hufffy’s product offerings and that Hufffy desires to manufacture, market and sell certain of these product concepts, which are set forth on Schedule A attached to the Royalty Agreement. *See* Exhibit 2.

15. The Royalty Agreement notes, “AS PREVIOUSLY AGREED, Hufffy shall pay a royalty to [NSP], based on the net sales of any products developed as a result of this [new Product Development Program], for the life of the products.” *See* Exhibit 2, paragraph 1.

16. The Royalty Agreement further provides that the “royalty scale will be calculated on the sale of each individual product, with the first year of sales starting upon the sales of the first 100 units” as follows:

- First year of product sales 3%
- Second year of product sales 2.5%
- Third year and years after 2%

*See Exhibit 2, paragraph 1.*

17. The Royalty Agreement included a schedule of product lines that NSP had brought to Huffly for consideration, and for which NSP would provide design and development services. *See Exhibit 2, paragraph 1.*

18. The Royalty Agreement specifically allowed the parties to add additional product lines subject to the terms and conditions of the Royalty Agreement. *See Exhibit 2, paragraph 1.*

19. Importantly, the Royalty Agreement expressly stated that Huffly had the right to change the form of the items and to produce and sell them under the new form, “provided, however, that all the provisions of this [Royalty Agreement] shall apply to said new form of the ITEMS.” *See Exhibit 2, paragraph 5.*

### **C. Required Royalty Reports Pursuant to the April 2003 Royalty Agreement**

20. The Royalty Agreement required that Huffly provide NSP with a quarterly royalty report covering the actual sales collected on each individual item during the preceding 3 month period, and remit payment to NSP of the amount due under the terms of the Royalty Agreement within 30 days after the quarter ended. *See Exhibit 2, paragraph 2.*

21. Similarly, the Royalty Agreement further required Huffly to provide NSP with a quarterly report covering the actual sales collected on each individual item by sublicensees of Huffly during the preceding 3 month period, and remit payment to NSP of the amount due under

the terms of the Royalty Agreement within 60 days after the quarter ended. *See* Exhibit 2, paragraph 2.

22. The Royalty Agreement required that Hufffy keep “full and accurate books, records, data, and memoranda based on the manufacture and sales of each individual ITEM in sufficient detail to enable the payments to [NSP] to be determined.” *See* Exhibit 2, paragraph 3.

23. The Royalty Agreement also granted NSP the right to examine Hufffy’s books and records, as they pertain to each individual item, not more often than one time per year for the purpose of verifying the reports provided for in the Royalty Agreement. *See* Exhibit 2, paragraph 3.

24. The Royalty Agreement further provided that it “shall continue for the life of the product or patents that may be granted on the ITEMS and/or as long as the ITEMS are covered by the Agreement shall continue to be manufactured or sold, whichever is longer.” *See* Exhibit 2, paragraph 10.

25. Beginning in 2003, and continuing thereafter, Hufffy provided NSP with quarterly royalty reports of the sales collected on individual items.

26. From 2010 to 2014, the royalties paid by Hufffy steadily increased, year over year.

27. In fact, the royalties paid by Hufffy more than doubled from 2011 to 2012.

28. In 2015, the royalties reported by Hufffy began to decline for the first time during the relationship between the parties.

29. From 2015 to 2016, the royalties diminished by more than 50%.

30. In 2017, the royalties reported by Hufffy had declined to less than 50% of the 2010 royalty amounts.

31. In response to this marked decline in royalties reported by Hufffy, NSP’s Chief

Financial Officer contacted Hufffy to open a dialogue about the significant reduction in royalty payments under the Royalty Agreement and requested the opportunity to conduct an audit of the books and records of Hufffy to ensure that the royalties were being calculated properly. A true and accurate copy of the September 11, 2017 Correspondence from NSP to Hufffy is attached hereto as Exhibit 3.

32. As part of this planned audit, NSP provided Hufffy with a list of model numbers known to NSP for which it sought information for the audit. *See* Exhibit 3.

33. These model numbers included products for which NSP was previously paid a royalty, or that it became aware of through its own research of publicly available information.

34. In response, Hufffy refused to provide access to records related to certain model numbers, taking the position that they were not subject to the Royalty Agreement. A true and accurate copy of the October 17, 2017 Correspondence from Hufffy to NSP is attached hereto as Exhibit 4.

35. Without Hufffy's cooperation in allowing NSP access to its books and records to perform a complete audit as the Royalty Agreement provides, NSP is unable to determine the amount of royalties due and owing to NSP from Hufffy under the Royalty Agreement.

36. Based upon its own research, NSP has determined that several products sold by Hufffy were subject to a royalty but were not paid.

37. NSP cannot determine the extent of the underpayment by Hufffy without access to Hufffy's books and records related to the sales of products developed by NSD under the new Product Development Program.

38. Hufffy has also refused to allow NSP to conduct an audit of any sales occurring more than eight years before receipt of NSP's request to conduct an audit even though there is no

such limitation in the Royalty Agreement.

**D. NSD's Development of Products for Huffly under the new Product Development Program**

39. Prior to entering into the Royalty Agreement, NSD met with representatives of Huffly to discuss the terms of a new Product Development Program, which is memorialized in the February 1, 2002 Agreement between the parties. *See* Exhibit 1.

40. As agreed, following the launch of the new Product Development Program, NSP and Huffly entered into the Royalty Agreement to compensate NSP for product development services. *See* Exhibit 2.

41. The Royalty Agreement included Schedule A, which specifically identified the following product lines as those NSP brought to Huffly, and that Huffly desired to manufacture, market and sell under the terms of the Royalty Agreement:

- The Green Machine and Mini-Green Machine
- "S Frame bicycle" now known as Slither
- "Cheetah" now known as Kompressor
- "Transforming Trike" now known as Moto-Trike

*See* Schedule A attached to Exhibit 2.

42. The Royalty Agreement provided that the parties could update the list of product lines subject to the Royalty Agreement at any time. *See* Exhibit 2, at paragraph 2.

43. Pursuant to this provision, the parties agreed to add to the list of products that NSP was developing for Huffly in an Updated Schedule A to the Royalty Agreement dated August 6, 2003, which included the following product lines:

- The "Green Machine" and "Mini-Green Machine"
- "S Frame bicycles" now known as "Slither" and "Squirm"

- “Cheetah” now known as Compressor
- “Transforming Trike” now known as “Moto-Trike”
- “Wheel Spinners” rotating and stationary wheel disc concepts

*See Exhibit 2, Updated Schedule A.*

**E. NSD’s Development of “The Green Machine” Products**

44. Pursuant to the terms of the February 1, 2002 Agreement, NSD brought the concept of creating a new generation of “The Green Machine” to Huffy for consideration.

45. The parties documented NSD’s role in bringing the product concept of The Green Machine and Mini Green Machine to Huffy by including “The Green Machine and Mini Green Machine” on Schedule A, and Updated Schedule A of the Royalty Agreement.

46. Huffy agreed that all of The Green Machine concepts, including all new forms of The Green Machine, whether conceived by NSD or Huffy were subject to the Royalty Agreement for the life of the products. *See Exhibit 2.*

47. After NSP introduced the concept of The Green Machine to Huffy, Huffy registered the mark to use in conjunction with any products developed under these concepts.

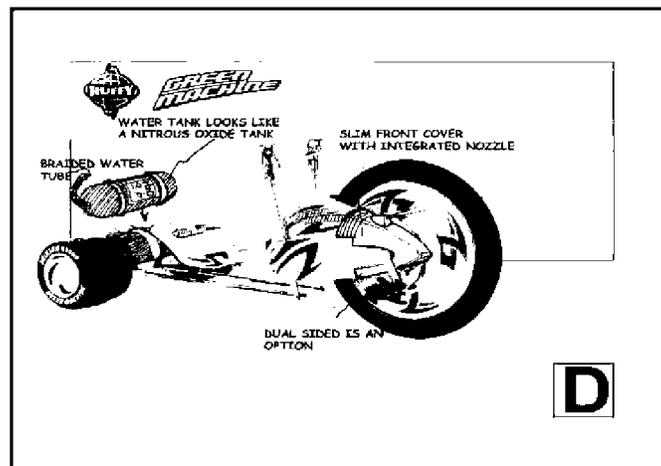
48. Pursuant to the February 1, 2002 Agreement, NSD began providing product concepts to Huffy.

49. NSD’s Green Machine concept was a low-riding horizontal bicycle having the following distinctive features:

- A large front tire
- Swivel action rear wheels that were extra wide to allow for spins and turns
- Dual stick steering
- A trigger handbrake for a rapid stop

50. As part of the new product development process, NSD prepared sketches and prototypes of a new line of “The Green Machine” products as requested by Huff. Examples of the sketches provided by NSD are set forth below:

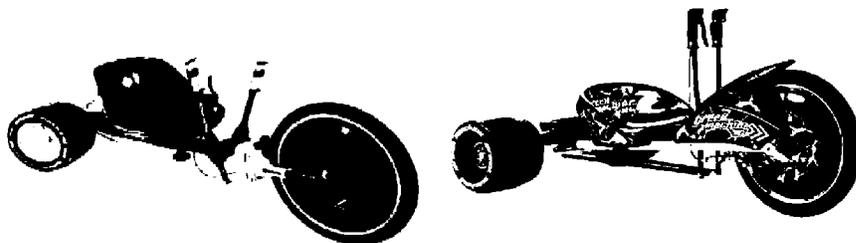
51. Upon review of these and other similar sketches, Huffy decided to develop a line of these Green Machine products and requested that NSD develop even more detailed product proposals, which NSD did. An example of these more developed images is set forth below:

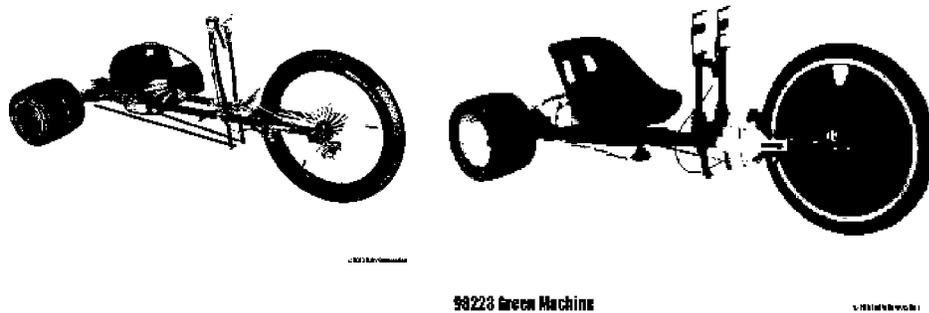


52. At the direction of Huffy, NSD developed concepts and prototypes for The Green Machine with a 20" front wheel, and a smaller version with a 16" front wheel, but with the same distinguishing features.

53. Based upon NSD's product development services, in 2003, Huffy began producing and selling The Green Machine, as depicted below, which looked substantially like the prototypes developed by NSP:

54. By way of example, Huffy later sold these versions of The Green Machine:





55. As these images demonstrate, all versions of The Green Machine shared similar characteristics, namely a low-riding frame, with a large front tire, swivel action, extra-wide rear wheels to allow spins and turns, dual stick steering, and a handbrake for quick stops.

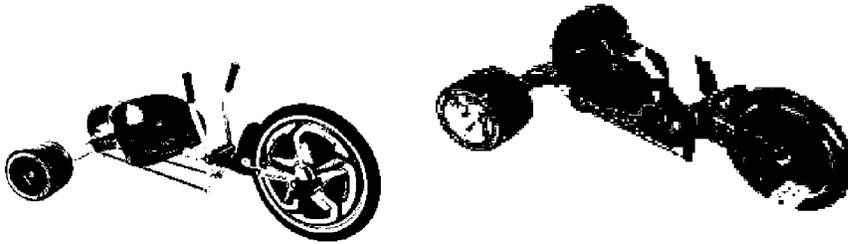
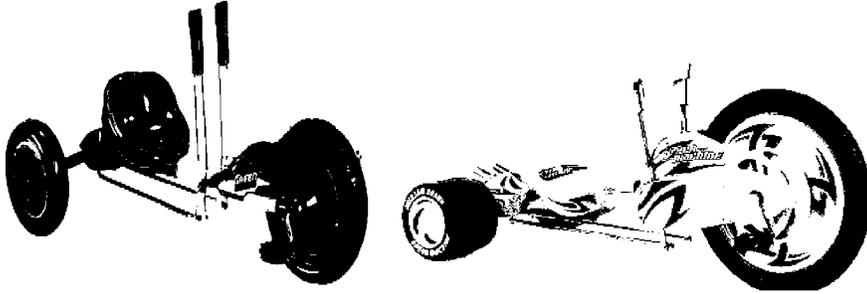
56. These were the primary features highlighted in all of the marketing materials produced or used by Huffy to sell The Green Machine.

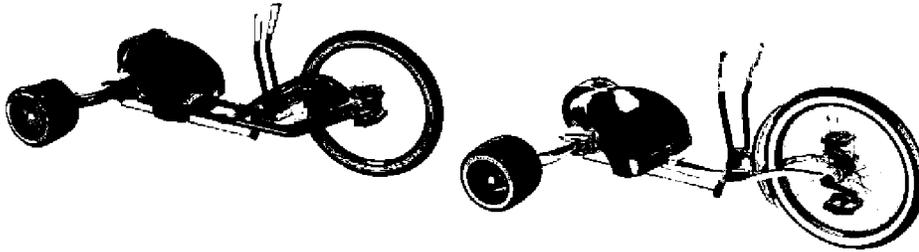
57. Huffy has reported sales and paid royalties to NSP on these and other similar products bearing The Green Machine name, and sharing the characteristics for which The Green Machine is known without objection under the Royalty Agreement since 2003 (although NSP is unable to determine if the royalties have been properly calculated and paid from inception given Huffy's refusal to allow NSP access to books and records).

58. In 2017, however, NSP learned that Huffy inexplicably has not been paying royalties to NSP on other products bearing The Green Machine name and having the primary features of The Green Machine, namely a low-riding bicycle frame with a larger front wheel, slick rear tires for spins and slides, dual stick steering, and quick brakes to allow for spins and turns.

59. By way of example, the following images are of products for which Huffy is

refusing to pay royalties to NSP under the Royalty Agreement (Model Nos. 29026/59026, 98146, 98205, 98225, 98228, 98263, 98315, and 98215):





60. As depicted in these images, and as advertised on the various retailer's websites, including Huffly's own website, these products are sold as The Green Machine.

61. The Royalty Agreement specifically contemplates the possibility of Huffly modifying the product lines, but it expressly states that Huffly owes a royalty on all iterations of a product governed by the Royalty Agreement for the life of that product even as modified. *See* Exhibit 2, p. 3.

62. Huffly markets and sells the Huffly "Mini Green Machine," which is a smaller version of The Green Machine with the same characteristic features including a low-riding frame, dual-stick steering, easy braking system for quick stops, and slick rear tires for slides and spins, as depicted in the image below (Model Nos. 29026 and 59026):

63. Various websites offering this product for sale state that the Mini Green Machine is intended to bring "the legendary thrill ride to younger kids," that it allows younger kids to

“share favorite Green Machine features,” and that it is an “entry-level product” to the “fun world of Green Machine.”

64. Updated Schedule A of the Royalty Agreement specifically includes The Green Machine and the *Mini Green Machine*. See Exhibit 2, Updated Schedule A.

65. In spite of this, Huffy has failed and refused to pay a royalty on the Mini Green Machine products and has refused to allow NSP access to books and records related to sales of these products.

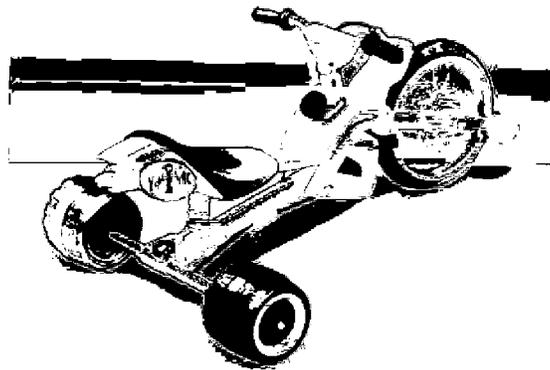
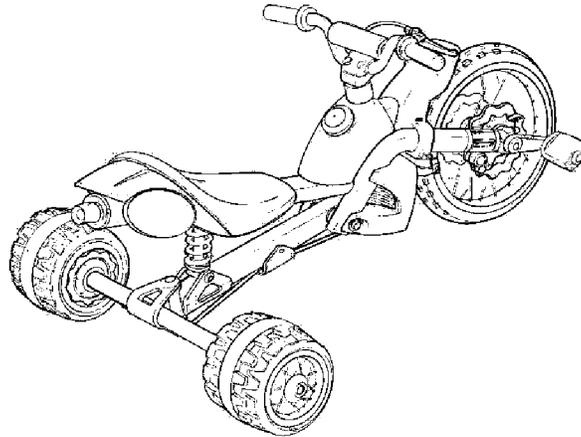
66. Huffy also markets and sells a battery-operated product, which shares the same characteristic features of The Green Machine including a low-riding frame, a larger front wheel, two wide slick rear tires and a responsive handbrake with dual stick steering to allow for slides and turns just like the non-motorized version of The Green Machine, as depicted below:



67. Indeed, this battery-operated version is simply called the “Green Machine Motorized.”

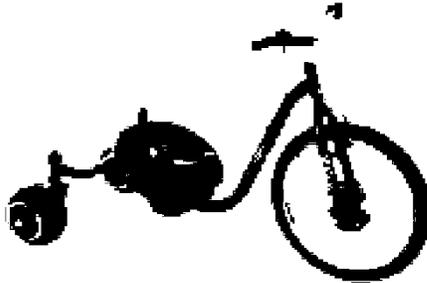
68. Huffy has failed and refused to pay a royalty to NSP on the sales of the Green Machine Motorized product and has refused to allow NSP access to books and records related to sales of these products.

69. In addition to The Green Machine concepts with dual-stick steering and oversized front tire, NSP also developed concepts for The Green Machine tricycle with handlebars, as set forth in these sketches provided by NSP to Huffy:



70. Huffy sells a product called The Green Machine Drift Trike, which features a large front wheel, super-slick rear wheels for spins and slides, a dual action handbrake, and handlebars.

71. An image of the Green Machine Drift Trike is set forth below:



72. Huffy has failed and refused to pay royalties to NSP for this product, and has refused to allow NSP access to books and records related to sales of these products.

73. Upon information and belief, Huffy has sold other products subject to the Royalty Agreement for which it has not paid a royalty to NSP in breach of the Royalty Agreement between the parties, but until NSP is allowed to conduct its audit, it cannot plead such failure to pay with particularity.

**F. Huffy's Breach of the Royalty Agreement**

74. In response to NSP's inquiry about the failure to pay royalties to NSP for products sold as The Green Machine, as well as other products identified in Updated Schedule A, Huffy asserted that it is not obligated to pay royalties to NSP unless the products contain some "novel or inventive aspect of the Green Machine as designed by [NSP]." *See* Exhibit 4.

75. Neither the Royalty Agreement nor the February 1, 2002 Agreement, which established the new Product Development Program, contain this limitation.

76. Huffy's failure and refusal to pay royalties under the Royalty Agreement for all of these products, among others that NSP may be unaware, is a breach of the Royalty Agreement because NSP developed these products for Huffy pursuant to the February 1, 2002 Agreement and the Royalty Agreement obligates Huffy to pay a royalty on such products, even if modified,

for the life of the products.

**G. The Audit Provision of the Royalty Agreement**

77. The Royalty Agreement requires Huffly to keep full and accurate books of accounts, records, data and memoranda based on the manufacture and sale of each individual product “in sufficient detail to enable the payments to NSP to be determined.” *See* Exhibit 2, paragraph 3.

78. The Royalty Agreement further provides that NSP shall have the right to “examine the books and records insofar as they concern each individual ITEM and not more than once in any calendar year, for the purpose of verifying the reports provided for in this Agreement,” provided it is conducted in a reasonable manner. *See* Exhibit 2, paragraph 3.

79. Although NSP has made demand upon Huffly for information to allow it to examine the books and records related to each product in order to conduct a full audit of the royalties due and owing, Huffly has refused to permit the required audit.

**H. Remedies for Breach of the Royalty Agreement**

80. The Royalty Agreement provides remedies to NSP if Huffly fails to make the necessary payments under the Royalty Agreement, fails to make any report required under the Royalty Agreement, or if Huffly provides a false or inaccurate report.

81. NSP has the right to recover the unpaid royalties plus interest from the date the payments became due at the prime rate published by Chase Manhattan Bank in New York City on the due date. *See* Exhibit 2.

82. NSP is also entitled to recover its costs incurred to conduct an audit of Huffly if the audit reveals an underpayment of greater than 10% of the royalties due for the year under inspection. *See* Exhibit 2.

83. Moreover, upon breach of the Royalty Agreement, it provides that Huffly is obligated to assign all rights, patents or patent applications in the developed products to NSP for the breach. *See* Exhibit 2.

**COUNT I**  
**(Breach of Contract)**

84. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

85. NSD complied with its contractual obligations to develop products for Huffly under the terms of the February 1, 2002 Agreement, entitling NSP to payment of royalties under the Royalty Agreement.

86. As a result of NSD's performance under the February 1, 2002 Agreement, and NSP's performance under the Royalty Agreement, Huffly incurred obligations to pay royalties to NSP on all products developed under the new Product Development Program, including all modifications to those products, for the life of the products.

87. Huffly failed to comply with its contractual obligations to NSD under the February 1, 2002 Agreement, and to NSP under the Royalty Agreement by refusing to pay the royalties due and owing to NSP when due, failing to account for the sales of products falling within the Royalty Agreement, and refusing to allow NSP to conduct an audit of all royalties due and owing under the Royalty Agreement, among other actions.

88. Huffly has failed to fulfill its contractual obligations under the February 1, 2002 Agreement and the Royalty Agreement without legal excuse.

89. As a result of Huffly's failure to comply with its contractual obligations, NSD and NSP suffered losses and are entitled to recover damages for those losses including all unpaid

royalties due and owing to NSP plus interest from the date such royalties were due.

90. Due to Hufffy's refusal to provide information to NSP or to allow NSP to conduct a full audit of the products subject to the Royalty Agreement, NSP and NSD are unable to determine at this time the exact amounts due and owing to them by Hufffy.

91. As result of Hufffy's material breaches, NSP and NSD have been harmed in an amount in excess of \$50,000.

**COUNT II**  
**(Action for an Accounting)**

92. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

93. The Royalty Agreement sets forth a list of products in Updated Schedule A for which Hufffy owes a royalty.

94. On October 6, 2017, NSP requested information related to sales of all products subject to the Royalty Agreement.

95. Hufffy refused to provide any sales information for certain products that NSP inquired about, taking the position that those products were not subject to the Royalty Agreement unless they were developed using "unique product concepts" provided by NSP.

96. Neither the February 1, 2002 Agreement nor the Royalty Agreement includes this limitation.

97. Instead, the February 1, 2002 Agreement and the Royalty Agreement state that NSP is entitled to a royalty from Hufffy for any product developed by NSD as a result of the new Product Development Program, and any modifications to those products for the life of the products.

98. Although the Royalty Agreement allows NSP to conduct an audit of the royalties due and owing it under the Royalty Agreement, Huffly has refused to provide information related to sales of products that it claims fall outside the scope of the Royalty Agreement.

99. As a result, NSP has no way of determining the sales of these products, or the balance of royalties due and owing to NSP under the Royalty Agreement.

100. The Royalty Agreement further provides that NSP shall have the right to conduct an audit of the sales of products subject to a royalty, but Huffly has refused to allow NSP to audit sales from inception of the products if Huffly began selling the product more than 8 years ago.

101. The Royalty Agreement contains no such limitation.

102. Although NSP has made demand upon Huffly for information to allow it to conduct a full audit of the royalties due and owing, and for information related to all products falling under the terms of the Royalty Agreement, Huffly has failed to make that information available to NSP.

103. NSP is entitled to conduct a thorough audit of all royalties due and owing it under the Royalty Agreement to obtain a complete and thorough accounting of the amounts owed under the Royalty Agreement.

104. In addition, NSP is entitled to recover the costs of the audit should the underpayment of royalties is greater than 10% of the royalties due for each year.

**COUNT III**  
**(Specific Performance)**

105. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

106. The Royalty Agreement requires Huffly to maintain accurate books and records

related to each item for the life of that product sufficient to enable NSP to verify the royalty reports provided by Hufffy.

107. The Royalty Agreement authorizes NSP to conduct an audit of the royalties due and owing it under the Royalty Agreement.

108. Although NSP has made demand upon Hufffy for information to allow it to conduct a full audit of the royalties due and owing, and for information related to all products identified as subject to the Royalty Agreement, Hufffy has failed to make that information available to NSP.

109. As a result, NSP has no way of verifying the accuracy of the royalty reports, or determining the net sales of these products, or the balance of royalties due and owing to NSP under the Royalty Agreement.

110. Enforcement of NSP's right to an audit is necessary because it is the only remedy that will allow NSP to verify the royalty reports to date, and to determine the amount of royalties that remain due and owing to NSP by Hufffy.

111. Hufffy should be required to comply with its obligations under the Royalty Agreement, including access to its books and records for NSP to conduct an audit, in addition to other remedies allowed by the Royalty Agreement.

**COUNT IV**  
**(Unjust Enrichment/Quantum Meruit)**

112. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

113. NSD conferred a benefit upon Hufffy by virtue of the products developed specifically for Hufffy under the new Product Development Program, from which Hufffy has

benefitted exponentially.

114. By all accounts, the introduction of The Green Machine to Hufffy's product line in particular resulted in significant sales over the past fifteen years.

115. NSD agreed to accept a reduced retainer fee to develop these products for Hufffy in exchange for a royalty payable to NSP on the sales of the products for the life of the product.

116. Hufffy is well aware that NSD provided these product development services to Hufffy at Hufffy's behest.

117. The benefits conferred upon Hufffy were at the expense of, and to the detriment of NSD.

118. Hufffy has been unjustly enriched by the benefit conferred upon it by NSD and has retained the benefit under circumstances where it would be unjust to do so without payment.

119. As a direct and proximate result Hufffy's conduct, Hufffy has damaged NSD and NSP, and unjustly enriched itself in an amount in excess of \$50,000.

**COUNT V**  
**(Breach of the Covenant of Good Faith and Fair Dealing)**

120. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

121. Every contract includes an implied duty of good faith and fair dealing requiring the parties to engage in objectively reasonable conduct to fulfill the obligations required of each party to a contract.

122. The February 1, 2002 Agreement and the Royalty Agreement created a contractual relationship between Hufffy and NSD, and Hufffy and NSP, respectively, both of which required Hufffy to act in good faith and deal fairly.

123. Hufffy's conduct in refusing to pay the royalties owed to NSP, or allow NSP the opportunity conduct an audit of all products falling under the purview of the Royalty Agreement, breaches Hufffy's covenant of good faith and fair dealing implied in the contractual relationship between the parties.

124. As a direct and proximate result of Hufffy's breach of the duty of good faith and fair dealing, NSP and NSD have incurred losses and are entitled to recover damages from Hufffy for those losses plus interest in an amount to be established at trial, in addition to other remedies allowed by the Royalty Agreement.

**COUNT VI**  
**(Conversion)**

125. NSP and NSD incorporate by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

126. Under the express terms of the Royalty Agreement, NSP was entitled to receive at least 2% of all sales of the products, and any modified versions thereof, payable as royalties by Hufffy.

127. Upon the sale of certain products developed by NSD for Hufffy pursuant to the new Product Development Program, Hufffy owed NSP at least 2% of all sales of the products sold by Hufffy or its sublicensees.

128. Upon sale of the products, NSP became the rightful owner of at least 2% of the net sales of those products.

129. Hufffy is aware of its obligation to transfer at least 2% of the funds received for sales of the products sold by Hufffy or its sublicensees within 30 days following the quarter in which the sale is made.

130. Huffy knowingly failed to transfer funds, and continues to refuse to transfer funds belonging to NSP.

1. This constitutes conversion of NSP's property and is in violation of NSP's rights under the Royalty Agreement.

131. As a result of Huffy's failure and refusal to transfer the funds due and owing to NSP, NSP has been damaged.

132. Because Huffy's conduct was intentional and in reckless disregard of the rights of NSP, in addition to the funds owed to NSP under the Royalty Agreement, NSP is entitled to punitive damages in such an amount that would deter Huffy and others from engaging in similar conduct, to be determined by the trier of fact.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs NSP and NSD pray for judgment against Defendant Huffy as follows:

1. Judgment in favor of NSP and NSD and against Huffy in an amount in excess of \$50,000, to be proven at trial following discovery for the amount of royalties due and owing to NSP that remain unpaid by Huffy, plus costs, prejudgment interest and post-judgment interest to compensate NSP and NSD for the damages sustained by it as a result of Huffy's breach of the February 1, 2002 Agreement and the Royalty Agreement;

2. An Order compelling Huffy to allow NSP access to all necessary information for NSP to conduct a full and complete audit of the royalties due and owing for all products subject to the Royalty Agreement from their inception to the present without limitation on time as directed by the Royalty Agreement;

3. For the costs of the audit in light of the anticipated underpayment of greater than 10% of the royalties due and owing to NSP;

4. Judgment in favor of NSP and NSD and against Huffy for all costs, expenses incurred by NSP and NSD in bringing this action;

5. If Huffy is found to have converted the funds earmarked for NSP under the Royalty Agreement, NSP is entitled to recover punitive damages;

6. All available remedies allowed by the Royalty Agreement;

7. Such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

*/s/ Dana S. Elfvin*

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**JURY DEMAND**

Pursuant to Rule 38 of the Ohio Rules of Civil Procedure, Plaintiffs NSP and NSD respectfully request a trial by jury of the maximum number of jurors provided by law with respect to each issue triable to a jury in this matter.

Respectfully submitted,

*/s/ Dana S. Elfvín*

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