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11 Razor USA LLC
12 Shane Chen

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 Razor USA LLC and Shane Chen,

17 Plaintiffs,

18 vs.

19 Swagway, LLC,

20 Defendant.

Case No. 2:15-CV-09209

COMPLAINT

DEMAND FOR JURY TRIAL

21 **COMPLAINT**

22 Plaintiffs Razor USA LLC (“**Razor**”) and Shane Chen (“**Shane Chen**” or
23 “**Mr. Chen**”) for their complaint against Defendant Swagway, LLC (“**Swagway**”) a
24 allege as follows:

25 **INTRODUCTION**

26 1. Razor has been a leader in new categories of rides and action sports, a
27 category that it continues to help define. Since 2000, Razor has been recognized
28 year in and year out for its innovative and popular products by parents, media, and

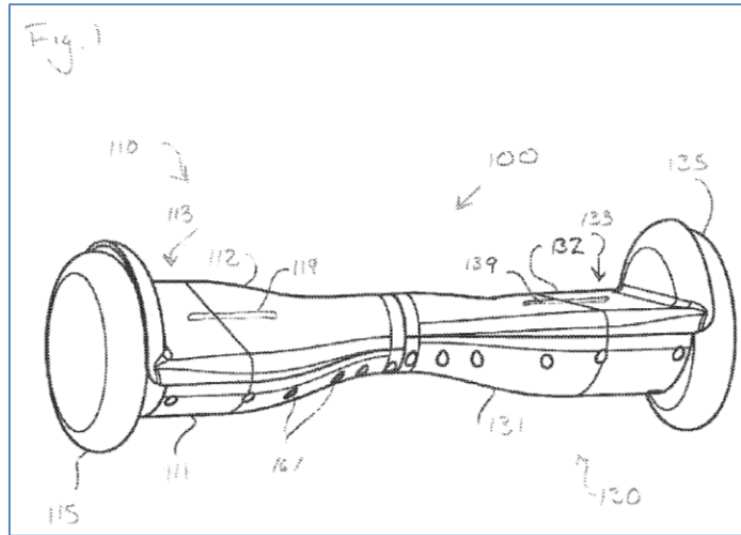
1 industry alike. From day one, Razor has focused on providing the very best riding
2 experience, combining cutting-edge technology, high-quality materials, and
3 innovation to deliver products designed to suit riders' evolving lifestyles. Today,
4 Razor offers a full line of award-winning products that inspire and excite riders
5 around the globe.

6 2. Throughout the years, Razor has invested significant resources in
7 protecting its intellectual property through the development, licensing, and, when
8 necessary, enforcement of substantial patent and other intellectual property rights.

9 3. In November 2015, Razor entered into a patent and trademark license
10 agreement with Shane Chen and his company Inventist, Inc. ("**Inventist**"). As a
11 result, Razor now owns certain exclusive rights in, among other intellectual
12 property, U.S. Patent Number 8,738,278 (the "**'278 Patent**").

13 4. The '278 Patent is entitled "Two-Wheel, Self-Balancing Vehicle With
14 Independently Movable Foot Placement Sections." A copy of the '278 Patent is
15 attached as Exhibit 1.

16 5. The '278 Patent relates to, among other things, a two-wheel, self-
17 balancing personal vehicle having independently movable foot placement sections.
18 In a disclosed embodiment, the foot placement sections have an associated wheel,
19 sensor and motor and are independently self-balancing which gives the user
20 independent control over the movement of each platform section by the magnitude
21 and direction of tilt a user induces in a given platform section. Various embodiments
22 are disclosed one of which is depicted in Figure 1 from the '278 Patent, which is
23 reproduced below:



6. Claim 1 of the '278 Patent recites:

1. A two-wheel, self-balancing vehicle device, comprising:

a first foot placement section and a second foot placement section that are coupled to one another and are independently movable with respect to one another;

a first wheel associated with the first foot placement section and a second wheel associated with the second foot placement section, the first and second wheels being spaced apart and substantially parallel to one another;

a first position sensor and a first drive motor configured to drive the first wheel, a second position sensor and a second drive motor configured to drive the second wheel; and

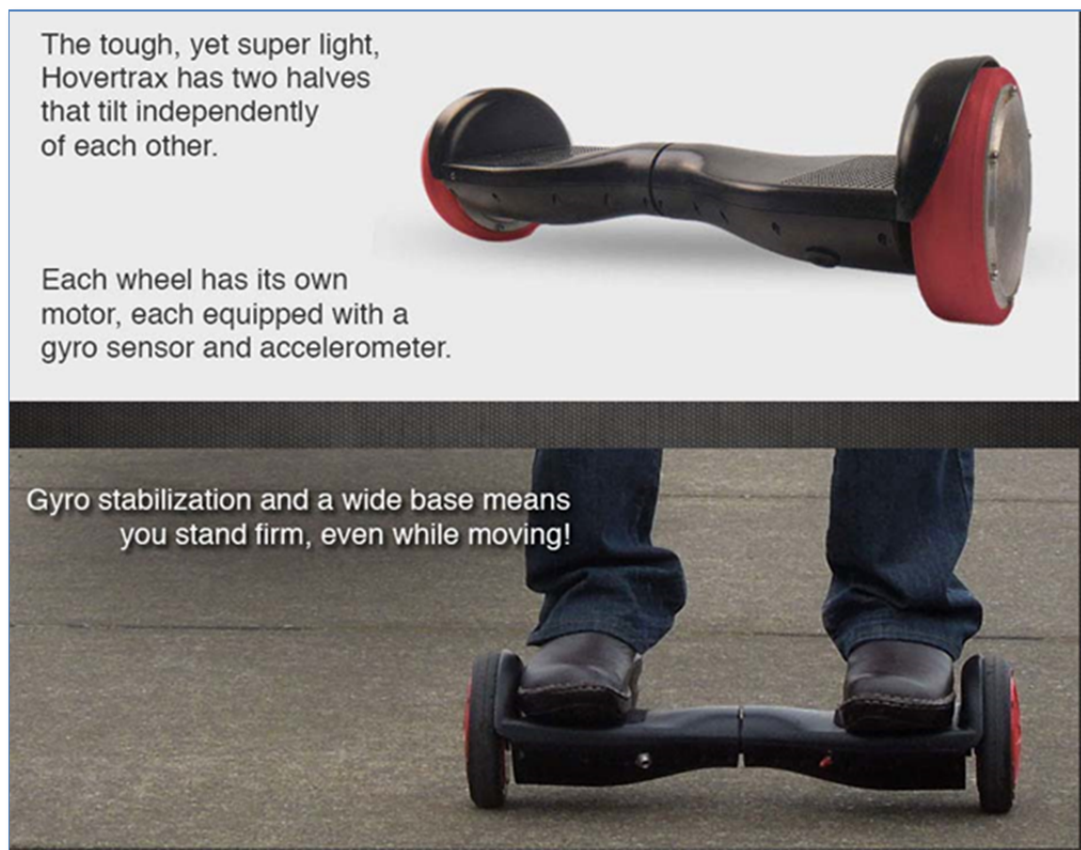
control logic that drives the first wheel toward self-balancing the first foot placement section in response to position data from the first sensor and that drives the second wheel toward self-balancing the second foot placement section in response to position data from the second foot placement section.

7. The United States Patent Office duly and lawfully issued the '278 Patent to Shane Chen on or about May 27, 2014 based on U.S. Patent Application No. 13/764,781, which was filed on or about February 11, 2013 and further referenced U.S. Provisional Application No. 61/597,777, which was filed on or about February 12, 2012. Mr. Chen is the inventor of and, subject to certain

1 exclusive license rights granted to Razor, owns all right, title and interest in the '278
2 Patent.

3 8. Shane Chen is an innovator of sports-related products that are
4 genuinely new, fun to use, and add an element of fitness at the same time. To date,
5 Mr. Chen has patented thirty-seven inventions, including the '278 Patent.

6 9. Mr. Chen has offered a product made under the '278 Patent, called
7 "The Hovertrax," through Inventist. Photographs of the Hovertrax are shown
8 below:



23 10. Depictions of Razor products licensed to use the technology claimed in
24 the '278 Patent are reproduced below:

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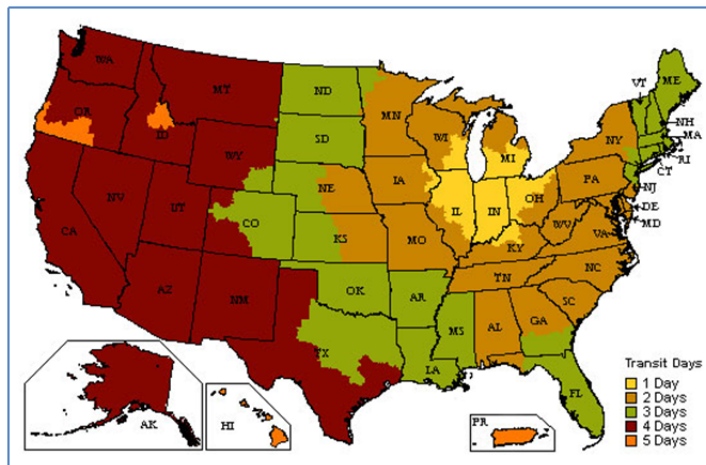
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11. On information and belief, Swagway makes, offers to sell, sells, imports, uses, and/or instructs its customers to use two-wheel, self-balancing vehicles and their components, including products referred to as the Swagway, Swagway X1, Swagway smart balancing electric skateboard, and related and similar products and component parts. Swagway makes such products and component parts available throughout the United States, including California, at least through Swagway's website at www.swagway.com, through multiple other social media platforms and email addresses including, but not limited to, Facebook (facebook.com/swagwayusa), Twitter (twitter.com/swagwayusa), Pinterest (www.pinterest.com/swagwayusa), and Instagram (instagram.com/swagwayusa), support@swagway.com, corporate@swagway.com, marketing@swagway.com, and media@swagway.com, and through additional media, distributors, and distribution channels such as through QVC®.

12. On information and belief, Swagway makes, offers to sell, sells, imports, uses, and/or instructs its customers to use component parts especially adapted for use in two-wheel, self-balancing vehicles, including, among other things, the Swagway X1 Mainboard, Swagway X1 Motor/Rubber Wheel, Swagway X1 Pedal Sensor Contact and Mounting Bracket, Swagway X1 Position Sensor Board, Swagway X1 Power Switch Connectors, Swagway X1 Front Right and Front Left LEDs, Swagway X1 Left and Right LED Plastic Housings, Swagway X1 Status Indicator LED, Replacement Charger for Swagway X1, Swagway X1 Battery Indicator LED, and Swagway X1 Charging Port Connector.

13. On information and belief, Swagway further ships and causes to be shipped the Swagway two-wheel, self-balancing vehicles from locations in Asia and from the “Swagway Warehouse” to locations throughout the United States, including California, as depicted in the shipment map available on the Swagway website (reproduced below):



14. Swagway instructs its customers to use and operate its two-wheel, self-balancing vehicles at least through various versions of Swagway’s “User’s Manual,” including the versions made available at <https://swagway.com/wp-content/uploads/2015/09/Swagway-X1-Manual-Official.pdf>, a copy of which is attached hereto as Exhibit 2. A version of the User Manual is also provided to customers within Swagway’s product packaging. *See, e.g.*, Exhibit 2 at 28.

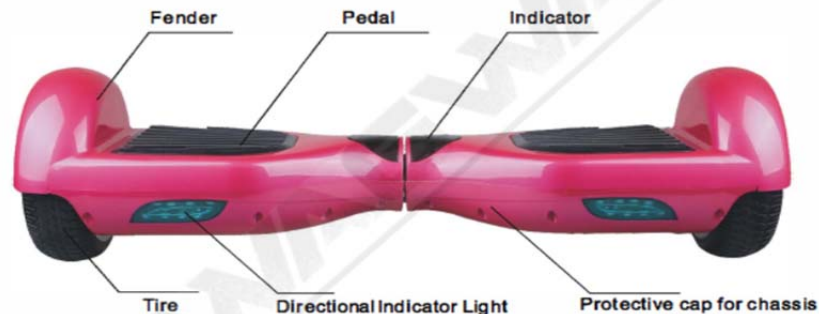
15. The Swagway User Manual states that the “Swagway is a self-balancing, personal transporter that uses balancing technology” and confirms that it “utilizes two self-balancing wheels” *See, e.g.*, Exhibit 2 at 3.

16. The Swagway User Manual provides, among other things, the following product descriptions and diagrams:

2.1 Description of the Swagway
The Swagway is a self-balancing electric skateboard which can go forwards and backwards. It's steering and stopping are controlled by Dynamic Equilibrium. It is simple to operate, easy to control, environmentally friendly, and looks incredibly cool!



2. 2 Swagway Diagram



17. In regards to the product’s “Pedal sensor” the Swagway User Manual states: “3.1 Pedal sensor: The Swagway has 4 sensors below the pedals. When the operator steps on a pedal, the Swagway will adjust itself to balance automatically.” *See, e.g.*, Exhibit 2 at 10.

18. The Swagway User Manual further reflects that the product has been tested and, on information and belief, Swagway used, and continues to use, the product during testing. *See, e.g.*, Exhibit 2 at 6.

19. Swagway received notice of the '278 Patent and Swagway's infringement of the '278 Patent at least as early as November 27, 2015 when Swagway and its agents received a letter from the Plaintiffs that included a copy of the patent and identified Swagway's infringing products and activities. On information and belief, Swagway was already aware of the '278 Patent and Swagway's infringement prior to that date at least because the '278 Patent and the Hovertrax were well-publicized and because Swagway and/or its agent received notice of the '278 Patent and Swagway's infringement when attempting to contact potential customers.

THE PARTIES

20. Razor is a privately-held, limited liability company organized and existing under the laws of Delaware with its principal place of business in Cerritos, California.

21. Shane Chen is a resident of Camas, Washington.

22. Upon information and belief, Swagway is a domestic limited liability company registered in Indiana. Swagway operates a place of business at 3431 William Richardson Dr., Suite F, South Bend IN 46628.

JURISDICTION AND VENUE

23. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 22 as if fully set forth herein.

24. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35 United States Code, including 35 U.S.C. § 1, *et seq.* This complaint includes claims for patent infringement arising under U.S. patent law, including 35 U.S.C. §§ 271, *et seq.*

1 25. Personal jurisdiction in California is proper over Swagway and venue is
 2 proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C.
 3 § 1400(b).

4 26. Plaintiffs are informed and believe, and on that basis allege, that
 5 Swagway has substantial, systematic, and continuous contacts with this judicial
 6 district and that Swagway committed acts of infringement in California by, among
 7 other things, selling, offering to sell, importing, and/or instructing customers to use
 8 infringing products in and through California, and Swagway has committed tortious
 9 acts in California by, selling, offering to sell, importing, and/or instructing
 10 customers to use infringing products in the United States, with knowledge of the
 11 Plaintiffs' intellectual property and presence in California, and the harm caused to
 12 Plaintiffs by these acts.

13 27. On information and belief Swagway places infringing products in the
 14 stream of commerce with the knowledge, understanding, and expectation that such
 15 products will be sold and/or used in California and in this judicial district. Plaintiffs
 16 are informed and believe, and on that basis allege, that Swagway derives substantial
 17 revenue from the sale of infringing products in this judicial district, expects its
 18 actions to have consequences in this judicial district, and derives substantial revenue
 19 from its acts in interstate and international commerce.

20 28. Intradistrict assignment is proper in the Western division because a
 21 substantial part of the events or omissions that give rise to the claim occurred in or
 22 around the Western division and because the '278 Patent was previously asserted in
 23 this division in *Shane Chen v. Soibatian Corporation dba IO HAWK and dba Smart*
 24 *Wheels*, No. 2:15-CV-4562-JAK(JPRx) (C.D. Cal.).

25 **COUNT I – SWAGWAY INFRINGES**

26 **UNITED STATES PATENT NO. 8,738,278**

27 29. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 28
 28 as if fully set forth herein.

1 30. Plaintiffs are informed and believe, and on that basis allege, that
2 Swagway has infringed and is currently infringing one or more claims of the '278
3 Patent, in violation of 35 U.S.C. § 271, *et seq.*

4 31. Swagway infringes literally and/or under the doctrine of equivalents,
5 by, among other things, making, using, offering for sale, selling, and/or importing
6 within this judicial district and elsewhere in the United States, without license or
7 authority, Swagway, Swagway X1, Swagway smart balancing electric skateboard,
8 and related and similar products falling within the scope of one or more claims of
9 the '278 Patent, including claim 1.

10 32. Plaintiffs are informed and believe, and on that basis alleges, that
11 Swagway has infringed and continues to infringe the '278 Patent in violation of 35
12 U.S.C. § 271(b) by actively inducing infringement of the '278 Patent, literally
13 and/or under the doctrine of equivalents, with knowledge of the '278 Patent and
14 knowledge that it was inducing the infringement of the '278 Patent, by, among other
15 things, actively and knowingly aiding and abetting, assisting, and encouraging
16 others, including without limitation its distributors, customers, and end users of
17 Swagway, Swagway X1, Swagway smart balancing electric skateboard, and related
18 and similar products and component parts to directly infringe the '278 Patent with
19 respect to the making, using, offering for sale, selling, and/or importing within this
20 judicial district and elsewhere in the United States, without license or authority, the
21 Swagway, Swagway X1, Swagway smart balancing electric skateboard, and related
22 and similar products falling within the scope of one or more claims of the '278
23 Patent, including claim 1.

24 33. Plaintiffs are informed and believe, and on that basis allege, that
25 Swagway has infringed and continues to infringe the '278 Patent in violation of 35
26 U.S.C. § 271(c) by contributing to infringement of the '278 Patent, literally and/or
27 under the doctrine of equivalents, by, among other things, making, selling, offering
28 for sale, and/or importing within this judicial district and elsewhere in the United

1 States, without license or authority, the Swagway, Swagway X1, Swagway smart
 2 balancing electric skateboard, and related and similar products and component parts
 3 falling within the scope of one or more claims of the '278 Patent, with knowledge of
 4 the '278 Patent and knowing that such products and/or components are especially
 5 made or especially adapted for use in the infringement of the '278 Patent, and not
 6 staple articles or commodities of commerce suitable for substantial noninfringing
 7 use.

8 34. Plaintiffs are informed and believe, and on that basis allege, that
 9 Swagway's infringement of the '278 Patent has been and continues to be willful and
 10 deliberate. Plaintiffs are informed and believe, and on that basis allege, that
 11 Swagway, with knowledge of the '278 Patent and its infringement, engaged in
 12 objectively reckless conduct by selling, offering to sell, and/or importing infringing
 13 products, and continuing that activity, in the face of an objectively high risk that
 14 Swagway was infringing the '278 Patent.

15 35. Swagway's acts of infringement have caused damage to Plaintiffs in an
 16 amount to be proven at trial. As a consequence of Swagway's infringement,
 17 Plaintiffs are entitled to recover lost profits and other damages adequate to
 18 compensate them for the infringement complained of herein, but in no event less
 19 than a reasonable royalty.

20 36. Plaintiffs have suffered and continue to suffer irreparable injury as a
 21 direct and proximate result of Swagway's infringement for which there is no
 22 adequate remedy at law. Unless Swagway is enjoined, Plaintiffs will continue to
 23 suffer such irreparable injury as a direct and proximate result of Swagway's
 24 conduct.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment
 27 as follows:

28 A. That Swagway has directly infringed the '278 Patent.

1 B. That Swagway has induced the infringement of the '278 Patent.

2 C. That Swagway has contributed to the infringement of the '278 Patent.

3 D. That Swagway and any of its affiliates, subsidiaries, officers, directors,
4 employees, agents, representatives, licensees, successors, assigns, and all those
5 acting for any of them and/or on any of their behalf, or acting in concert with any of
6 them directly or indirectly, be enjoined from infringing or inducing others to
7 infringe the '278 Patent or contributing to its infringement.

8 E. That Swagway and any of its affiliates, subsidiaries, officers, directors,
9 employees, agents, representatives, licensees, successors, assigns, and all those
10 acting for any of them and/or on any of their behalf, or acting in concert with any of
11 them directly or indirectly, deliver to Plaintiffs all products that infringe the '278
12 Patent for destruction at Plaintiffs' option;

13 F. That Swagway be ordered to pay compensatory damages to Plaintiffs,
14 together with pre-judgment interest and post-judgment interest as allowed by law;

15 G. That Swagway be ordered to provide an accounting;

16 H. That Swagway be ordered to pay supplemental damages to Plaintiffs,
17 including without limitation interest;

18 I. That the infringement by Swagway be adjudged willful and that the
19 damages be increased under 35 U.S.C. § 284 to three times the amount found or
20 measured;

21 J. That the Court enter judgment against Swagway, and in favor of
22 Plaintiffs in all respects;

23 K. That the Court determine this is an exceptional case under 35 U.S.C.
24 § 285 and an award of attorneys' fees and costs to Plaintiffs is warranted in this
25 action; and
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1 L. For any such other and further relief as the Court deems just and
2 equitable.

3 Dated: November 27, 2015

IRELL & MANELLA LLP
Bruce A. Wessel
Ellisen S. Turner

7 By:/s/ Ellisen S. Turner

8 Ellisen S. Turner
9 Attorneys for Plaintiffs
10 Razor USA LLC
11 Shane Chen
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Razor and Shane Chen respectfully request a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: November 27, 2015

IRELL & MANELLA LLP
Bruce A. Wessel
Ellisen S. Turner

By: /s/ Ellisen S. Turner
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Attorneys for Plaintiffs
Razor USA LLC
Shane Chen