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Attorneys for Plaintiff
Cheveux Corporation

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHEVEUX CORPORATION,

Plaintiff,

vs.

THREE BIRD NEST, LLC and THREE BIRD
NEST DESIGNS, LLC,

Defendant.

Case No.: 19-cv-513

**COMPLAINT FOR PATENT
INFRINGEMENT, TRADE DRESS
INFRINGEMENT, AND UNFAIR
COMPETITION**

Plaintiff Cheveux Corporation (“Cheveux”), by and through its undersigned counsel,
alleges as and for its Complaint against Defendants Three Bird Nest, LLC and Three Bird Nest
Designs, LLC (collectively, “Three Bird Nest” or “Defendants”) as follows:

PARTIES

1. Plaintiff Cheveux Corporation is a New York corporation, with its principal place
of business in New York, New York.

2. Defendant Three Bird Nest, LLC (“TBN”) is a California limited liability
company, with its principal place of business at 7901 Stoneridge Drive, Suite 201, Pleasanton,
California 94588.

3. Defendant Three Bird Nest Designs, LLC (“TBND”) is a California limited
corporation with its principal place of business located at 4045 Raymond Road, Livermore,

1 California 94551. Upon information and belief, TBN and TBND share common ownership
2 and/or management.

3 **JURISDICTION AND VENUE**
4

5 4. This action alleges patent infringement under Title 35 of the United States Code,
6 as well as trade dress infringement under the Lanham Act, 15 U.S.C. §1125(a), unfair
7 competition under California Business & Professions Code § 17200 *et seq.*, and common law
8 unfair competition.

9 5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
10 1338(a). The Court has supplemental jurisdiction over the state law unfair competition claims
11 pursuant to 28 U.S.C. § 1338(b), as those claims are joined with substantial and related claims
12 alleged under Federal patent or trademark laws. The Court also has supplemental jurisdiction
13 over the state law claims pursuant to 28 U.S.C. § 1367(a).
14

15 6. Upon information and belief, Defendants are California-based e-commerce
16 retailers of hats and other articles of clothing and accessories, who market and sell goods through
17 the Internet, including on Defendants' website, www.threebirdnest.com. The Court has personal
18 jurisdiction over Defendants as: (i) Defendants purposefully direct their activities at residents of
19 this State, (ii) at least a portion of the infringement alleged herein arises out of or relates to the
20 Defendants' activities within this State, and (iii) Defendants regularly solicit business, engage in
21 other persistent courses of conduct, or derive revenue from goods or services provided to
22 individuals throughout the United States and in this judicial district.
23
24

25 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28
26 U.S.C. § 1400(b).
27
28

1 **INTRADISTRICT ASSIGNMENT**

2 8. Pursuant to Local Rule 3-2(c), this case is appropriate for assignment on a district-
3 wide basis because it is an Intellectual Property Action.
4

5 **THE PATENT-IN-SUIT**

6 9. On May 29, 2018, the United States Patent and Trademark Office issued U.S.
7 Patent No. D818,671 S (“the ‘671 Patent”), entitled “HAT”. A true and correct copy of the ‘671
8 Patent is attached hereto as Exhibit A.

9 10. All rights, title, and interest in the ‘671 Patent have been assigned to Cheveux,
10 who is the sole owner of the ‘671 Patent. Cheveux, as the owner of the ‘671 Patent, has the
11 exclusive right to enforce that patent, including the right to prosecute infringement actions and
12 collect damages for all relevant times.
13

14 11. The ‘671 Patent generally relates to a hat with four rows and an opening at the
15 apex, which allows, *inter alia*, a ponytail to protrude from the top of the hat. Cheveux marketed
16 these hats under the brand name “C.C” and the hats were generally referred to as “C.C Ponytail
17 Hats”. The C.C Ponytail Hats have affixed a brown label bearing the mark “C.C”.
18

19 **FIRST COUNT**
20 **(Patent Infringement)**

21 12. Cheveux repeats and realleges the foregoing allegations as if set forth in full
22 herein.

23 13. Cheveux is the owner of the ‘671 Patent by virtue of assignment.

24 14. Beginning in or about December 2017, Defendants purchased C.C Ponytail Hats
25 from Cheveux and marketed and re-sold them on Defendants’ website www.threebirdnest.com.
26 Those hats indicated “Patent Pending”, referring to the patent issued as the ‘671 Patent.
27
28

1 15. In or about April 2018, Defendants ceased purchasing C.C Ponytail Hats from
2 Cheveux. Upon information and belief, Defendants thereafter began marketing and selling on
3 Defendants' website hats with an opening at the apex, as well as four rows, that infringe on the
4 '671 Patent. Defendants' infringing hats also have a substantially similar brown label affixed,
5 but instead of C.C label and mark, it displays "Three Bird Nest".
6

7 16. Attached hereto as Exhibits B and C, respectively, are copies of examples of the
8 C.C Ponytail Hat and a hat being marketed and sold by Defendants.
9

10 17. Defendants have had actual knowledge of the '671 Patent since they began
11 purchasing the C.C Ponytail Hats from Cheveux's authorized distributor.
12

13 18. Defendants also have had actual knowledge of the '671 Patent since August 31,
14 2018, when counsel for Cheveux sent Defendants a letter putting them on notice of their
15 infringement.
16

17 19. Defendants further have actual knowledge of their infringement since the filing of
18 this Complaint.
19

20 20. Defendants' infringement is based on literal infringement and/or infringement
21 under the doctrine of equivalents.
22

23 21. Upon information and belief, Defendants have without authority made, used,
24 offered to sell, sold, or imported into the United States products infringing the '671 Patent.
25

26 22. Upon information and belief, Defendants have induced others to infringe the '671
27 Patent, and therefore are liable as an infringer.
28

 23. Cheveux has been injured by Defendants' infringement, and therefore Defendants
are liable to Cheveux in an amount adequate to compensate for the infringement, including lost
profits, loss sales, and other damages, but in no event less than a reasonable royalty.

24. Defendants' infringing activities have been intentional, willful and deliberate. Defendants formerly purchased and re-sold the authorized C.C Ponytail Hat and then ceased doing so in order to market and sell their own infringing product. Defendants have continued this activity despite their knowledge of the '671 Patent. Cheveux, therefore, is entitled to an award of attorneys' fees.

SECOND COUNT
(Trade Dress Infringement/Unfair Competition – Lanham Act)

25. Cheveux repeats and realleges the foregoing allegations as if set forth in full herein.

26. Cheveux's C.C Ponytail Hats have acquired distinction and secondary meaning in the marketplace that is not functional.

27. Cheveux's promotion of its C.C Ponytail Hats have resulted in Cheveux acquiring significant goodwill and legally protected rights in the C.C Ponytail Hats trade dress.

28. As described above, Defendants, after previously marketing and selling C.C Ponytail Hats, now manufacture, marketing, and/or sell hats that are substantially or confusingly similar to the C.C Ponytail Hats, incorporating the design of the four rows and/or the opening at the apex.

29. Pursuant to 15 U.S.C. § 1125(a), a non-registered trademark owner may be granted injunctive relief to prevent or restrain infringement of its well-known mark and may also seek an award of damages, disgorgement of profits, and attorneys' fees as a result of trademark infringement.

30. Defendants' actions, including their use in commerce of marks and trade dress that are substantially similar or identical to Cheveux's mark and trade dress, has caused or is

likely to cause confusion, mistake, deception of consumers, or misunderstanding as to the source, origin, approval or sponsorship Defendants' goods.

31. Defendants' actions, therefore, constitute trade dress and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

32. Defendants knew of Cheveux's trade dress, as Defendants had formerly purchased and sold Cheveux's CC Ponytail Hats prior to selling their own infringing products. Accordingly, Defendants' conduct is intentional and willful.

33. Even after being placed on notice of Cheveux's rights, Defendants continue to use confusingly similar marks and trade dress in commerce. Upon information and belief, Defendants are willfully offering for sale and selling products that infringe upon Cheveux's mark and trade dress in order to benefit from Cheveux's goodwill and reputation, and to falsely create an association between Defendants' and Cheveux's products.

34. Cheveux has been and will continue to be irreparably harmed and injured Defendants' actions, and Cheveux lacks an adequate remedy at law. Defendants therefore should be enjoined from using Cheveux's mark and trade dress.

35. Cheveux is also entitled to recover Defendants' profits in providing its goods using Cheveux's mark and trade dress, as well as all other damages sustained by Cheveux due to Defendants' use of goods using marks and trade dress identical or confusingly similar to Cheveux's mark and trade dress, and costs of suit.

36. Because this is an exceptional case, involving willful misconduct by Defendants, Cheveux is entitled to recover treble damages or Defendants' profit, whichever is greater, and reasonable attorneys' fees.

THIRD COUNT
(Unfair Competition - Cal. Bus. & Prof. Code § 17200, et seq.)

37. Cheveux repeats and realleges the foregoing allegations as if set forth in full herein.

38. As described herein, the actions of Defendants constitute unlawful business practices under California Business & Professions Code § 17200, et seq.

39. Cheveux has a valid and legally protectable right in the C.C Ponytail Hat, whose trade dress is inherently distinctive and through Cheveux's use and efforts has become associated with Cheveux.

40. The above-described acts further constitute business acts that violate 15 U.S.C. § 1125(a) and 35 U.S.C. § 271, and are therefore unlawful.

41. Furthermore, the above-described acts and practices by Defendants have and are likely to continue to confuse, mislead or deceive the general public and therefore constitute unfair and fraudulent business practices in violation of California Business & Professions Code §§ 17200, et seq.

42. As a direct and proximate result of Defendants' wrongful conduct, Cheveux has suffered actual injury and has lost money and profits, as well as suffered injury to its reputation and goodwill.

43. Such harm will continue unless Defendants' acts are enjoined by the Court. Cheveux has no adequate remedy at law. Defendants, therefore, should be enjoined from continuing the practices described above.

FOURTH COUNT
(Common Law Unfair Competition)

44. Cheveux repeats and realleges the foregoing allegations as if set forth in full herein.

45. Cheveux's mark, trade dress and the patented design of products associated therewith have been highly successful and Cheveux has developed a substantial reputation and goodwill in the marketplace.

46. Upon information and belief, Defendants have misappropriated Cheveux's efforts and have exploited Cheveux's mark, trade dress, and the patented design of products associated therewith, as well Cheveux's goodwill and reputation.

47. The above-described actions constitute unfair competition.

48. As a direct and proximate result of Defendants' wrongful conduct, Cheveux has been and will continue to be damaged.

49. Such harm will continue unless Defendants' acts are enjoined by the Court. Cheveux has no adequate remedy at law. Defendants, therefore, should be enjoined from continuing the practices described above.

50. Upon information and belief, Defendants have acted willfully, intentionally and maliciously, such that Cheveux is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Cheveux prays for relief and a judgment in its favor as follows:

A. Entering judgment holding that Defendants have infringed the '671 Patent.

B. Entering a judgment that Defendants have committed trade dress infringement and unfair competition under the Lanham Act.

1 C. Entering a judgment that Defendants have committed unfair competition or
2 business practices under California Business & Professions Act § 1700, *et seq.*

3 D. Entering judgment that Defendants have committed common law unfair
4 competition.
5

6 E. Entering judgment that Defendants account for and pay to Cheveux all damages
7 to and costs incurred because of Defendants' infringing activities and other conduct complained
8 of herein.

9 F. Enjoining Defendants, their officers, agents, servants, employees, successors and
10 assigns, as well as all related and subsidiary entities or other persons or entities acting in concert
11 with them from infringing the '671 Patent, infringing upon Cheveux's mark or trade dress, or
12 otherwise unfairly competing with Cheveux, or in the alternative, awarding Cheveux post-
13 judgment royalties for future infringement or unfair competition.
14

15 G. Ordering Defendants to account to Cheveux for Defendants' wrongful conduct,
16 including Defendants' sales and profits thereon.
17

18 H. Awarding Cheveux actual damages, in an amount to be proven at trial, and in no
19 event less than a reasonable royalty.

20 I. Awarding treble damages, as allowed by law.

21 J. Awarding punitive damages, as allowed by law.

22 K. Awarding Cheveux its reasonable attorneys' fees, as allowed by law.

23 L. Awarding pre-judgment interest and costs and disbursements of suit.

24 M. Granting such other and further relief as the Court deems just and proper.
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Dated: January 29, 2019

By:

rlash@hlnylaw.com

EXHIBIT A

The
United
States
of
America



The Director of the United States
Patent and Trademark Office

Has received an application for a patent for a new, original, and ornamental design for an article of manufacture. The title and description of the design are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the design shall be granted under the law.

Therefore, this

United States Patent

Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the design throughout the United States of America or importing the design into the United States of America for the term set forth by law.

Andrei Iancu

Director of the United States Patent and Trademark Office

(12) United States Design Patent
Yim**(10) Patent No.: US D818,671 S**
(45) Date of Patent: ** May 29, 2018**(54) HAT****(71) Applicant: Hyo Jeong Yim, Palisades Park, NJ (US)****(72) Inventor: Hyo Jeong Yim, Palisades Park, NJ (US)****(**) Term: 15 Years****(21) Appl. No.: 29/591,561****(22) Filed: Jan. 20, 2017****(51) LOC (11) Cl. 02-03****(52) U.S. Cl. D2/889**
USPC**(58) Field of Classification Search**USPC D2/865, 866, 867, 869, 870, 873, 878,
D2/879, 883, 888, 889, 891, 895
CPC .. A42B 1/00; A42B 1/004; A42B 1/04; A42B
1/041; A42B 1/12; A42B 1/225; A42B
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See application file for complete search history.

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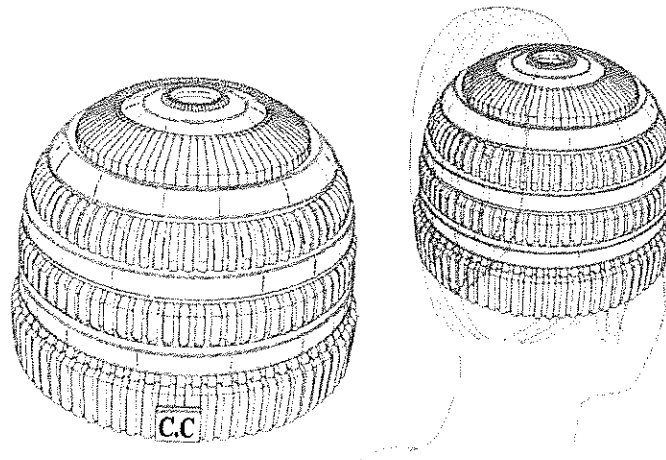
(Continued)

Primary Examiner — Karen S Acker*Assistant Examiner* — Jasmine Mlinarcik**(57)****CLAIM**

The ornamental design for a hat, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view with an opening at the apex of the design;
 FIG. 2 is a front view of the design;
 FIG. 3 is a left side view of the design;
 FIG. 4 is a right side view of the design;
 FIG. 5 is a back side view of the design;
 FIG. 6 is a top side view with an opening at the center of the design;
 FIG. 7 is a bottom side view with an opening at the center of the design; and,
 FIG. 8 is a rear perspective view.
 The broken line depiction of the partial human figure in FIG. 8 assists in illustrating how the claimed design may appear when worn, and forms no part of the claimed design.

1 Claim, 8 Drawing Sheets

(56)

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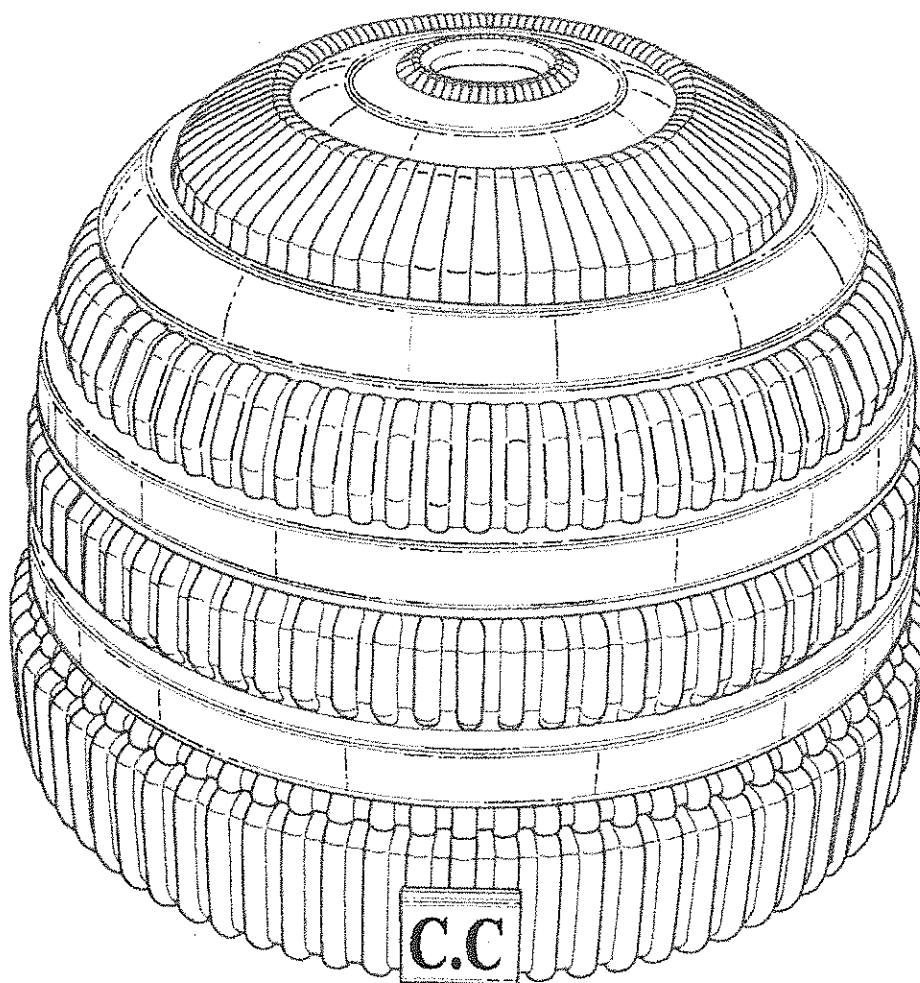


FIG. 1

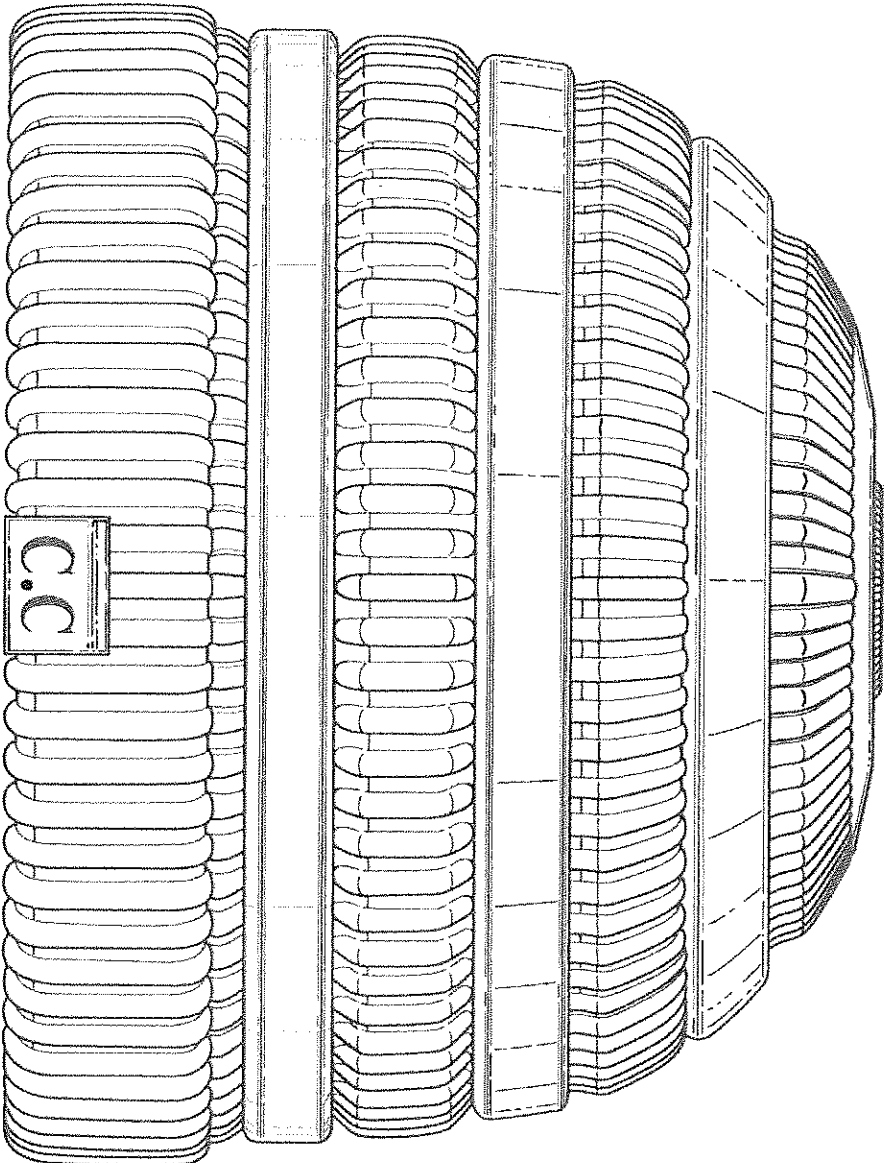


FIG. 2

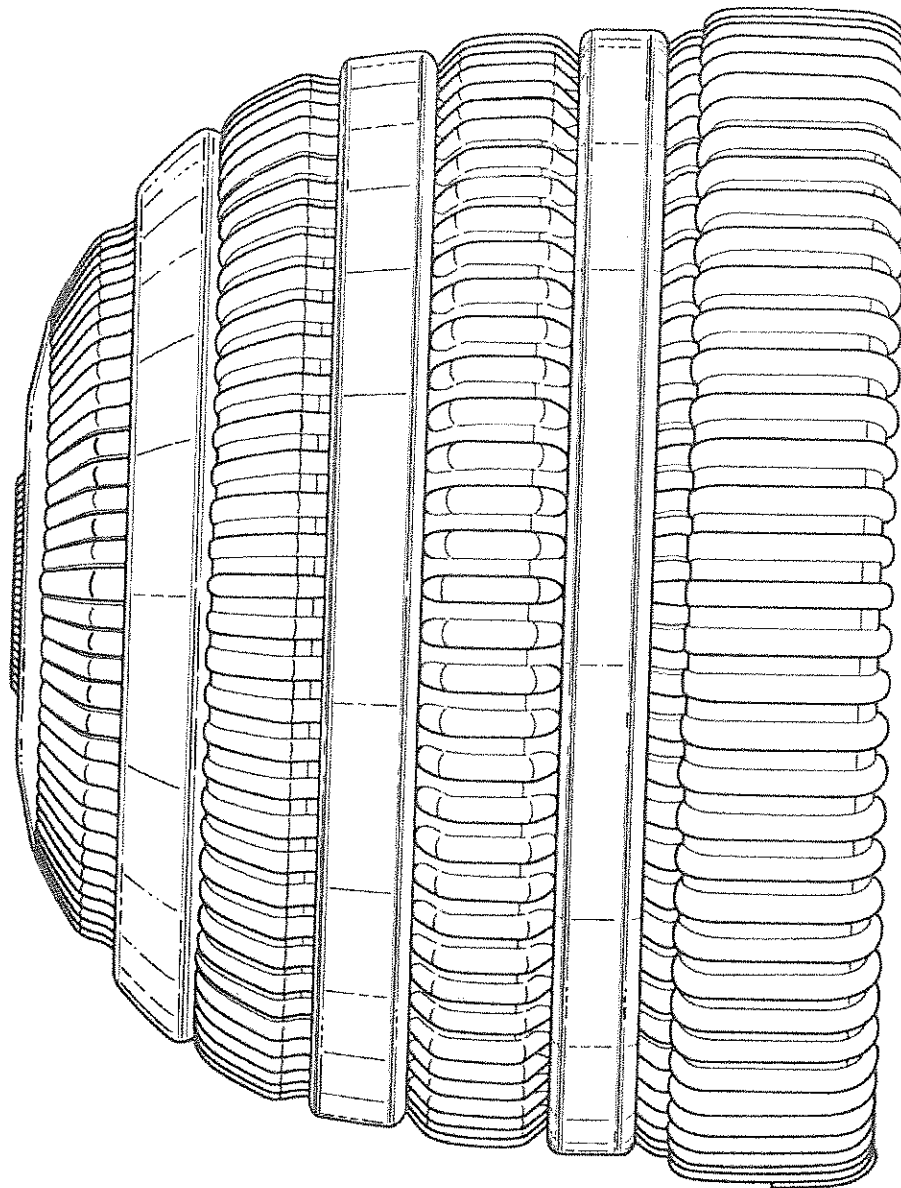


FIG. 3

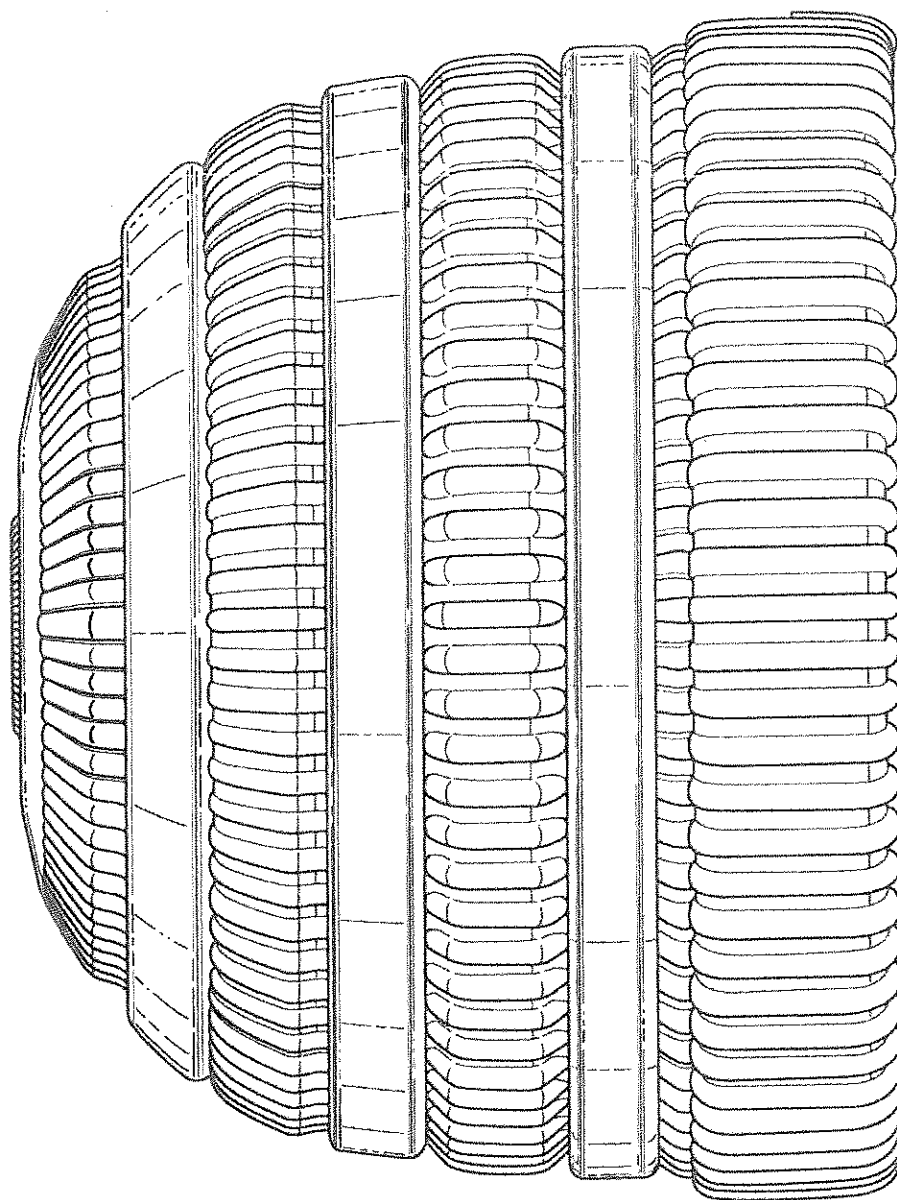


FIG. 4

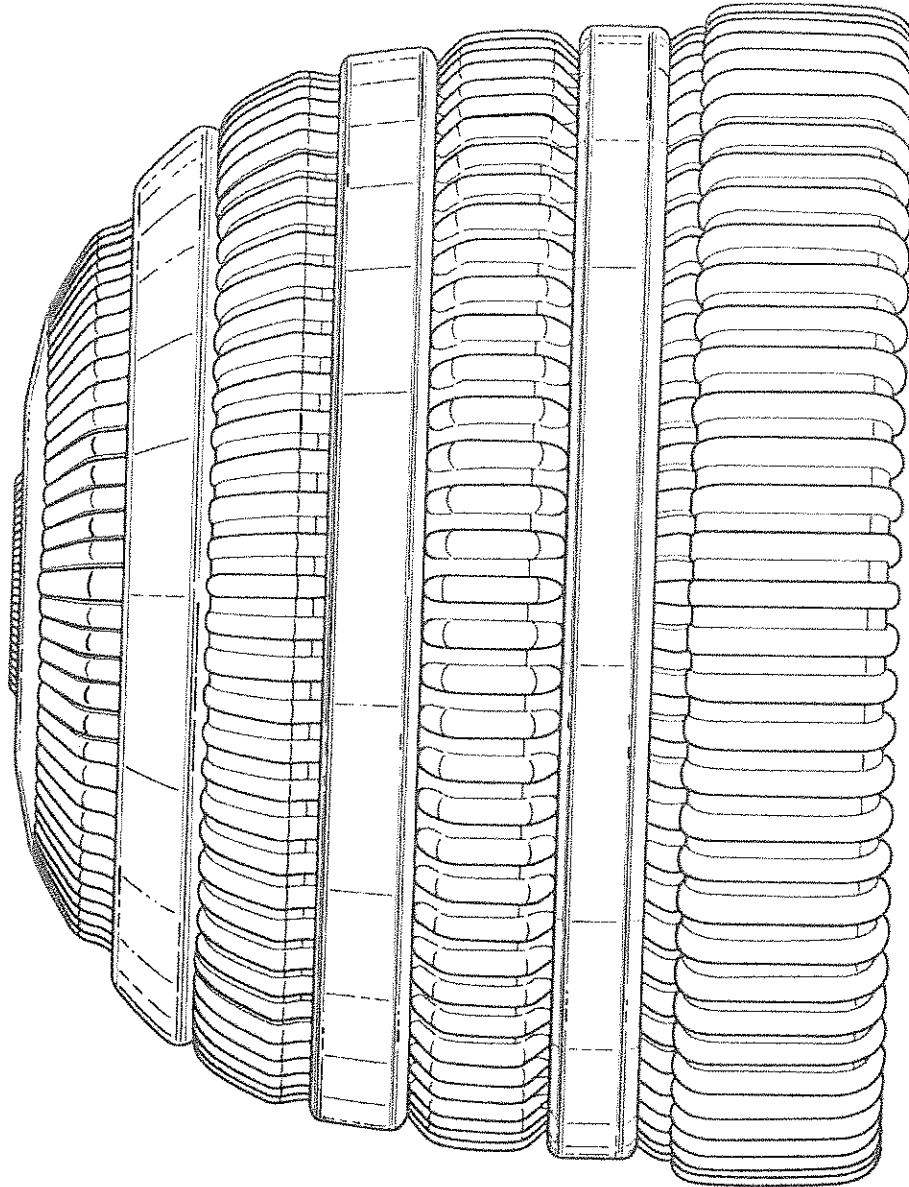


FIG. 5

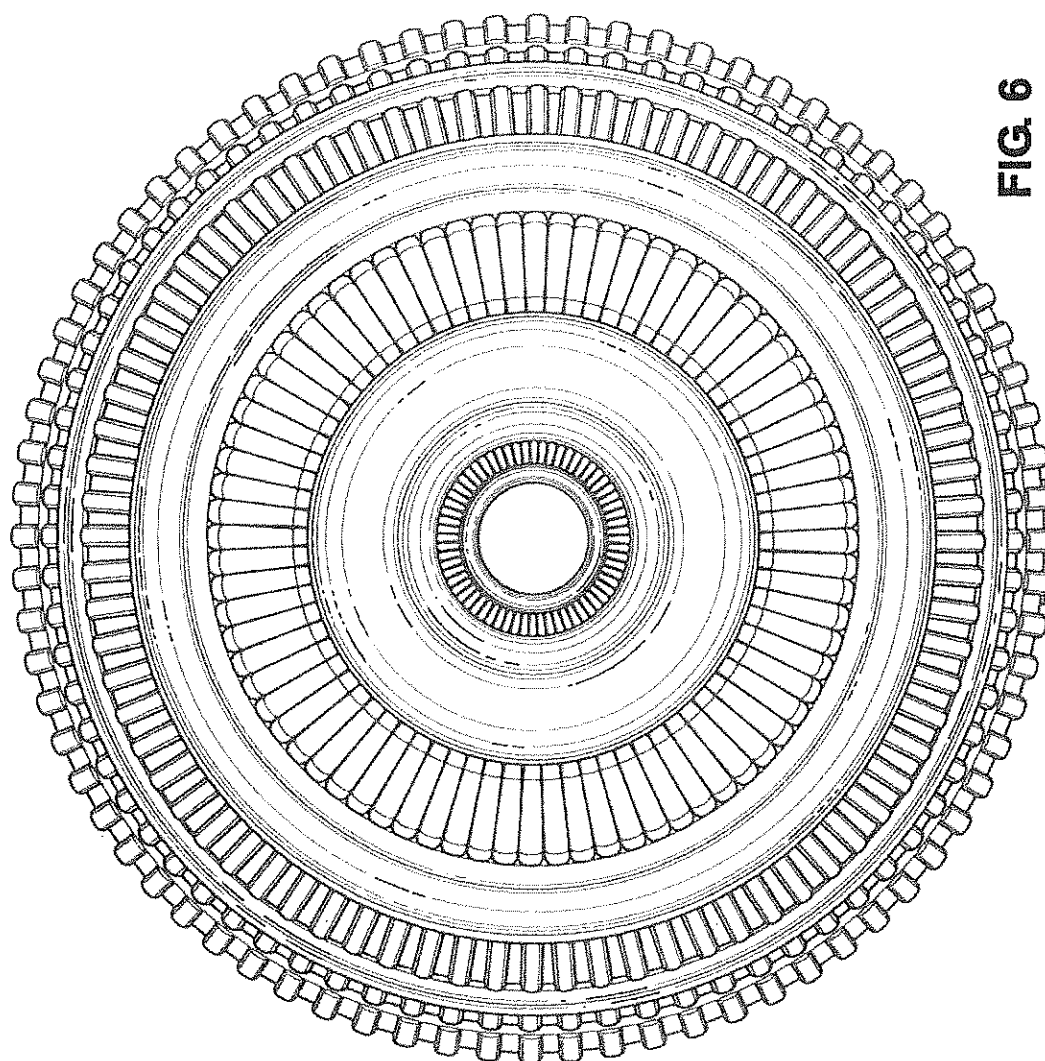


FIG. 6

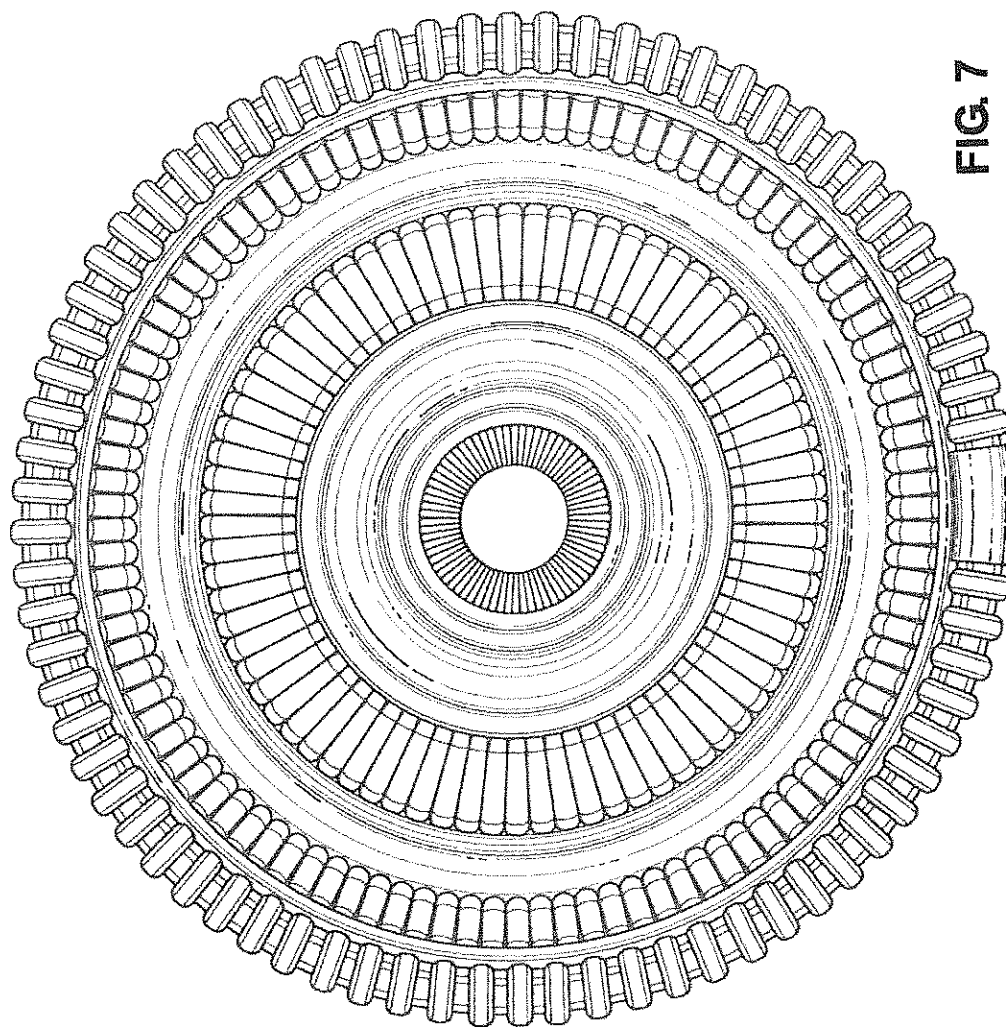


FIG. 7

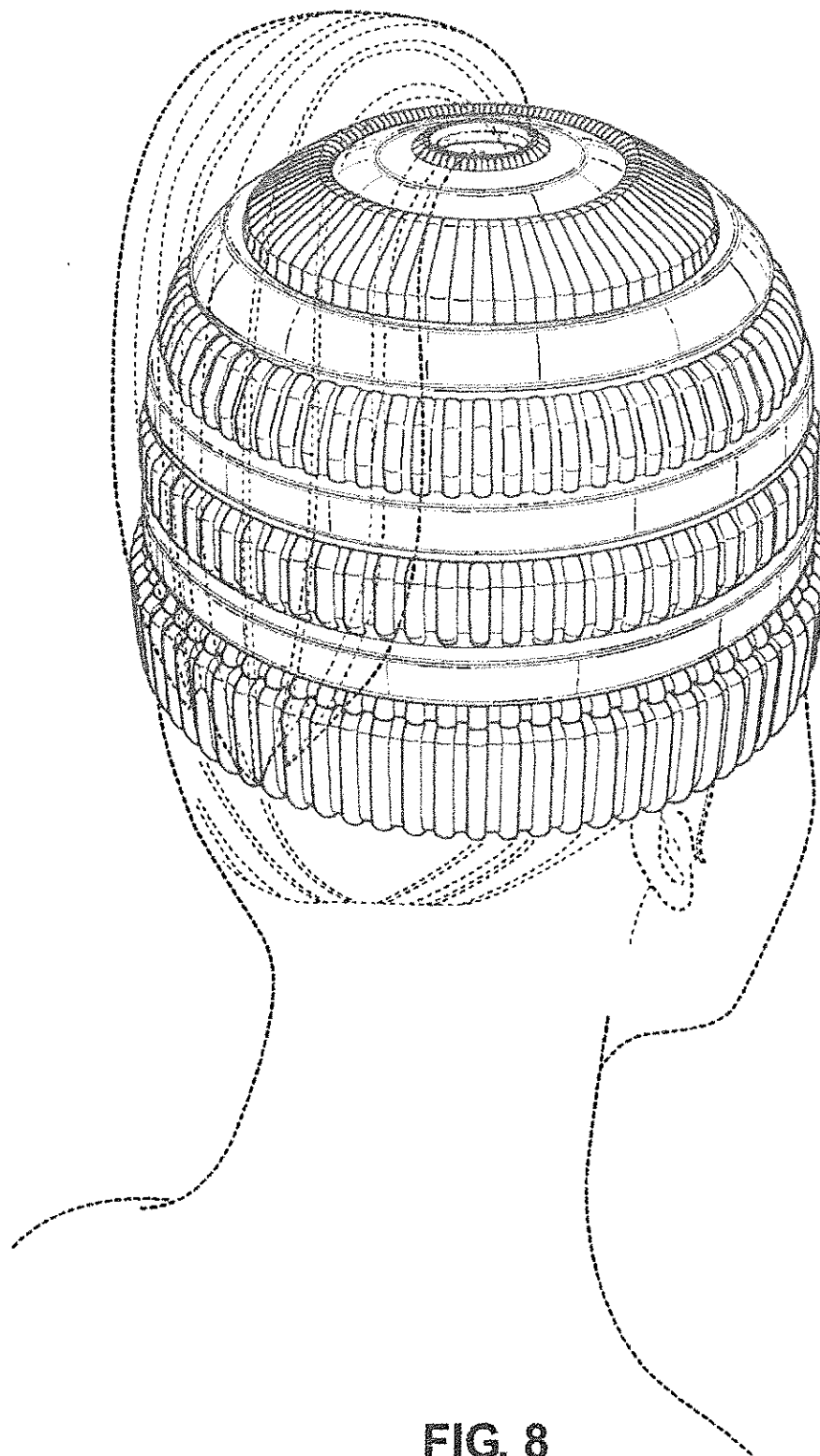


FIG. 8

EXHIBIT B

C.C BeanieTail Soft Stretch Cable Knit Messy High Bun Ponytail Beanie Hat



Perfect for pulling your messy bun or high ponytail through on chilly days, even suitable for man buns

C.C BeanieTail Soft Stretch Cable Knit Messy High Bun Ponytail Beanie Hat

- Perfect for pulling your messy bun or high ponytail through on chilly days, even suitable for man buns
- Keep your whole head warm without your bun or hair in the way, high or low opening, depending on how you wear it
- Time saving and convenient design for leisure, snow sports, camping, outdoor activities
- Material: 100% stretchable soft acrylic, head measurement: 57 cm, 22-3/8", Size 7-1/8
- C.C Exclusives BeanieTail Patent pending: Made in Korea

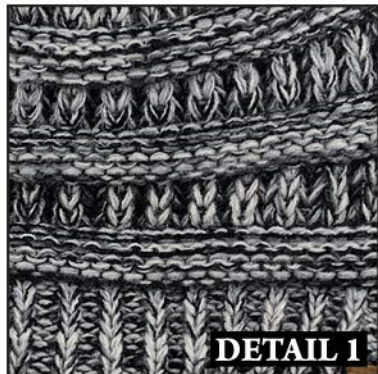
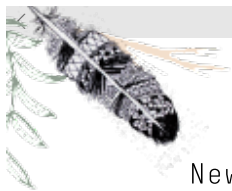


EXHIBIT C



New
Arrivals

Boho
Hats
Grab
Bag

Shop

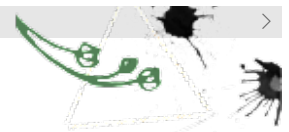
Clothing

Accessories

ACCOUNT | BAG (0)
Shoes

Best
Seller:

SHOP SALE!



SHOP / HATS / MESSY BUN KNITTED BEANIE - DUSTY PURPLE

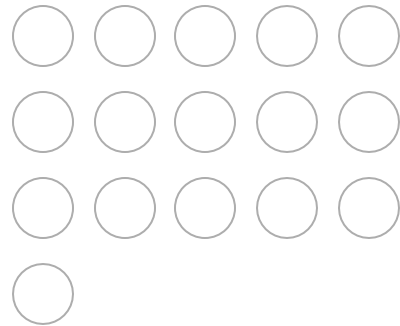


MESSY BUN KNITTED BEANIE

\$15.99 ~~19.95~~

★★★★★ 55 reviews

COLOR: DUSTY PURPLE



ADD TO BAG

BUY NOW

DESCRIPTION

SHARE ON



SPOTTED ON INSTAGRAM



New
Arrivals

Boho
Hats
Grab
Bag

Shop

Clothing

Accessories

ACCOUNT | BAG (0)
Shoes

Best
Seller:

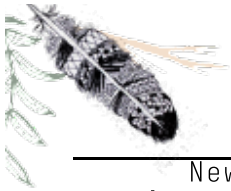
SHOP SALE!



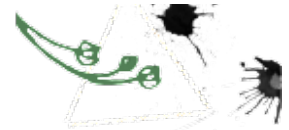
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Sale



SHOP SALE!



New Arrivals | Boho Hats Grab Bag | Shop Clothing Accessories | ACCOUNT | BAG (0) | Shoes | Best Seller:

REVIEWS



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3 weeks ago

Verified Ashley Dowrie said:
It's the best pony tail hat



4 weeks ago

Verified Danielle Cliburn said:
Cute and Comfortable!
I ordered 2 of the messy bun beanies and when they... Read more



4 weeks ago

Verified Vanessa Griggs said:
Love them
They are great quality and my girls and I love them!



1 month ago

Verified Heather Dobson said:
Messy Bun beanie
Love it. Looks exactly like the pictures.



1 month ago

Verified Bridget Kohlhaas said:
Well made
This hat is very well made and super cute. Excellent... Read more

Showing 5 out of 55 reviews. [Show all](#)





New
Arrivals

Boho
Hats
Grab
Bag

SHOP SALE!

HELP, PLEASE

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Shipping

3BN Policies

Start a Return

Pre-Order Info

Size Chart

Wholesale

EXPLORE 3BN

Our Story

#LoveBirds

Press + Media

Contact Us

ACCOUNT | BAG (0)
Shoes Best Seller

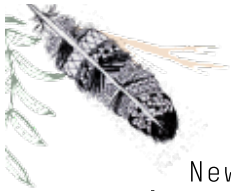


Join The Flock



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New
Arrivals

Boho
Hats
Grab
Bag



SHOP SALE!



Shop

Clothing

Accessories

ACCOUNT | BAG (0)

Shoes

Best
Seller: