

## DECLARATION OF STEVEN LEE

I, Steven Lee, declare as follows:

1. I am the CEO of applicant Pado, Inc. ("Pado"), which has applied to register the mark PUREWAVE for its hand-held electric therapeutic massagers.

### Pado Has Been Selling PUREWAVE Massagers, with a High Profile Internet and Industry Presence, for More than Four Years Now

2. Pado, including through its corporate predecessor in interest AT Battery Company, Inc, has been selling its PUREWAVE line of hand-held electric therapeutic massagers since approximately June 12, 2015. During that time, Pado has maintained a high Internet and industry presence.
3. Pado has spent approximately \$19,276,000 advertising its PUREWAVE massagers in the form of Google, Amazon Advertising, and Amazon Media Group advertisements, and in trade publication magazines including Chiropractic Economics, The American Chiropractor, The Chiropractic Assistant, and PGA Tour.
4. Pado has spent approximately \$150,000 attending and displayed its PUREWAVE massagers at industry trade shows including the Parker Seminar events, and the APTA American Physical Therapy Association CMS seminar.
5. Pado has spent approximately \$15,000 sponsoring sporting events including the Spartan Race in 2018, and the Revel Run Marathon in 2018.
6. Pado has been purchasing "PUREWAVE" as an Internet advertising keyword for four (4) years.
7. Pado acquired the domain [www.purewave.com](http://www.purewave.com). A "redirect" at that domain redirects visitors to Pado's home page of [www.padoua.com](http://www.padoua.com) at which Pado promotes and sells the PUREWAVE massagers.

### Pado Has Sold More than \$71,000,000 of PUREWAVE Massagers

8. Since the first sales of PUREWAVE massagers in June 2015, Pado has sold approximately **645,000** PUREWAVE massagers at a total selling price of approximately **\$71,826,000**.
-

There is No Overlaps Between Cosmetic (Anti-Wrinkle) Massagers and Therapeutic Massagers

9. I am informed that the trademark Examining Attorney contends that there is a likelihood of confusion between Pado's PUREWAVE therapeutic massagers, and the registration by Sigma Instruments, Inc. ("Sigma Instruments") of the mark PURWAVE for the goods of a "device for non-surgical cosmetic treatments, namely, an electric massage apparatus."

10. The term "non-surgical cosmetic treatments" generally refers to anti-wrinkle treatment, usually on and around the face. I understand that the Examining Attorney has cited to the following as examples of massagers for cosmetic treatments:

- a) <https://www.amazon.com/Multifunctional-Electric-Massager-Whitening-KLX-9902EMS/dp/B07FDZ2WMX> - goods are a "multifunctional electric face massager" for cosmetic purposes, also "suitable for all your body";
- b) [https://www.amazon.com/Massager-Electric-Instant-Anti-Wrinkles-Tightening/dp/B07N59NYBX/ref=pd\\_cp\\_194\\_1?pd\\_rd\\_w=QEhst&pf\\_rd\\_p=ef4dc990-a9ca-4945-ae0bf8d549198ed6&pf\\_rd\\_r=YSRFXYB9CJSA9VS6FTYG&pd\\_rd\\_r=885c148f-240c-4fedba1c-5e4caca4f5b1&pd\\_rd\\_wg=VA3oM&pd\\_rd\\_i=B07N59NYBX&psc=1&refRID=YSRFXYB9CJSA9VS6FTYG](https://www.amazon.com/Massager-Electric-Instant-Anti-Wrinkles-Tightening/dp/B07N59NYBX/ref=pd_cp_194_1?pd_rd_w=QEhst&pf_rd_p=ef4dc990-a9ca-4945-ae0bf8d549198ed6&pf_rd_r=YSRFXYB9CJSA9VS6FTYG&pd_rd_r=885c148f-240c-4fedba1c-5e4caca4f5b1&pd_rd_wg=VA3oM&pd_rd_i=B07N59NYBX&psc=1&refRID=YSRFXYB9CJSA9VS6FTYG) - goods are an electric "face massager" intended to improve the user's appearance, also for use in massaging other body parts; and
- c) [https://akirabeauty.com/products/caratray?variant=19716358176827&currency=USD&gclid=EAlaIQobChMIwLLzwy35AIVCJ6fCh3sHAKKEAkYAYABEgLDHvD\\_BwE](https://akirabeauty.com/products/caratray?variant=19716358176827&currency=USD&gclid=EAlaIQobChMIwLLzwy35AIVCJ6fCh3sHAKKEAkYAYABEgLDHvD_BwE) - an electric massager for use on the face and other body parts.

11. There is no overlap between anti-wrinkle massagers and therapeutic massagers. They are different categories of products. Although anti-wrinkle massagers could theoretically be used on other parts of the body, such as for reducing wrinkles on other parts of the body, they are too weak to be effectively used as therapeutic massagers, i.e., for massaging sore muscles such as in the shoulders, neck, back, legs, arms, and feet.

12. Generally speaking, consumers who purchase cosmetic (anti-wrinkle) massagers are different consumers than those who purchase therapeutic massagers. Consumers purchase those respective products for much different reasons.

13. At the various trade shows that I have attended, a number of different brands of therapeutic massagers are typically displayed and promoted. However, I have never seen cosmetic (anti-wrinkle) massagers being displayed and promoted at those trade shows. As far as I am aware, cosmetic (anti-wrinkle) massagers are not displayed or promoted at those trade shows.

14. More particularly, Pado has never seen Registrant Sigma Instruments, Inc. ("Sigma Instruments") nor its PURWAVE cosmetic massage device at any of the trade shows that Pado has attended.

15. I have never even heard of the PURWAVE device, nor any device by Sigma Instruments, being displayed at any trade show within Pado's field.

16. I am not aware of any electric massagers that are sold for use both as anti-wrinkle massagers and as therapeutic massagers.

17. I am not aware of any company that sells both an anti-wrinkle massager and a therapeutic massager.

There Has Never Been Any Consumer Confusion

18. In my position as CEO, Pado's employees would normally advise me of any instances in which consumers confused Pado with another company, or confused a PUREWAVE massager with a different company's massagers. In addition, I recently asked Pado's customer service representatives whether they are aware of any instances of consumers confusing our PUREWAVE product with a different company's products, or confused Pado with a different company. They responded that they are aware of no such instances of consumer confusion.

19. As far as I am aware, and as far as has been reported to me, PADO has never received any inquiries from consumers regarding Sigma Instruments nor its PURWAVE product.

20. Pado sells only directly to consumers. It does not sell through distributors or retailers, so there are no retailers or distributors who might have been confused or who might have any information regarding consumer confusion.

Sigma Instruments Has Never Contacted Pado, Either about Actual Confusion or Potential Confusion, or for Any Other Reason

21. PADO has never received any complaint from Sigma Instruments regarding alleged instances of consumer confusion, nor a complaint from Sigma Instruments that it perceives a potential for confusion.

22. In fact, in the more than four years that Pado has been selling and advertising its PUREWAVE massagers, Sigma Instruments has never contacted Pado for any reason.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any trademark registration issued thereon.

Dated: 10/21, 2019

  
Steven Lee