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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CTS WHOLESale, LLC,

Plaintiff,

v.

USPA ACCESSORIES, LLC d/b/a
CONCEPT ONE,

Defendant.

Case No.: 6:13-00709

COMPLAINT
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT

PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

COMPLAINT DECLARATORY JUDGMENT OF NON-INFRINGEMENT

Plaintiff CTS Wholesale, LLC, alleges:

NATURE OF THE ACTION

1. This is a civil action for a declaratory judgment to hold plaintiff does not and has not ever infringed U.S. Patent No. D557,478.

THE PARTIES

2. Plaintiff CTS Wholesale, LLC, is an Oregon corporation with a principal place of business in Salem, Oregon.

3. On information and belief, Defendant USPA Accessories LLC d/b/a Concept One (“USPA”) is a limited liability company organized and existing under the laws of the State of New York, with an principal office in New York, New York, doing business nationwide.

JURISDICTION AND VENUE

4. This action is pursuant to 35 U.S.C. §§ 101 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 and other relevant laws.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a substantial part of the events which give rise to the claims herein occurred in this district and because USPA is subject to personal jurisdiction in this district.

7. On information and belief, USPA is subject to personal jurisdiction in the District of Oregon consistent with the principles of due process and the Oregon Long Arm Statute, and because USPA offers its products for sale nationwide and has transacted business in this District.

PATENT AT ISSUE

8. U.S. Pat. D557,478 is a design patent for the ornamental design of a visor with simulated hair.

9. It is believed U.S. Pat. D557,478 was issued to David M. Nance on 12/18/2007, and assigned to Backgate Designs, Inc in assignments executed March 17, 2009, and then assigned from Backgate Designs, Inc. to USPA Accessories, LLC in an assignment recorded June 18, 2012.

10. It is believed USPA Accessories, LLC d/b/a Concept One is the owner of all right title and interest in U.S. Pat. D557,478.

GENERAL ALLEGATIONS

11. USPA and its predecessors in interest have filed a number of suits against defendants across the country seeking to enforce U.S. Pat. D575,478.
12. USPA has stated a specific intent to file suit against plaintiff and demands plaintiff comply with demands and the production of information beyond the scope of any right granted to USPA under the patent.
13. Plaintiff has considered U.S. Pat. D557,478 and compared it to products that were previously sold but which it no longer sells and does not believe it ever sold any product that infringes U.S. Pat. D557,478.
14. Plaintiff is not infringing, has not infringed, and is not liable for any infringement of U.S. Pat. D557,478, and USPA has no rights against plaintiff under U.S. Pat. D557,478.
15. By On information and belief, USPA intends to file suit against plaintiff and absent a declaration of non-infringement plaintiff will suffer and continues to suffer injury.
16. Plaintiffs seek a declaration that they have not and do not infringe U.S. Pat. D557,478 and that they are not otherwise liable for infringement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief as follows:

- I. for entry of a judgment declaring U.S. Pat. D557,478 is not infringed by plaintiff and that plaintiff is not liable for infringement;
- II. for entry of a preliminary and permanent injunction enjoining USPA from pursuing infringement litigation or threatening litigation related to U.S. Pat. D557,478 against plaintiff or any of plaintiffs' customers or business relations; and
- III. that plaintiff have such other and further relief as the Court shall deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demands a jury trial.

DATED: April 27, 2013.

Respectfully submitted,

CROWELL LAW

/s/ Carl D. Crowell

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