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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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SAVERGLASS, INC.,	:	Civil Action No.
Plaintiff,	:	2:13- cv-03861-WJM-MF
	:	<i>AMENDED COMPLAINT</i>
v.	:	
	:	DEMAND FOR JURY TRIAL
CAPITAL BRANDS, LLC	:	
Defendant.	:	
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Nature of the Action

1. This is an action for patent infringement arising under Title 35 of the United States Code of the laws of the United States of America, and related state common law claims for misappropriation of property and unfair competition arising under the laws of the State of New Jersey.

Identification of the Parties

2. Plaintiff, Saverglass, Inc. (“Saverglass”), is a company organized and existing under the laws of the State of New Jersey in the United States of America and having an address of 107 Spring Street, Suite 210, Ramsey, New Jersey 07446.

3. Plaintiff is in the glassware products business, including supplying bottles for the beverage industry.

4. On information and belief, Defendant, Capital Brands, LLC (hereinafter “Capital Brands”), is a limited liability company organized and existing under the laws of the State of Florida. Upon information and belief, Capital Brands operates Tennessee Spirits Company, which is a division of Capital Brands. At all times relevant hereto, Capital Brands has been, *inter alia*, importing, using, offering for sale and/or selling packaging materials for beverage items, including bottles, in which alcoholic beverages which it sells are distributed.

5. On information and belief, Capital Brands operates through various facilities within the United States, including a place of business located at 28960 U.S. Highway 19N, Suite 103, Clearwater, Florida 33761, through which it conducts substantial business within this judicial district.

Jurisdiction and Venue

6. This is an action for patent infringement under 35 U.S.C. §§ 271 and 281, and for claims arising under the common law of the State of New Jersey for unfair competition.

7. This Court has jurisdiction to hear this action under 28 U.S.C. §§ 1331, 1332, 1338 and 1367. Upon information and belief, Capital Brands is subject to personal jurisdiction in the State of New Jersey and in this Judicial District. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(c) and 1400(b).

FACTS

8. United States Patent No. D602,368 (“the ‘368 Patent”) was duly and legally issued to Saverglass on October 20, 2009. The ‘368 Patent is valid, subsisting and in full force and effect. A true and correct copy of the ‘368 Patent is appended hereto as Exhibit A.

9. United States Patent No. D606,409 (“the ‘409 Patent”) was duly and legally issued to Saverglass on December 22, 2009. The ‘409 Patent is valid, subsisting and in full force and effect. A true and correct copy of the ‘409 Patent is appended hereto as Exhibit B.

10. The ‘368 Patent and the ‘409 Patent each shows and claims an ornamental design for a bottle that Saverglass refers to as its “Little Sumo” bottle.

11. Saverglass holds all rights, title and interest in and to the ‘368 Patent and the ‘409 Patent (collectively, “the Asserted Patents”).

12. Saverglass has not assigned or licensed any rights to any of the Asserted Patents to Capital Brands, LLC (“Capital Brands”).

13. Upon information and belief, Capital Brands has imported, used, offered for sale, sold and/or sells products throughout the United States, including this Judicial District, using bottles that infringe the Asserted Patents.

FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. D602,368 by Capital Brands)

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-13 of the Complaint as though they were fully set forth herein.

15. This count arises under the patent laws of the United States (i.e., Title 35, United States Code, Section 100 *et seq.*)

16. Upon information and belief, Capital Brands has imported, used, offered for sale and/or sold, and continues to import, use, offer for sale and/or sell within the United States certain bottles that infringe the '368 Patent, including but not limited to Capital Brands' Forbidden Secret American Cream Liqueur ("Capital Brands' Products").

17. Capital Brands', importation, use, offer for sale and/or sale of Capital Brands' Products constitutes infringement of the '368 Patent, in violation of 35 U.S.C. § 271(a).

18. Upon information and belief, Capital Brands has actively and intentionally induced infringement of the '368 Patent, by its importation, use, sales and offers for sale of Capital Brands' Products in violation of 35 U.S.C. § 271(b). Indeed, Capital Brands was notified of its infringement of the '368 Patent at least as early as July 27, 2012, and possibly earlier.

19. Upon information and belief, Saverglass has suffered irreparable injury from Capital Brands' infringement of the '368 Patent, which cannot be adequately compensated by monetary damages. Unless Capital Brands' acts of infringement and inducement of infringement of the '368 Patent are enjoined by the Court pursuant to 35

U.S.C. § 283, Saverglass will continue to suffer irreparable injury.

SECOND CAUSE OF ACTION

(Infringement of U.S. Patent No. D606,409 by Capital Brands)

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-19 of the Complaint as though they were fully set forth herein.

21. This count arises under the patent laws of the United States (i.e., Title 35, United States Code, Section 100 *et seq.*)

22. Upon information and belief, Capital Brands has manufactured, imported, used, offered for sale and/or sold, and has continues to import, use, offer for sale and/or sell within the United States Capital Brands' Products that infringe the '409 Patent.

23. Capital Brands' importation, use, offer for sale and/or sale of Capital Brand's Products constitutes infringement of the '409 Patent, in violation of 35 U.S.C. § 271(a).

24. Upon information and belief, Capital Brands has actively and intentionally induced the infringement of the '409 Patent, by its importation, use, sales and offers for sale of Capital Brands' Products in violation of 35 U.S.C. § 271(b). Indeed, Capital Brands was notified of its infringement of the '409 Patent at least as early as July 27, 2012, and possibly earlier.

25. Upon information and belief, Saverglass has suffered irreparable injury from the Capital Brands' infringement of the '409 Patent, which cannot be adequately compensated by monetary damages. Unless Capital Brands' acts of infringement and

inducement of infringement of the '409 patent are enjoined by the Court pursuant to 35 U.S.C. § 283, Saverglass will continue to suffer irreparable injury.

THIRD CAUSE OF ACTION

(Unfair Competition)

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25 of the Complaint as though they were fully set forth herein.

27. This count arises under the common law of the State of New Jersey for unfair competition.

28. Upon information and belief, Capital Brands' acts as alleged herein were undertaken in bad faith and constitute unfair competition under the common law of the State of New Jersey.

29. As a proximate result of the acts of Capital Brands as alleged herein, Plaintiff has suffered and continues to suffer damage to its business, goodwill, reputation and profits, while Capital Brands is benefiting at Plaintiff's expense.

Prayer for Relief

WHEREFORE, Plaintiff, Saverglass, Inc., prays for a judgment in its favor and against Capital Brands, LLC, as follows:

- (a) that the manufacture, importation, use, offer for sale and/or sale of Capital Brand's Products infringe the '368 Patent and the '409 Patent;

- (b) that Capital Brand has induced others to sell and use Capital Brand's Products, and thereby they were intentionally induced to infringe the '368 Patent and the '409 Patent;
- (c) that the Court preliminarily and permanently enjoin Defendant, its affiliated companies, divisions and their officers, directors, agents, servants, employees, dealers and customers, present or prospective, and those in active concert or participation therewith, from offering, manufacturing, importing, installing, using, offering for sale or selling, or inducing others to sell, import, install, use, offer for sale or sell within the United States, Capital Brand's Products, or other items embodying the subject matter of or otherwise infringing the '368 Patent and the '409 Patent;
- (d) that the Court preliminarily and permanently enjoin Defendant, its affiliated companies and their officers, directors, agents, servants, employees, dealers and customers, present or prospective, and those in active concert or participation therewith, unfairly competing with Plaintiff in any manner whatsoever;
- (e) that the Court require an accounting;
- (f) that the Court award Plaintiff monetary damages to compensate Plaintiff for Defendant's infringement of the '368 Patent and the '409 Patent, pursuant to 35 U.S.C. § 284;
- (g) that the Court award Plaintiff additional statutory damages to compensate Plaintiffs for each use and application by Defendant of the designs covered

by the respective claim of the '368 Patent and the '409 Patent to any article of manufacture and for each sale of such article of manufacture by Defendant, pursuant to 35 U.S.C. § 289;

- (h) that the Court award Plaintiff monetary damages to compensate Plaintiff for Defendant's acts of state common law unfair competition;
- (i) that the Court award prejudgment and post judgment interest and costs to Plaintiff;
- (j) that the Court order a recall and destruction of all of Defendant's products that incorporate any design that infringes the '368 Patent and the '409 Patent, and that Defendant shall report in writing, under oath to the Court, that such delivery and destruction occurred; and
- (k) such other and further relief as the Court may deem appropriate.

Jury Trial Demand

Plaintiff hereby demands a trial by jury of this action.

DORSEY & WHITNEY, L.L.P.

Dated: July 25, 2013

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