

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MIH International, LLC,)	
)	Case No. _____
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
Assist Medical Supplies, Corp.,)	
d/b/a Walkbeyond.com,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, MIH International, LLC, by and through its attorneys, submits this Complaint against Defendant Assist Medical Supplies, Corp., d/b/a Walkbeyond.com, and in support thereof, states as follows:

THE PARTIES

1. Plaintiff MIH International, LLC (“MIH”) is a Delaware limited liability company with its principal place of business at 112 Capitol Trail, Newark, Delaware 19711.
2. The patent-in-suit is U.S. Patent No. 7,765,619 B2 (“the ’619 Patent”). A true copy of the ’619 Patent is attached hereto as Exhibit 1.
3. All rights, title, and interest in the ’619 Patent are assigned to MIH.
4. Defendant Assist Medical Supplies, Corp., d/b/a Walkbeyond.com (“AMS”), upon information and belief, is a New York corporation with its principal place of business located at 67 35th Street, 2nd floor, Brooklyn, New York, 11232. Defendant AMS may be served by serving the New York Department of State, which will in turn mail process to Assist Medical Supplies, Corp., c/o Leon Golden, CPA, 135 Irwin Street, Brooklyn, New York, 11235.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) in that, among other things, the acts of infringement complained of have been committed in this judicial district.

FACTS

11. On August 3, 2010, United States Patent No. 7,765,619 B2 entitled “Corset” was duly and legally issued to inventor Jean-Patrick Jaccard.

12. Inventor Jaccard assigned all rights, title, and interest in the ‘619 Patent to Sports & Supports Limited, an Irish corporation. Sports & Supports has assigned all rights, title, and interest in the ‘619 Patent to Plaintiff MIH.

13. Plaintiff MIH sells and distributes products manufactured pursuant to the claims in the ‘619 Patent. MIH’s products are marketed and sold in this district and throughout the United States.

14. Plaintiff MIH is in compliance with all marking and notice provisions of 35 U.S.C. § 287.

FIRST CAUSE OF ACTION (Claim for Patent Infringement)

15. Plaintiff MIH repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

16. Defendant AMS has infringed and/or continues to infringe the ‘619 Patent in that without authority it makes, uses, offers to sell, and/or sells the patented invention within the United States.

17. Defendant AMS’s products that infringe on Plaintiff’s ‘619 Patent, include, but are not limited to, Defendant AMS’s product known as “AMS Back Assist” and/or “AMS Back

Support Assist.” At least as of the filing of this suit, Defendant’s infringement of the ‘619 Patent is knowing.

18. Defendant’s infringement of the ‘619 Patent is willful, deliberate, and intentional pursuant to 35 U.S.C. §§ 284 and 285, based at least on the following facts:

a. Defendant AMS’s braces are nearly identical in gross physical appearance to the inventions disclosed and claimed in the ‘619 Patent;

b. Defendant AMS’s AMS Back Assist brace is manufactured and intended to be used by a person in the same manner as are the braces claimed in the ‘619 Patent;

c. Plaintiff’s braces produced pursuant to the ‘619 Patent are marked with the ‘619 Patent number and the existence and identification of the patent was known to Defendant prior to Defendant’s manufacture, importation, use, offer of sale, and/or sales of its infringing products;

d. Defendant AMS and Plaintiff MIH compete in the same markets for sales of their braces; and

e. Although similar in appearance, Defendant AMS’s product is constructed of lesser quality material than the patented product sold by Plaintiff MIH, thereby intentionally causing confusion in the marketplace and permitting Defendant AMS to sell its facially similar product for a lower price than Plaintiff MIH’s price for its product.

19. Upon information and belief and at least as of the filing of this suit, Defendant AMS induced others to manufacture, import, use, sell, and/or offer to sell the infringing products in that Defendant AMS knowing that the induced acts of manufacture, importation, use, sale, and/or offer to sell the infringing products constituted patent infringement.

20. On information and belief and at least as of the filing of this suit, Defendant AMS jointly infringed the ‘619 Patent through knowing, significant, active and intentionally actions

with one or more unknown other entities to manufacture, import, distribute, offer to sell, sell, and use Defendant AMS 's infringing product.

21. Defendant AMS's actions have constituted and/or continue to constitute contributory infringement of the '619 Patent in violation of 35 U.S.C. § 271(c) and or the active inducement of others under 35 U.S.C. § 271(b) to engage in direct infringement under 35 U.S.C. § 271 (a) with a knowledge of and an intent to induce the specific infringement.

22. By Defendant AMS's infringement of the '619 Patent, they have made unlawful gains and profits and Plaintiff MIH, due to the same infringing conduct by Defendant, has been deprived of rights and remunerations that would have otherwise come to Plaintiff, but for the infringement.

23. In addition, Defendant AMS's sales of its inferior products in direct competition for and as an alternative to Plaintiff MIH's original and superior effective product is damaging Plaintiff's future sales by causing irreparable and inestimable harm to the reputation of Plaintiff's braces based on the invention of the '619 Patent. Purchases of back braces, such as those under the '619 Patent, are infrequent for any particular individual – a brace is expected to have a substantial useful life, and back problems often come and go for many individuals. Therefore, if such individual purchases Defendant AMS 's inferior product, due to its lower price, confusion of likeness, or for whatever reason, then future sales a Plaintiff's patented brace product are highly likely to be negatively impacted. A reasonably expected result is that an average person will not buy the same or similar design brace in the future.

24. Because of the likelihood of negative associations between Defendant AMS's inferior brace product, and the likelihood that such negative attitude will affect future sales of Plaintiff MIH's patented brace product, an injunction is necessary to protect Plaintiff MIH from the

irreparable harm that is likely to result from Defendant AMS's continued sales of its infringing products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MIH, respectfully requests the following relief:

a. a preliminary injunction enjoining the continuing infringement of the '619 Patent by Defendant AMS and, additionally, enjoining any and all such other persons that are manufacturing, importing, offering for sale, and selling the infringing products;

b. a judgment declaring that Defendant AMS and any joint infringers have infringed Plaintiff MIH's '619 Patent;

c. a judgment declaring the Defendant AMS's infringement of Plaintiff MIH's '619 Patent was willful and deliberate;

d. an accounting for damages;

e. a judgment awarding Plaintiff MIH treble damages and pre- and post-judgment interest under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '619 Patent;

f. a judgment declaring that this case is exceptional and awarding Plaintiff MIH its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285, and Rule 54(d) of the Federal Rules of Civil Procedure;

g. a permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant AMS from further acts of infringement and, additionally, enjoining any and all such other persons that are manufacturing, importing, offering for sale, and selling the infringing products; and,

h. a grant of any such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff MIH hereby respectfully demands a jury trial on all claims and issues so triable.

Respectfully submitted,

O'KELLY ERNST & BIELLI, LLC

Dated: July 25, 2013

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