

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BERN UNLIMITED, INC.,

Plaintiff,

v.

NUTCASE, INC.

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff Bern Unlimited, Inc. for its complaint against defendant Nutcase, Inc., and states as follows:

PARTIES

1. Plaintiff Bern Unlimited, Inc. (“Bern”) is a Massachusetts corporation with its principal place of business in Kingston, Massachusetts.

2. Upon information and belief, defendant Nutcase, Inc. (“Nutcase”) is an Oregon corporation with its principal place of business in Portland, Oregon.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

4. Venue is proper in this court pursuant to 28 U.S.C. §§1391(b) and 1400(b).

FACTS

5. Bern is the owner by assignment of United States Design Patent Nos. D685,137, issued on June 25, 2013 (the “’137 Patent”), and D685,138, issued on June 25, 2013 (the “’138 Patent”), which are directed to ornamental designs for a helmet. Copies of the ’137 and ’138 Patents are attached as Exhibits A and B.

6. Bern makes and sells a line of bicycle helmets that incorporate the designs of the '137 and '138 Patents. Copies of pages from Bern's website, which show an example of these helmets, are attached as Exhibit C.

7. Nutcase has made, used, offered for sale and/or sold Nutcase bicycle helmets and a Nutcase visor for attachment to Nutcase bicycle helmets, and is continuing to do so. A copy of a page from a website which shows a photograph of a Nutcase helmet with a Nutcase visor attached to it is attached as Exhibit D.

8. By making, using, offering for sale and/or selling the Nutcase helmets and Nutcase visors, Nutcase has directly infringed, contributed to the infringement of, and induced the infringement of, and are continuing to infringe, the '137 and '138 Patents.

9. Upon information and belief, Nutcase's infringement is willful.

COUNT I

(Infringement of '137 Patent – 35 U.S.C. §281)

10. Bern repeats and realleges paragraphs 1 through 9 as if fully set forth herein.

11. Nutcase has infringed, and are continuing to infringe, the '137 Patent.

COUNT II

(Infringement of '138 Patent – 35 U.S.C. §281)

12. Bern repeats and realleges paragraphs 1 through 11 as if fully set forth herein.

13. Nutcase has infringed, and are continuing to infringe, the '138 Patent.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Bern Unlimited, Inc. requests judgment as follows:

1. Enjoining Nutcase from further infringement of the '137 and '138 Patents;
2. Awarding Bern damages in an amount to be proven at trial;
3. Awarding Bern multiple damages, costs and attorneys' fees pursuant to 35 U.S.C.

§285; and

4. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff Bern Unlimited, Inc. demands a trial by jury of all issues so triable.

Dated: August 14, 2013

Respectfully submitted,

BERN UNLIMITED, INC.,

By its attorneys,

/s/ David S. Godkin

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