

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

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| GRAND OVERSEAS, INC., | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Case No.: _____ |
| | § | |
| WALGREEN CO. | § | JURY |
| | § | |
| Defendant. | § | |
| | § | |

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Grand Overseas, Inc. ("Grand Overseas") alleges against Defendant Walgreen Co.:

THE PARTIES

1. Plaintiff Grand Overseas, Inc. is a corporation duly organized and existing under the laws of the State of California.
2. On information and belief Defendant Walgreen Co. is a Illinois corporation with its principal place of business located at 104 Wilmot Road MS #1435, Deerfield, Illinois. Walgreen Co. may be served with process by serving its registered agent, Prentice Hall Corporation System, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

3. This is action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1338(a).

4. On information and belief Defendant has engaged in intentional, continuous, and systematic contacts within the State of Texas, and specifically within the Eastern District of Texas. Defendant, alone or in conjunction with its authorized dealers, have introduced into the stream of commerce infringing products with the knowledge at all relevant times that some of those infringing products would be sold and used by consumers in the State of Texas and the Eastern District of Texas. Products that infringe the Plaintiff's patent are being offered for sale, sold, and being used within the Eastern District of Texas, and the Plaintiff's cause of action arises at least in part from infringing activities that occurred in this District. The Defendant is therefore deemed a resident of the Eastern District of Texas under 28 U.S.C. §1391(c), and venue is proper in the District pursuant to 28 U.S.C. §1391(a)(1).

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to the Texas Long Arm Statute, and consistent with the requirement of due process, due to their infringements alleged herein, regularly doing business or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals and entities in this State and in this District. In particular, within this judicial district, Defendant: (a) sells, or offers to sell, the infringing products, (b) induces others to use, sell or offers to sell the infringing products, or (c) transacts other business.

6. Defendant distributes its infringing products throughout the United States, including the Eastern District of Texas. Multiple Walgreen Co. stores are located within the Eastern District of Texas, including those located in Marshall, Longview, Tyler, Lufkin, Plano, Sherman, Beaumont and Texarkana.

INFRINGEMENT OF U.S. PATENT NO. D590583 S1

7. Plaintiff Grand Overseas is the owner of all right, title, and interest in United States Patent No. D590583 S1 entitled "Sandal" ("the '583 patent). The '583 is a design patent that was duly and properly issued by the United States Patent and Trademark Office ("PTO") on April 21, 2009. A copy of the '583 patent is attached hereto as Exhibit A, and incorporated by this reference.

8. Plaintiff actively markets and sales, within the Eastern District of Texas and throughout the United States, products covered by the '583 Patent.

9. On information and belief, Defendant Walgreen Co. has been and now is directly infringing the '583 patent in this judicial district, and elsewhere in the United States. Infringements by Walgreen Co. includes, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, without license or authority from Plaintiff, sandals that infringe the '583 Patent, including but not limited to Walgreen Co. product having No. WIC 425581 (04902267336) and WIC 425581 (04902267332).

10. Defendant's acts of infringement have caused damage to Grand Overseas, and Grand Overseas is entitled to recover from Defendant the damages sustained by Grand Overseas as a result of their wrongful acts in an amount subject to proof at trial. Defendant's infringement of Grand Overseas' exclusive rights under the '583 patent will continue to damage Grand Overseas, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

11. Grand Overseas is informed and believes, and on that basis alleges, that Walgreen Co. is fully aware of Grand Overseas' patent portfolio including the '583 patent;

that Walgreen Co. has proceeded to infringe the '583 patent with full and complete knowledge of the patent and its applicability to its products without any attempt to take a license under the '583 patent and without a good faith belief that the '583 patent is invalid or not infringed, and thus their infringement of the '583 patent is willful and deliberate, entitling Grand Overseas to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Grand Overseas reserves the right to allege, after discovery, that the remaining Defendant's infringement of the '583 patent is willful and deliberate, entitling Grand Overseas to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

INFRINGEMENT OF U.S. PATENT NO. D591,034 S1

12. Plaintiff Grand Overseas is the owner of all right, title, and interest in United States Patent No. D591,034 S1 entitled "Strap For A Sandal And The Like" ("the '034 patent). The '034 patent was duly and properly issued by the United States Patent and Trademark Office ("PTO") on April 28, 2009. A copy of the '034 patent is attached hereto as Exhibit B, and incorporated by this reference.

13. Plaintiff actively markets and sales, within the Eastern District of Texas and throughout the United States, products covered by the '034 Patent.

14. On information and belief, Defendant Walgreen Co. has been and now is directly infringing the '034 patent in this judicial district, and elsewhere in the United States. Infringements by Walgreen Co. includes, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, without license or authority from Grand Overseas, sandals that infringe the '034 Patent,

including but not limited to Product No. WIC 425581 (04902267336) and WIC 425581 (04902267332).

15. Defendant's acts of infringement have caused damage to Grand Overseas, and Grand Overseas is entitled to recover from Defendant the damages sustained by Grand Overseas as a result of their wrongful acts in an amount subject to proof at trial. Defendant's infringement of Grand Overseas' exclusive rights under the '034 patent will continue to damage Grand Overseas, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

16. Grand Overseas is informed and believes, and on that basis alleges, that Walgreen Co. is fully aware of Grand Overseas' patent portfolio including the '034 patent; that Walgreen Co. has proceeded to infringe the '034 patent with full and complete knowledge of the patent and its applicability to their products without any attempt to take a license under the '034 patent and without a good faith belief that the '034 patent is invalid or not infringed, and thus Walgreen Co.'s infringement of the '034 patent is willful and deliberate, entitling Grand Overseas to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Grand Overseas reserves the right to allege, after discovery, that the remaining defendant's infringement of the '034 patent is willful and deliberate, entitling Grand Overseas to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

17. As a result of the Defendant's infringement of the '583 and '034 patents, Plaintiff has suffered monetary damages that are adequate to compensate it for infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff request that this Court enter:

A. A judgment in favor of Plaintiff that Defendant has directly infringed the '583 and '034 Patents;

B. A judgment and order requiring Defendant to pay Grand Overseas their damages, costs, expenses, prejudgment and post-judgment interest, and post-judgment royalties for Defendant's infringement of the '583 and '034 Patents as provided under 35 U.S.C. § 284;

C. Permanently enjoining Defendant and its respective officers, agents, employees, and those acting in privity with them, from further infringement, including contributory infringement and/or inducing infringement, of U.S. Patent Nos. D590583 S1 and D591,034 S1;

D. An award of attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

E. Any and all other relief to which the Court may deem Plaintiff entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable by right.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl R. Roth", written over a horizontal line.

Carl R. Roth

cr@rothfirm.com

Brendan C. Roth

br@rothfirm.com

Amanda A. Abraham

aa@rothfirm.com

THE ROTH LAW FIRM, P.C.

115 N. Wellington, Suite 200

Marshall, Texas 75670

Telephone: (903) 935-1665

Facsimile: (903) 935-1797

**ATTORNEYS FOR PLAINTIFF
GRAND OVERSEAS, INC.**