

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

BLUE GENTIAN, LLC,
a Florida limited liability company, and
NATIONAL EXPRESS, INC., a
Connecticut corporation,

Plaintiffs,

v.

NEW PRODUCT SOLUTIONS, INC.,
a Texas corporation, and
CATALOG SOLUTIONS, INC.,
a Connecticut corporation,

Defendants.

_____ /

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, BLUE GENTIAN, LLC (“Blue Gentian”) and NATIONAL EXPRESS, INC. (“National Express”) sue Defendants, NEW PRODUCT SOLUTIONS, INC. (“New Product Solutions”) and CATALOG SOLUTIONS, INC. (“Catalog Solutions”) for Patent Infringement under the Patent Act and complain as follows:

JURISDICTION AND VENUE

1. This is an action for Patent Infringement under the Patent Act, 35 U.S.C. § 271.
2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1338(a).
3. This Court has personal jurisdiction over Defendants pursuant to Fla. Stat. Ch. 48.193(1) and (2) by virtue of their having committed tortious acts causing injury in the State of Florida, as well as substantial, continuous and not isolated activity in the Southern District of

Florida, e.g., its marketing, distribution and sale of the accused infringing “Handy Hose” expandable and contractible hose product (“the Accused Product”) and, upon information and belief, other products throughout this District.

4. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b & c) and 1400(b), because the Defendants are each subject to personal jurisdiction in the District and have committed acts of Patent Infringement in the District.

THE PARTIES

5. Plaintiff Blue Gentian is a Florida limited liability company having its principal place of business at 223 Skylark Point, Jupiter, Florida 33458.

6. Plaintiff National Express is a Connecticut corporation having its principal place of business at 2 Morgan Avenue, Norwalk, Connecticut 06851.

7. Defendant New Product Solutions is, upon information and belief, a Texas corporation having its principal place of business at 4401 Diplomacy Road, Fort Worth, Texas 76155.

8. Defendant Catalog Solutions is a Connecticut corporation having its principal place of business at 25 Walls Drive, Suite 1-C, Fairfield, Connecticut 06824.

9. Upon information and belief, Defendants have common ownership and principals. Further discovery is required in this regard, including the possible addition of such principals as named defendants in this action.

BACKGROUND

10. Blue Gentian’s principal, Michael Berardi, has conceived and invented a novel hose product that is light in weight, does not kink when unwrapped or uncoiled, and can be substantially reduced in length and width when not in use simply by turning off the flow of water

into it. The product has been marketed in the United States, under the XHose® trademark, since March 24, 2012. A screen shot from www.xhose.com depicting the XHose® product is attached as Exhibit “A” hereto.

11. Blue Gentian is the owner of all intellectual property rights in connection with the XHose® product invented by Berardi, including the patent rights asserted in this Complaint. Blue Gentian is the owner of all right, title and interest in U.S. Patent No. 8,291,941, entitled “Expandable and Contractible Hose” and issued on October 23, 2012 (“the ‘941 Patent”), U.S. Patent No. 8,291,942, entitled “Expandable Hose Assembly” and also issued on October 23, 2012 (“the ‘942 Patent”) and U.S. Patent No. 8,479,776, entitled “Expandable Garden Hose” and issued on July 9, 2013 (“the ‘776 Patent”). Copies of the ‘941, ‘942 and ‘776 Patents are attached as Exhibits “B”, “C” and “D” hereto, respectively.

12. Blue Gentian has granted National Express the exclusive right under the ‘941, ‘942 and ‘776 Patents to make, use, sell, offer for sale, import, market, promote and/or distribute expandable and contractible hoses embodying the inventions disclosed therein within certain non-geographic markets, including the direct-to-consumer market in which Defendants sell the Accused Product. As such, National Express maintains the right to exclude all others from practicing the patents within this and other defined markets.

13. Indicative of the ingenuity and popularity of the Xhose® product, competitors have promoted and sold knock-off expandable hose products embodying the inventions protected under the ‘941, ‘942 and ‘776 Patents. Defendants, in promoting and selling the Accused Product, appear to be the latest to do so. A screen shot of the New Product Solutions website promoting the Accused Product is attached as Exhibit “E” hereto. A screen shot of the Living Social website promoting the Accused Product and linking to the New Product Solutions website

is attached as Exhibit “F” hereto. Internet orders for the Handy Hose are fulfilled by Catalog Solutions.

COUNT I
DIRECT PATENT INFRINGEMENT
(‘941 Patent)

14. This Count alleges direct Patent Infringement of the ‘941 Patent against Defendants, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-13 above.

15. Defendants have infringed and are still infringing one or more claims of the ‘941 Patent by making, using, selling and offering to sell and, upon belief, importing into the United States a hose product embodying the invention protected under the ‘941 Patent, and will continue to do so unless enjoined by this Court.

16. Defendants’ acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

17. Defendants’ acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

COUNT II
INDIRECT PATENT INFRINGEMENT
(‘941 Patent)

18. This Count alleges indirect Patent Infringement of the ‘941 Patent against Defendants, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-13 above.

A. INDUCEMENT OF INFRINGEMENT

19. Defendants have induced others to infringe and continue to induce others to infringe one or more claims of the '941 Patent.

20. Defendants' customers, by using the Accused Product, have directly infringed and continue to directly infringe one or more claims of the '941 Patent.

21. Despite having knowledge of the issuance of the '941 Patent, Defendants have sold, offered to sell and promoted the Accused Product with specific intent to encourage and cause their customers' infringement of the '941 Patent.

22. Defendants have had actual knowledge of the claims of the '941 Patent, and of the fact that the Accused Product infringes one or more of those claims. Upon information and belief, Defendants have taken no steps to remedy any infringement.

23. Defendants have known that selling, offering to sell and promoting the Accused Product would cause the direct infringement of the '941 Patent.

24. Defendants' acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

25. Defendants' acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

B. CONTRIBUTORY INFRINGEMENT

26. Defendants have contributorily infringed and continue to contributorily infringe the '941 Patent.

27. Defendants' customers, by using the Accused Product, have directly infringed and continue to directly infringe one or more claims of the '941 Patent.

28. Despite having knowledge of the issuance of the '941 Patent, Defendants have sold, offered to sell and promoted the Accused Product with the specific intent to encourage and cause their customers' infringement of the '941 Patent.

29. Defendants have had actual knowledge of the claims of the '941 Patent, and of the fact that the Accused Product infringes one or more of those claims. Upon belief, Defendants have taken no steps to remedy any infringement.

30. Defendants have sold, offered to sell and promoted the Accused Product for use in practicing the patented method claimed in one or more claims of the '941 Patent, and have done so with knowledge that the product is especially made or adapted for use in an infringement of the '941 Patent.

31. The Accused Product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

32. Defendants' acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

33. Defendants' acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

COUNT III
DIRECT PATENT INFRINGEMENT
(‘942 Patent)

34. This Count alleges direct Patent Infringement of the ‘942 Patent against Defendants, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-13 above.

35. Defendants have infringed and are still infringing one or more claims of the ‘942 Patent by making, using, selling and offering to sell and, upon belief, importing into the United States a hose product embodying the invention protected under the ‘942 Patent, and will continue to do so unless enjoined by this Court.

36. Defendants’ acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

37. Defendants’ acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

COUNT IV
INDIRECT PATENT INFRINGEMENT
(‘942 Patent)

38. This Count alleges indirect Patent Infringement of the ‘942 Patent against the Defendants, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-13 above.

A. INDUCEMENT OF INFRINGEMENT

39. Defendants have induced others to infringe and continue to induce others to infringe one or more claims of the '942 Patent.

40. Defendants' customers, by using the Accused Product, have directly infringed and continue to directly infringe one or more claims of the '942 Patent.

41. Despite having knowledge of the issuance of the '942 Patent, Defendants have sold, offered to sell and promoted the Accused Product with specific intent to encourage and cause their customers' infringement of the '942 Patent.

42. Defendants have had actual knowledge of the claims of the '942 Patent, and of the fact that the Accused Product infringes one or more of those claims. Upon information and belief, Defendants have taken no steps to remedy any infringement.

43. Defendants have known that selling, offering to sell and promoting the Accused Product would cause the direct infringement of the '942 Patent.

44. Defendants' acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

45. Defendants' acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

B. CONTRIBUTORY INFRINGEMENT

46. Defendants have contributorily infringed and continue to contributorily infringe the '942 Patent.

47. Defendants' customers, by using the Accused Product, have directly infringed and continue to directly infringe one or more claims of the '942 Patent.

48. Despite having knowledge of the issuance of the '942 Patent, Defendants have sold, offered to sell and promoted the Accused Product with the specific intent to encourage and cause their customers' infringement of the '942 Patent.

49. Defendants have had actual knowledge of the claims of the '942 Patent, and of the fact that the Accused Product infringes one or more of those claims. Upon belief, Defendants have taken no steps to remedy any infringement.

50. Defendants have sold, offered to sell and promoted the Accused Product for use in practicing the patented method claimed in one or more claims of the '942 Patent, and have done so with knowledge that the product is especially made or adapted for use in an infringement of the '942 Patent.

51. The Accused Product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

52. Defendants' acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

53. Defendants' acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

COUNT V
DIRECT PATENT INFRINGEMENT
(‘776 Patent)

54. This Count alleges direct Patent Infringement of the ‘776 Patent against Defendants, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-13 above.

55. Defendants have infringed and are still infringing one or more claims of the ‘776 Patent by making, using, selling and offering to sell and, upon belief, importing into the United States a hose product embodying the invention protected under the ‘776 Patent, and will continue to do so unless enjoined by this Court.

56. Defendants’ acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

57. Defendants’ acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

COUNT VI
INDIRECT PATENT INFRINGEMENT
(‘776 Patent)

58. This Count alleges indirect Patent Infringement of the ‘776 Patent against Defendants, pursuant to 35 U.S.C. § 271(b). Plaintiffs repeat and reallege Paragraphs 1-13 above.

59. Defendants have induced others to infringe and continue to induce others to infringe one or more claims of the ‘776 Patent.

60. Defendants' customers, by using the Accused Product, have directly infringed and continue to directly infringe one or more claims of the '776 Patent.

61. Despite having knowledge of the issuance of the '776 Patent, Defendants have sold, offered to sell and promoted the Accused Product with specific intent to encourage and cause their customers' infringement of the '776 Patent.

62. Defendants have had actual knowledge of the claims of the '776 Patent, and the fact that the Accused Product infringes one or more of those claims. Upon information and belief, they have taken no steps to remedy any infringement.

63. Defendants have known that selling, offering to sell and promoting the Accused Product would cause the direct infringement of the '776 Patent.

64. Defendants' acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

65. Defendants' acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Defendants are enjoined from doing so by this Court.

DEMAND FOR JURY TRIAL

Plaintiffs request that all issues in this case be tried to a jury.

WHEREFORE, Plaintiffs pray that this Court:

A. Enter judgment against Defendants for infringement of the '941 Patent and permanently enjoin Defendants, their principals, officers, directors, agents, employees,

subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

B. Enter judgment against Defendants for infringement of the '942 Patent and permanently enjoin Defendants, their principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

C. Enter judgment against Defendants for infringement of the '776 Patent and permanently enjoin Defendants, their principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

D. Enter judgment for Plaintiffs for an accounting as to all damages arising from Defendants' infringement of the '941 Patent;

E. Enter judgment against Defendants for damages arising from the infringement of the '941 Patent, pursuant to 35 U.S.C. § 284;

F. Enter judgment for Plaintiffs for an accounting as to all damages arising from Defendants' infringement of the '942 Patent;

G. Enter judgment against Defendants for damages arising from the infringement of the '942 Patent, pursuant to 35 U.S.C. § 284;

H. Enter judgment for Plaintiffs for an accounting as to all damages arising from Defendants' infringement of the '776 Patent;

I. Enter judgment against Defendants for damages arising from the infringement of the '776 Patent, pursuant to 35 U.S.C. § 284;

J. Enter judgment that this case is exceptional, and award treble damages, attorney fees and costs incurred in connection therewith, pursuant to 35 U.S.C. § 285; and

K. Enter judgment granting Plaintiffs such other relief as this Court deems appropriate.

Dated: August 26, 2013

Respectfully submitted,

s/ Brian M. Taillon

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