

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CASE NO. 5:13-cv-159

TECHNIBILT, LTD.)	
)	
Plaintiff,)	COMPLAINT FOR PATENT
)	INFRINGEMENT AND COPYRIGHT
v.)	INFRINGEMENT
)	
ORCHID RETAIL SERVICES USA, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

Plaintiff Technibilt, Ltd. (“Technibilt” or “Plaintiff”), through counsel by way of complaint against Defendant Orchid Retail Services USA, Inc. (“Orchid” or “Defendant”) hereby alleges as follows.

Nature of Action

1. This is an action arising under the patent laws of the United States, 35 U.S.C. 1 *et seq* and under the copyright laws of the United States.

Parties

2. Plaintiff Technibilt, Ltd. is a North Carolina corporation with its principal place of business in Newton, North Carolina.

3. Plaintiff is the owner by assignment from its sister company Cari-All Products, Inc. of United States Patent No. 6,659,294 titled “Multi-Configurational Wire-Rod Display Rack.” The assignment has been recorded in the United States Patent and Trademark Office

4. Plaintiff is the owner of an application for registration of a copyright for the brochure titled “Cariflex.” The Copyright Office has assigned Case # 1-985429075 to that application.

5. On information and belief, Defendant Orchid Retail Services USA, Inc. is a Georgia corporation with a principal place of business at 9117 Fairfield Approach, Suite 1317, Jonesboro, Georgia 30236-6160.

Jurisdiction and Venue

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, and is also an action for copyright infringement arising under the copyright laws of the United States, Title 17 of the United States Code. This Court has jurisdiction of the subject matter of this action under 35 U.S.C. 1 *et seq*, 17 U.S.C. 101 *et seq*, and 28 U.S.C. 1331 and 1338(a).

7. Venue is proper in this judicial district under 28 U.S.C. 1391(b) and (c) and 1400(b).

8. This Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant maintains systematic and continuous contacts with this District and because, on information and belief, Defendant has committed substantial acts of infringement in this District.

COUNT I

Infringement of U.S. Patent No. 6,659,294

9. Plaintiff repeats and realleges the allegations of all of the preceding paragraphs as if fully set forth herein.

10. On December 9, 2003, United States Patent No. 6,659,294 (hereinafter referred to as the “‘294 Patent”) titled “Multi-Configurational Wire-Rod Display Rack” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘294 Patent is attached hereto as Exhibit A to this Complaint.

11. Defendant has infringed and continues to infringe at least one claim of the ‘294 Patent by selling a product possessing all of the elements of such claim or claims in the United States and, upon information and belief, in this judicial district.

12. Defendant's acts of infringement have injured and damaged Plaintiff in an amount to be proven at trial.

13. Defendant has had actual knowledge of the '294 Patent and Defendant's infringement has been and continues to be willful.

14. Defendant's infringement has caused irreparable harm to Plaintiff and will continue to cause irreparable injury to it unless Defendant is enjoined from further infringement by this Court.

COUNT II

Copyright Infringement

15. Plaintiff repeats and realleges the allegations of all of the preceding paragraphs as if fully set forth herein.

16. On September 3, 2013, Plaintiff filed an application for registration of its copyright for a brochure titled "Cariflex." A copy of such brochure, which forms the deposit for the application, is attached hereto as Exhibit B. The U.S. Copyright Office has assigned Case # 1-985429075 to this application.

17. Plaintiff's brochure contains materials wholly original to Plaintiff and is copyrightable subject matter under the copyright laws of the United States pursuant to 17 U.S.C. 101 *et seq.*

18. Since at least as early as 2004, Plaintiff's brochure has been published and all copies made by Plaintiff were under Plaintiff's authority and have been printed and published in strict conformity with the provisions of the Copyright Act of 1976.

19. Defendant has distributed a brochure titled "Flex-Master Shelving System." A copy of Defendant's "Flex-Master Shelving System" brochure is attached hereto as Exhibit C.

20. Defendant has infringed Plaintiff's copyright by publishing and placing in the market Defendant's "Flex-Master Shelving System" brochure which contains a copy of substantial portions of Plaintiff's copyrighted brochure.

21. Defendants have had access to Plaintiff's "Cariflex" brochure prior to its first printing of its "Flex-Master Shelving System" brochure.

22. Defendant has infringed and continues to infringe Plaintiff's copyright by distributing its "Flex-Master Shelving System" brochure in the United States and, upon information and belief, in this judicial district.

23. Defendant's acts of infringement have injured and damaged Plaintiff in an amount to be proven at trial.

24. Defendant has had knowledge of Plaintiff's copyright and Defendant's infringement has been and continues to be willful.

25. Defendant's infringement has caused irreparable harm to Plaintiff and will continue to cause irreparable injury to it unless Defendant is enjoined from further infringement by this Court.

Attorneys' Fees

26. Defendant's infringement of the '294 Patent and the circumstances surrounding the infringement render this case exceptional under 35 U.S.C. § 284 and Plaintiff is therefore entitled to its reasonable attorneys' fees and costs.

27. Defendant's infringement of Plaintiff's copyright and the circumstances surrounding the infringement entitles Plaintiff to its reasonable attorneys' fees pursuant to 17 U.S.C. § 505 of the Copyright Act.

Jury Demand

28. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

29. Whereas Plaintiff respectfully demands judgment for itself and against Defendant as follows:

- a) for a permanent injunction preventing Defendant and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns and

- customers, and those in active concert participation with Defendant from infringing any claim of the '294 Patent pursuant to 35 U.S.C. § 283
- b) for an adjudication that Defendant has infringed the '294 Patent.
 - c) for an award of damages to be paid Plaintiff adequate to compensate Plaintiff for Defendant's past infringement of the '294 Patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses;
 - d) for an accounting of all infringing acts, including but not limited to those acts not presented at trial;
 - e) for enhanced damages pursuant to 35 U.S.C. § 284, including enhanced damages based on the willful nature of Defendant's infringement;
 - f) for a declaration that this case is exceptional under 35 U.S.C. § 285 and an award of Plaintiff's costs and reasonable attorneys' fees;
 - g) for a permanent injunction preventing Defendant and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns and customers, and those in active concert participation with Defendant from infringing Plaintiff's copyright pursuant to 17 U.S.C. § 502;
 - h) for an adjudication that Defendant has infringed Plaintiff's copyright;
 - i) for an award of damages to be paid Plaintiff adequate to compensate Plaintiff for Defendant's past infringements of Plaintiff's copyright and any continuing or future infringement through the date such judgment is entered, including interest, costs, and expenses, pursuant to 17 U.S.C. § 504;
 - j) for enhanced damages pursuant to 17 U.S.C. § 504, including enhanced damages based on the willful nature of Defendant's infringement;
 - k) for an award of Plaintiff's costs and reasonable attorneys' fees pursuant to 17 U.S.C. § 505;

- l) for trial by jury; and
- m) for an award to Plaintiff for such further relief at law or at equity as the Court deems just and proper.

This the 22nd day of November, 2013.

By: s/ David M. Wilkerson
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