

DURHAM JONES & PINEGAR

CLINTON E. DUKE, cduke@djplaw.com (State Bar No. 9784)

JEFFREY A. STEPHENS, jstephens@djplaw.com (State Bar No. 14339)

111 East Broadway, Suite 900

Salt Lake City, Utah 84111

Telephone: (801) 415-3000

Facsimile: (801) 415-3500

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ZAGG INTELLECTUAL PROPERTY
HOLDING CO., INC., a Nevada corporation,

Plaintiff,

v.

FUHU, INC.,

Defendants.

Civil No. 2:13-cv-01105-BSJ

Honorable Judge Bruce S. Jenkins

Jury Trial Requested

COMPLAINT

For its complaint against defendant Fuhu, Inc. (“Fuhu”), plaintiff ZAGG Intellectual Property Holding Co., Inc. (“ZAGG IP”), by and through its attorneys, hereby states as follows:

Parties

1. Plaintiff ZAGG Intellectual Property Holding Co., Inc. is a Nevada corporation with its principal place of business at ZAGG Square, 3855 S 500 W, Salt Lake City, Utah 84115.

2. On information and belief, Counterclaim Defendant Fuhu, Inc., is a California corporation with a place of business at 909 N. Sepulveda Boulevard, Suite 540, El Segundo, California 90245.

Jurisdiction and Venue

3. This is an action for infringement of a United States Patent arising under 35 U.S.C. § 271 et seq.

4. This Court has original jurisdiction of the subject matter of this action under 28 U.S.C. §1331 and §1338(a).

5. This Court has general and specific personal jurisdiction over Fuhu, and venue is proper, pursuant to 28 U.S.C. §§ 1391 and 1400(b).

6. Fuhu is subject to the Court's general and specific jurisdiction consistent with the principles of due process and/or the Utah Long Arm Statute. Specifically, and upon information and belief, Fuhu has substantial contacts with this forum as a result of substantial business activities conducted within the State of Utah and within this District. Fuhu solicits business in Utah and derives revenue from products, sold or provided to individuals and entities residing in Utah and in this District. Fuhu has placed and is continuing to place merchandise into the stream of commerce within the United States, within Utah and in this District, and it is reasonable to expect that such merchandise will continue to enter and be used by consumers in Utah and in this District. Further, Fuhu has committed and continues to commit acts of patent infringement in Utah and in this District through its making, selling and/or offering to sell the nabi® Armor Shield which is herein accused of infringing one or more claims of the patent-in-suit.

The '596 Patent

7. On October 29, 2013, United States Patent Number 8,567,596 (hereafter “the '596 Patent”), entitled “ELECTRONIC DEVICE PROTECTIVE FILM APPLICATION KIT AND METHOD” was duly and legally issued. A true and correct copy of the '596 patent is attached hereto as Exhibit A.

8. ZAGG IP owns all right, title and interest in, to and under the '596 Patent, including the right to prosecute this action and recover past, present, and future damages for infringement.

Background

9. ZAGG is a subsidiary of ZAGG Inc, a Nevada corporation. ZAGG Inc sells in the United States, in Utah, and throughout the world protective film application kits for electronic devices.

10. Fuhu makes, uses, sells, offers for sale and/or imports a protective film application kit for an electronic device under the name “nabi® Armor Shield”. The nabi® Armor Shield is within the scope of and, therefore, infringes one or more claims of the '596 Patent.

11. Until recently, the nabi® Armor Shield competed directly with one of ZAGG Inc’s protective film application kits.

12. Fuhu and Fuhu Holdings, Inc. filed suit against ZAGG Inc in the United States District Court for the Central District of California, Case No. CV 13-06317 PA (SHx) (the “California Action”), alleging among other things, trademark and copyright infringement.

13. ZAGG Inc has since ceased the manufacture and distribution of the product accused of infringement in the California Action.

FIRST CLAIM FOR RELIEF

(Patent Infringement)

14. ZAGG IP incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Counterclaim.

15. Without the authority so to do, Fuhu has directly infringed (either by literal infringement or by infringement under the Doctrine of Equivalents) and is continuing to directly infringe one or more claims of the '596 Patent within the meaning of Title 35 U.S.C. §271(a), by making, using, offering to sell and/or selling the nabi® Armor Shield which is within the scope of at least claim 1 of the '596 Patent.

16. Fuhu's infringement of at least claim 1 of the '596 Patent is continuing and, on information and belief, will continue unless enjoined.

17. ZAGG IP has been irreparably damaged and is continuing to be irreparably damaged by Fuhu's infringement of at least claim 1 of the '596 Patent for which ZAGG IP has no adequate remedy at law. ZAGG IP is entitled, under Title 35 United States Code §283, to an injunction against Fuhu's continuing infringement.

18. ZAGG IP's monetary damage caused by Fuhu's infringement of at least claim 1 of the '596 Patent is an amount that is not yet fully ascertained or ascertainable.

19. ZAGG IP is entitled to an award of damages under Title 35 United States Code §284, adequate to compensate it for Fuhu's infringement of at least claim 1 of the '596 Patent, together with interest and costs as fixed by the Court.

20. On information and belief, Fuhu's infringement of at least claim 1 of the '596 Patent is willful and deliberate.

21. ZAGG IP is entitled, under Title 35 United States Code §284, to an increase of the compensatory damages by up to three times its damages for Fuhu's aforesaid willful and deliberate infringement of at least claim 1 of the '596 Patent.

22. This is an exceptional case within the meaning of Title 35 United States Code §285. ZAGG IP is entitled to an award of its reasonable attorneys' fees incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, ZAGG IP prays for the following relief:

1. A preliminary and permanent injunction against Fuhu's continuing infringement of at least claim 1 of the '596 Patent;
2. Monetary damages in an amount adequate to compensate ZAGG IP for Fuhu's infringement of at least claim 1 of the '596 Patent;
3. Treble the amount of such compensatory damages;
4. ZAGG IP's costs incurred in this action;
5. A finding that this case is exceptional under 35 U.S.C. § 285 and an award to ZAGG IP of all remedies available, including reasonable attorneys' fees incurred in this action;
6. Pre-judgment and post-judgment interest as provided by law; and
7. Any other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ZAGG Inc hereby demands a trial by jury on all issues and claims so triable.

DATED: December 16, 2013.

DURHAM JONES & PINEGAR, P.C.

/s/ Clinton E. Duke

Clinton E. Duke

Jeffrey A. Stephens

Attorneys for ZAGG Intellectual Property Holding Co., Inc.