

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KATCH KAN HOLDINGS USA, INC.;
KATCH KAN USA, LLC;
KATCH KAN LTD,

Plaintiffs,

v.

ROBELIN MARTINEZ, JR.,

Defendant.

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CIVIL ACTION NO.4:14-cv-00085

ORIGINAL COMPLAINT

Plaintiffs Katch Kan Holdings USA, Inc., Katch Kan USA, LLC, and Katch Kan Ltd (collectively, “Katch Kan”) file this Original Complaint against Robelin Martinez, Jr. as set forth below:

I. PARTIES

1. Plaintiff Katch Kan Holdings USA, Inc. (“Katch Kan Holdings”) is a Texas corporation with its registered agent for service at 1300 W. Sam Houston Parkway, Suite 340, Houston, Texas 77042.

2. Plaintiff Katch Kan USA, LLC (“Katch Kan USA”) is a Texas limited liability company with its principal place of business located at 1092 Old Hwy 105 W, Suite 102, Conroe, Texas 77304.

3. Plaintiff Katch Kan Ltd is a Canadian corporation with its principal place of business located at 8210 McIntyre Road, Edmonton, Alberta, Canada T6E 5C4.

4. Defendant Robelin Martinez, Jr. (“Martinez”) is an individual residing at 3526 W. St. Hwy 44, Alice, Texas 78332.

II. NATURE OF THIS ACTION

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, et seq., and particularly 35 U.S.C. §§ 271-287; for trademark infringement and unfair competition arising under the Lanham Act, 15 U.S.C. § 1051, et seq., and particularly 15 U.S.C. §§ 1114 and 1125; for unfair competition arising under the Texas Trademark Act, Texas Business & Commerce Code Ch. 16; and for common law trademark infringement.

III. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), 28 U.S.C. § 1338(b), and 28 U.S.C. § 1367.

7. Defendant Martinez is subject to personal jurisdiction by virtue of his contacts with the State of Texas, and with the Southern District of Texas in particular. Martinez resides in this district, voluntarily does business in this district, and committed acts of patent infringement, trademark infringement, and unfair competition in this district.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

IV. FACTS

9. On December 23, 2003, U.S. Patent No. 6,666,287 (“the ‘287 patent”) was duly and legally issued by the U.S. Patent and Trademark Office (“PTO”) to Mr. Quinn Holtby for an invention relating to a “Method And Apparatus For Enclosing An Oil Drilling Rig.” A true and correct copy of the ‘287 patent is attached hereto as Exhibit A. The ‘287 patent is presumed valid pursuant to 35 U.S.C. § 282.

10. On June 10, 2013, Mr. Quinn Holtby assigned the ‘287 patent to Katch Kan Holdings.

11. Katch Kan USA is the exclusive master dealer of Katch Kan products in the continental United States (lower 48 states). In Texas, Katch Kan USA rents to end users spill containment devices incorporating the technology of the '287 patent. These spill containment devices are marketed under Katch Kan's "Zero Spill System" product line and have been very successful in the market since their introduction.

12. Katch Kan is the owner of a federally registered trademark for the word "KATCH KAN", U.S. Reg. No. 4,192,697 (hereafter, the "KATCH KAN Mark"). This trademark is registered in Class 37 on the Principal Register of the United States Patent and Trademark Office. The KATCH KAN Mark is registered for oil rig and oil field construction services. Plaintiff Katch Kan Ltd owns all of the right, title and interest in the United States to the KATCH KAN trademark and the goodwill associated with it.

13. Katch Kan has been using the KATCH KAN Mark in commerce for the provision of goods and services in the field of oil rig and oil field construction since 1994. Katch Kan has been using the KATCH KAN Mark in commerce in the State of Texas for a number of years. Plaintiff has continuously used the KATCH KAN Mark in the United States since at least the time of filing of the mark. The KATCH KAN Mark is inherently distinctive and has acquired secondary meaning in the marketplace. Katch Kan products are high quality oil field spill prevention devices used regularly by successful drilling contractors and oil and gas operators. Katch Kan provides high quality services in conjunction with the installation, rental, maintenance, and removal of these devices. As a result, Katch Kan has developed enormous goodwill in the KATCH KAN Mark.

14. On information and belief, Martinez provides fabrication and welding services for oil and gas equipment, including oil rig and oil field construction services. On information and belief, Martinez regularly provides services to drilling contractors and oilfield customers.

15. On information and belief, Martinez makes, uses, sells and/or offers to sell oil rig spill containment devices covered by the claims of the '287 patent when installed on an oil rig. On information and belief, Martinez has manufactured, sold, or offered for sale the oil rig spill containment devices covered by the claims of the '287 patent in Jim Wells County, Texas. On information and belief, Martinez's oil rig spill containment devices covered by the claims of the '287 patent have been used and installed on rigs operating in South Texas.

16. Martinez markets and sells his devices and services under the name "Catch Can." Martinez seeks to profit from the success and the goodwill developed by Katch Kan.

V. PATENT INFRINGEMENT CLAIMS

17. Paragraphs 1 – 16 are incorporated by reference.

18. Martinez has been, and still is, making, using, offering to sell, and/or selling products that infringe one or more valid claims of the '287 patent without authority or license from Katch Kan.

19. Upon information and belief, Martinez's infringing activities have been willful and deliberate. Upon information and belief, Martinez was actually aware of the '287 patent and willfully committed acts of infringement.

20. As a result of Martinez's infringing activities, Katch Kan has suffered actual damages in an amount to be determined at trial. Additionally, as a result of the willful and deliberate nature of Martinez's infringing activities, Katch Kan is entitled to a trebling of its actual damages and is entitled to recover its attorney's fees and costs incurred in prosecuting this action, as provided for in 35 U.S.C. §§ 284-285.

21. Martinez's acts of infringement have caused irreparable harm to Katch Kan for which there is no adequate remedy at law, and will continue to cause irreparable harm to Katch Kan unless Martinez is preliminarily and permanently enjoined by this Court.

VI. TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION CLAIMS

A. Trademark Infringement (15 U.S.C. § 1114)

22. Paragraphs 1 – 21 are incorporated by reference.

23. Martinez's acts constitute trademark infringement under 15 U.S.C. § 1114. Martinez has used "Catch Can" to market his goods and services in a manner that has actually confused, is likely to cause confusion, has caused mistake, or has deceived customers and the general public. Martinez's use of this colorable imitation of the KATCH KAN Mark has been without consent from Katch Kan.

24. Martinez has used "Catch Can" to market his goods and services with notice that the KATCH KAN Mark was registered. In accordance with 15 U.S.C. § 1111, Katch Kan utilizes the letter R enclosed with a circle, or ®, in conjunction with its use of the KATCH KAN Mark.

25. Martinez's acts of infringement have caused irreparable harm to Katch Kan for which there is no adequate remedy at law, and will continue to cause irreparable harm to Katch Kan unless Martinez is preliminarily and permanently enjoined by this Court under 15 U.S.C. § 1116.

26. Martinez's infringing conduct has been willful, intentional, in bad faith, malicious, and knowing, intending to trade on Katch Kan's substantial recognition, reputation, and goodwill. In view of the willful nature of Martinez's infringement and unfair competition, this is an exceptional case under 15 U.S.C. § 1117.

27. As a result of Martinez's willful and intentional infringing activities, Katch Kan has suffered actual damages in an amount to be determined at trial. Accordingly, Katch Kan is further entitled to remedies and damages as provided by 15 U.S.C. §§ 1116-1117.

B. False Designations and False Descriptions (15 U.S.C. § 1125(a))

28. Paragraphs 1 – 27 are incorporated by reference.

29. Martinez’s acts constitute a false designation of origin and false representation in commerce in violation of 15 U.S.C. § 1125(a). Martinez’s use of “Catch Can” to market his goods and services constitutes a false designation of origin or false description that is likely to cause confusion, deception, and mistake among consumers who are likely to believe that the infringing products and/or services are sponsored by, connected with, affiliated with, or manufactured by Katch Kan. Martinez’s use of “Catch Can” has been without consent from Katch Kan.

30. Martinez has used “Catch Can” to market his goods and services with notice that the KATCH KAN Mark was registered. In accordance with 15 U.S.C. § 1111, Katch Kan utilizes the letter R enclosed with a circle, or ®, in conjunction with its use of the KATCH KAN Mark.

31. Martinez’s acts of infringement and unfair competition have caused irreparable harm to Katch Kan for which there is no adequate remedy at law, and will continue to cause irreparable harm to Katch Kan unless Martinez is preliminarily and permanently enjoined by this Court under 15 U.S.C. § 1116.

32. Martinez’s conduct has been willful, intentional, in bad faith, malicious, and knowing, intending to trade on Katch Kan’s substantial recognition, reputation, and goodwill. In view of the willful nature of Martinez’s infringement and unfair competition, this is an exceptional case under 15 U.S.C. § 1117.

33. As a result of Martinez’s willful and intentional infringing activities, Katch Kan has suffered actual damages in an amount to be determined at trial. Accordingly, Katch Kan is further entitled to remedies and damages as provided by 15 U.S.C. §§ 1116-1117.

C. Common Law Trademark Infringement

34. Paragraphs 1 – 33 are incorporated by reference.

35. Martinez's acts constitute common law trademark infringement under state common law. Katch Kan began using the Katch Kan mark in commerce prior to Martinez's use of the colorable imitation, "Catch Can." The Katch Kan mark is inherently distinctive and has acquired secondary meaning in the marketplace. Katch Kan has developed enormous recognition, reputation, and goodwill associated with the Katch Kan mark.

36. Martinez's use of "Catch Can" to market his competing goods and services has caused confusion or is likely to cause confusion in the marketplace and amongst the public. Martinez's use of "Catch Can" has been without consent from Katch Kan.

37. As a result of Martinez's infringing activities, Katch Kan has suffered actual damages in an amount to be determined at trial. Moreover, Martinez has been unjustly enriched by trading on the recognition, reputation, and goodwill of Katch Kan. Katch Kan is entitled to damages and to an accounting from Martinez, including all information necessary to permit Katch Kan to determine the gains, profits, and advantages that Martinez has obtained by reason of his wrongful conduct.

D. Texas State Dilution Claim

38. Paragraphs 1 – 37 are incorporated by reference.

39. Martinez's acts constitute dilution under Texas Business & Commerce Code § 16.103. Martinez's acts are likely to injure Katch Kan's business reputation or to dilute the distinctive quality of the Katch Kan mark, which have developed fame in Texas as to the association with spill prevention goods and services in the context of oil rig and oil field construction.

40. Martinez's acts of infringement and unfair competition have caused irreparable harm to Katch Kan for which there is no adequate remedy at law, and will continue to cause irreparable harm to Katch Kan unless such action is enjoined by this Court, as provided by Texas law.

41. Martinez's conduct has been willful, intentional, in bad faith, malicious, and knowing, intending to willfully dilute Katch Kan's mark. As a result of Martinez's willful and intentional infringing and diluting activities, Katch Kan has suffered actual damages. Accordingly, Katch Kan is entitled to remedies under Chapter 16 of the Texas Business & Commerce Code, as provided by Section 16.103(c). In light of Martinez's bad faith actions, Katch Kan is entitled to treble damages and attorney's fees, as provided in Section 16.104(c). Moreover, because Martinez's dilution has been willful, this case is eligible for an award of exemplary damages under Texas law.

VII. PRAAYER FOR RELIEF

Wherefore, Katch Kan respectfully requests that this Honorable Court enter judgment against Martinez, granting Katch Kan the following relief:

- A. a preliminary and permanent injunction enjoining Martinez, and all persons in active concert or participation with him, from continuing to infringe United States Patent No. 6,666,287;
- B. a judgment that United States Patent No. 6,666,287 has been and continues to be directly infringed by Martinez;
- C. an award of damages adequate to compensate Katch Kan for Martinez's infringement of United States Patent No. 6,666,287;
- D. a determination that Martinez's infringement of United States Patent No. 6,666,287 has been willful and deliberate;
- E. an award of treble damages based on the willful and deliberate nature of Martinez's infringement;

- F. a determination that this case is “exceptional” under 35 U.S.C. § 285, thereby entitling Katch Kan to an award of its reasonable attorney’s fees and costs incurred in prosecuting this action;
- G. an award of pre-judgment and post-judgment interest on all damages computed;
- H. a preliminary and permanent injunction enjoining Martinez, and all persons in active concert or participation with him, from doing any of the following acts, either directly or indirectly, and from doing any act prefatory to the prohibited acts:
- (1) using the KATCH KAN Mark (U.S. Reg. No. 4,192,697) in connection with his business;
 - (2) otherwise infringing the KATCH KAN Mark or any other Katch Kan mark;
 - (3) causing likelihood of confusion, deception, or mistake as to the source, nature, or quality of Martinez’s products or services;
 - (4) using any false designation of origin or false description concerning any Katch Kan product;
 - (5) misrepresenting to anyone that he is an authorized Katch Kan manufacturer or distributor; and
 - (6) soliciting, assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (1) through (5).
- I. an order requiring Martinez and any of his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, to deliver for destruction, or show proof of destruction of, all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements, and any other materials in their possession or control that depict or reference the designation KATCH KAN or any other confusingly or substantially similar mark, including “Catch Can,” and all materials or articles used for making or reproducing the same, as provided in 15 U.S.C. § 1118;
- J. an order directing Martinez to file with the Court and serve on Katch Kan, within 30 days after the entry and service on Martinez of an injunction, a report in writing and under oath stating in detail the manner and form in which Martinez has complied with the provisions of paragraphs H and I above;
- K. an award of treble damages as provided by 15 U.S.C. §§ 1116 and 1117 for infringement and unfair competition as to the KATCH KAN Mark, including an award of damages for Martinez’s profits, actual damages, and costs;

- L. an award of damages for all gains, profits, or advantages derived by Martinez by his infringement and unfair competition as to the Katch Kan mark to the fullest extent allowed by common law;
- M. an award of punitive and exemplary damages as to Martinez's unfair competition and dilution of the Katch Kan mark;
- N. a determination that this case is "exceptional" under 15 U.S.C. § 1117(a), thereby entitling Katch Kan to an award of reasonable attorneys' fees; and,
- O. such other relief as this Court deems fair and appropriate.

DATED: January 13, 2014

Respectfully Submitted,

By : /s/ Eric S. Schlichter
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