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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ICON HEALTH AND FITNESS, a Utah
Corporation,

Plaintiff,

v.

PEDNAR PRODUCTS, INC, a California
Corporation, and ARTHUR NAREVSKY, an
Individual

Defendants.

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Case No. 1:13-CV-152

Plaintiff ICON HEALTH & FITNESS, INC. ("ICON") hereby complains against defendant ARTHUR NAREVSKY ("Narevsky"), and alleges as follows:

PARTIES

1. ICON is a Delaware corporation with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.
2. Defendant Arthur Narevsky is an individual living in California.

3. Narevsky is the owner of Pednar Products, Inc. (“Pednar”), which is a California corporation with its principal place of business located at 13130 Spring Street Baldwin Park, California 91706. As detailed herein, Narevsky appears to control Pednar to such a degree that there is no real legal distinctions between Pednar and Narevsky. A unity of interest and ownership exists between Pednar and Narevsky and that separation does not exist and each is the alter ego and/or successor of the other. This unity of interest is demonstrated by, among other things, Narevsky’s ownership and control of Pednar, and the absence of distinction in public representations by both Narevsky and Pednar.

NATURE OF ACTION, JURISDICTION AND VENUE

4. This is a civil action for, *inter alia*, declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202, and the United States Patent Law, 35 U.S.C. §§ 100 *et seq.*, and also for patent misuse, and for such other relief as the Court deems just and proper.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Narevsky holds himself out as the owner of Pednar. Narevsky further has held himself out as manager and director of Pednar’s business, sales, intellectual property procurement and enforcement.

7. Narevsky is subject to personal jurisdiction in this District because Narevsky has transacted business, contracted to supply goods or services, and caused injury within the State of Utah, and has otherwise purposely availed himself of the privileges and benefits of the laws of the State of Utah, pursuant to Utah Code Ann. § 78B-3-205.

8. ICON alleges on information and belief that Narevsky has attempted to sell,

actually sold, contracted to sell, or contracted to supply goods for sale at retail stores in Utah.

9. Narevsky is the owner of the domain name <http://pednar.com>, through which Narevsky provides interactive web sites that are available to persons within the State of Utah.

10. Narevsky advertises, markets, and sells goods through the website and through other means, which advertising, marketing, and selling are available to the purchasing public in the State of Utah.

11. At the direction of Narevsky, Narevsky and/or his affiliates, agents, and employees attended the Outdoor Retailer Conference in Salt Lake City in August 2013, where Narevsky offered goods and services for sale within the state of Utah.

12. Narevsky's sales, advertising, and marketing of its goods relate to the claims asserted by ICON, and form the basis, at least in part, for ICON's claims.

13. In communications to ICON, both Narevsky, as well as his affiliates, agents and employees, explicitly threatened to immediately sue ICON.

14. This Court's exercise of personal jurisdiction over Narevsky is consistent with the Constitutions of the United States and the State of Utah.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

16. ICON advertises, markets, and sells exercise equipment consumer products.

17. Since in or around August 2013, Narevsky and his employees and agents have interacted with various ICON employees regarding potential business transactions, principally the purchase and sale of certain fitness rollers.

18. During those negotiations, Narevsky represented to ICON that Pednar owned certain intellectual property related to fitness rollers, including Patent No. D670, 817 (the “’817 Patent”). A Copy of the ’817 Patent is attached hereto as Exhibit A.

19. Narevsky has held himself out as an owner of Pednar who controls Pednar and various employees or agents. Narevsky has held out that individual actions and statements have the authority to bind Pednar, and that Pednar’s resources exist to support Narevsky and Narevsky’s business aims.

20. On multiple occasions, Narevsky and his affiliates, employees or agents asserted that ICON’s manufacture or sale of a branded fitness roller would infringe the ’817 Patent, and that ICON must purchase rollers from Narevsky or face immediate legal action.

21. On multiple occasions, Narevsky and his affiliates, employees or agents threatened ICON with legal action related to the ’817 Patent and ICON’s products.

22. On August 16, 2013, Mike Laban, General Manager of Pednar, and an agent or employee of Narevsky, emailed Dave McEvoy of ICON as follows: “As mentioned, this is a patented product (we will protect the patent)”

23. On September 26, 2013, Laban emailed McEvoy as follows: “[W]e also have made you aware of our patent and our intention to protect it. Perhaps you have decided to drop the product, and no more action is needed. If so please let us know and we will wait for the next opportunity to work with you. If you wish to pursue the product and move it forward, please contact Art or me to discuss how we best accomplish that.”

24. On October 8, 2013, Narevsky emailed McEvoy, stating as follows: “After our conversation yesterday I discussed the massage roller issues with my team and we feel very

strongly that we can defend our patent. Although the possibility of new business is attractive, we need to protect the patent and I need to focus on that first and foremost. We have spent thousand [sic] of dollars and hundreds of hours developing the product and feel we need to be compensated. We are disappointed that ICON chose to market such a novel and high end roller to the discounters but what's done is done.”

25. On October 14, 2013, Narevsky sent an email to McEvoy, stating as follows: “My legal team wants to proceed with a C&D this week but I have convinced them to hold off until you and I can discuss further. I can buy a couple of days but that’s about it.”

26. On October 21, 2013 at 1:24 p.m., Narevsky emailed McEvoy as follows: “To answer your question, per our patent attorney, The egg Crete/convoluted design is covered under our patent, regardless of how it’s designed into the roller. **I need to hear back from you today or our legal team want [sic] to file.**” (emphasis added). Later that same day, Narevsky emailed McEvoy again, stating: “We feel you design is aesthetically similar to ours. The test for infringement is the ordinary observer test. Do you think an ordinary observer in a jury would think yours is aesthetically different? I don't think so. Anyway, we need to get this resolved. Please get back to me by tomorrow.”

27. As a result of Narevsky’s actions, and the actions of Narevsky’s affiliates, agents or employees, ICON had a reasonable apprehension that Narevsky/Pednar would immediately file suit alleging infringement of the ’817 Patent. Of particular note are Narevsky’s communications of October 21, 2013 wherein he threatened to immediately sue ICON for infringement.

28. ICON denies that any of its activities or products infringe the ’817 Patent.

29. ICON further alleges that as construed by the inventor, Narevsky, the '817 Patent is invalid and/or unenforceable.

30. A substantial, continuing, and justiciable controversy exists between ICON, on the one hand, and Narevsky on the other, as to Narevsky's right to threaten or maintain suit for alleged infringement of the '817 Patent and as to the validity, scope, and enforceability of the '817 Patent.

31. As shown in illustrative written communications, as well as numerous other telephonic and in-person conversations, Narevsky and his affiliates, employees, and agents have engaged in a prolonged effort of intimidation, misrepresentation, and threats regarding the nature and ownership of the '817 Patent, including its ownership, the timing and putative certainty of a lawsuit, the presence of corporate funding and support for a lawsuit, and the putative expansive scope of the Patent. All these communications were designed and executed for the sole purpose of forcing ICON to purchase rollers from Narevsky.

32. Narevsky engaged in a pattern of misrepresentations regarding the ownership of the '817 Patent. Specifically, Narevsky's agent or employee, Mike Laban, stated that Pednar owned the Patent and that Pednar would protect the patent. Furthermore, Narevsky made similar representations, including that the '817 Patent belonged to Pednar, was supported by Pednar's legal team and patent attorneys, and that Pednar's legal team would immediately sue ICON.

33. All these misrepresentations were made with the intent of having ICON rely upon them. The purpose of these misrepresentations was to intimidate ICON, make ICON fearful of immediate legal action by Pednar, and to convince ICON to immediately purchase products from Pednar/Narevsky.

34. The misrepresentations made by Narevsky, his agents, and his employees were made either intentionally or negligently, with disregard to the truth or accuracy of the same. ICON reasonably did in fact rely upon these misrepresentations, in ignorance of the falsity of such representations. ICON suffered loss and damage as a result of relying upon the misrepresentations made by Narevsky and his affiliates, agents and employees.

FIRST CAUSE OF ACTION
(For Declaratory Judgment of Non-infringement of the '817 Patent)
(Brought Against Narevsky, Owner of '817 Patent)

35. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

36. Narevsky and his agents/employees expressly claimed that the manufacture or sale of ICON's fitness roller constitutes infringement of the '817 Patent. Narevsky expressly threatened to bring a lawsuit on this basis.

37. None of ICON's products, including its fitness rollers, infringe, directly or indirectly, any valid and enforceable claim of the '817 Patent.

38. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

39. ICON seeks a declaratory judgment from this Court that its fitness roller does not infringe the '817 Patent.

SECOND CAUSE OF ACTION
(For Declaratory Judgment of Invalidity and/or Unenforceability of the '817 Patent)
(Brought Against Narevsky, Owner of '817 Patent)

40. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

41. The '817 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

42. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

43. Narevsky and Pednar have claimed that the scope of the single claim of the '817 Patent is such that any "egg Crete/convoluted design, regardless of how it's [sic] designed" infringes the Patent.

44. The prior art, including but not limited to the figures depicted in United States Patent No. 7,918,774, discloses all novel or non-obvious aspects of the '817 Patent. Because the '817 Patent, as construed by Narevsky/Pednar, does not disclose any novel or non-obvious invention in light of the prior art, it is not valid and is unenforceable.

45. Furthermore, Narevsky and his employees, affiliates and agents have made various false statements regarding the ownership of the '817 Patent; these false statements were designed to impermissibly broaden the influence of the Patent, and are therefore grounds for finding the Patent unenforceable.

46. ICON seeks a declaratory judgment from this Court that the '817 Patent is invalid and/or unenforceable.

**THIRD CAUSE OF ACTION
(Patent Misuse)
(Brought Against Narevsky, Owner of '817 Patent)**

47. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

48. Narevsky is the owner of the '817 Patent.

49. Narevsky and his agents, employees or affiliates made numerous representations to ICON expressly stating and implying that the '817 Patent was owned and would be enforced by Pednar.

50. The purpose of these misrepresentations was to broaden the intended impact of the Patent in licensing negotiations with ICON by making ICON believe that the '817 Patent would be asserted and enforced by a company with company resources.

51. These misrepresentations sought to broaden the limited monopoly which is by law granted solely to the owner and exclusive licensee of the '817 Patent. Narevsky's actions sought to leverage the patent beyond the scope of rights granted by the Patent Act.

52. In essence, Narevsky improperly used the '817 Patent to obtain market benefit beyond that which inheres in the statutory patent right.

53. The overall effect of Narevsky's misrepresentations was to restrain and negatively affect competition in that Narevsky sought to improperly influence normal business supply negotiations by making ICON believe that it would face an infringement lawsuit supported by corporate resources unless it purchased product from or obtained a license from Narevsky/Pednar.

54. ICON has been damaged by Narevsky's patent misuse, and herein lays claims to its damages, which include, *inter alia*, expenses of outside legal counsel retained to assess Narevsky's statements and allegations.

REQUEST FOR RELIEF

WHEREFORE ICON respectfully requests relief against Pednar and Narevsky as follows:

1. For a declaratory judgment that:
 - a. None of ICON's products, including its fitness roller, infringes the '817 Patent.

- b. The '817 Patent is invalid and/or unenforceable.
- c. Narevsky and those acting in concert with him are without right or authority to threaten or maintain suit against ICON, or users or distributors of ICON's products, for alleged infringement of the '817 Patent.
- d. For an injunction prohibiting Narevsky, his agents, servants, employees, affiliates and attorneys, and those persons in active concert or participation with them who receive actual notice thereof, from initiating infringement litigation against, and from threatening, ICON or purchasers or users of ICON's products or services with infringement litigation or charging any of them verbally or in writing with infringement of the '817 Patent, or representing to any of them that infringement has occurred, because of any activities of ICON.

2. An order declaring that this is an exceptional case and awarding Plaintiff its costs, expenses, disbursements and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;

3. For damages naturally incurred as a consequence of the statements of Narevsky and his affiliates, agents, and employees, including costs of retaining outside counsel.

4. For costs and reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem appropriate.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, ICON respectfully demands a jury trial on all issues so triable.

DATED this 13th day of January 2014.

/s/ Chad S. Pehrson
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2014, I electronically filed the foregoing AMENDED COMPLAINT AND JURY DEMAND with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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