

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

OTTER PRODUCTS, LLC, a Colorado
Limited Liability Company,

Plaintiff,

v.

SEAL SHIELD, LLC., a Florida Limited
Liability Company, and KLEARKASE
LLC, a Washington Limited Liability
Company,

Defendants.

CASE NO.: 1:13-CV-01734-MSK

AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Otter Products, LLC (“Otterbox”), by and through its undersigned attorneys, for its Amended Complaint against Seal Shield, LLC (“Seal Shield”) and KlearKase LLC (“KlearKase”) (together, “Defendants”) states as follows:

PARTIES

1. Plaintiff OtterBox is a Colorado limited liability company with its principal place of business at 209 S. Meldrum Street, Fort Collins, Colorado 80521. The members of OtterBox are all citizens of Colorado.

2. Upon information and belief, Defendant Seal Shield is a Florida Limited Liability Company with its principle place of business at 3105 Riverside Ave., Jacksonville, Florida, 32205. Upon information and belief, the members of Seal Shield are all citizens of Florida.

3. Upon information and belief, Defendant KlearKase LLC is a Washington Limited Liability Company with its principle place of business at 6513 132nd Avenue NE #356, Kirkland, Washington, 98033. Upon information and belief, the members of KlearKase are all citizens of Washington and Texas.

4. In or around January 2013, Seal Shield acquired KlearKase. This transaction included an acquisition by Seal Shield of all assets of KlearKase. *See* Declaration of Bradley W. Whitchurch, attached hereto as **Exhibit A**.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* and breach of contract under the laws of the State of Colorado.

6. This court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338 (patent laws), 28 U.S.C. § 1367 (supplemental jurisdiction) and 28 U.S.C. § 1332 (diversity jurisdiction). There is complete diversity of the parties and the amount in controversy exceeds \$75,000.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391

and 28 U.S.C. § 1400 because Defendants are engaged in the regular, continuous, and systematic transaction of business in this judicial district, including through the distribution, sale and or offer for sale of the Sea Lion for iPhone 5 case and the KlearKase iPhone 4 case through its website(s) and via various catalogs and retailers, and has committed acts of patent infringement in this judicial district. This Court also has specific jurisdiction over Defendants as infringing products were purchased from Defendants in this judicial district. Venue is also proper because the parties contractually agreed to the jurisdiction of the Colorado courts.

OTTERBOX & THE TECHNOLOGY AT ISSUE

8. OtterBox was founded by current CEO Curtis (“Curt”) Richardson in his garage in Ft. Collins, Colorado. In that garage, Mr. Richardson created a first of its kind prototype of a waterproof case. The OtterBox waterproof product line was a rapid success, and soon OtterBox was creating waterproof cases as well as specially designed cases for electronic products that allow users to protect their devices without sacrificing access to the device’s controls or hampering the use of the device.

9. OtterBox was then and is now known as a leading innovator in device protection and interaction. In 2010 alone, OtterBox won National Geographic’s “Gear of the Year Award” the United States’ Postal Services’ “Creative Business Solutions Award” and TESSCO Technology’s “Innovator Award.”

10. The OtterBox inventions at issue pertain to innovations tracing back to OtterBox's roots: waterproof protective devices. OtterBox products based on and stemming from the waterproof patent family have won many awards, including "Best of WES" (Wireless Exposition Symposium) (2006) and "Editor's Choice" from Best of PC Magazine (2006).

11. The asserted OtterBox patents claim groundbreaking innovations that teach the design, manufacture, and use of electronic devices that are water-resistant, crush-resistant, and impact-resistant but still allow full sensory interaction with and use of the enclosed device. OtterBox's innovations solved long-standing problems and its products were and are incredibly well-received in the market place and copied with an astonishing regularity.

OTTERBOX'S INTELLECTUAL PROPERTY

12. On October 27, 2009, United States Patent No. 7,609,512 ("the '512 Patent"), entitled "Protective Enclosure For Electronic Device," was duly and legally issued to Curtis R. Richardson and Alan Morine. A true and correct copy of the '512 Patent is attached as **Exhibit B**.

13. The '512 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

14. By assignment, OtterBox owns all rights, title, and interests in the '512 Patent, including, without limitation, the right to enforce this patent and

collect damages for its infringement.

15. On January 2, 2007, United States Patent No. 7,158,376 (“the ’376 Patent”), entitled “Protective Enclosure For An Interactive Flat-Panel Controlled Device,” was duly and legally issued to Curtis R. Richardson et. al. A true and correct copy of the ’376 Patent is attached as **Exhibit C**.

16. The ’376 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

17. By assignment, OtterBox owns all rights, title, and interests in the ’376 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

THE PARTIES’ NON-DISCLOSURE/CONFIDENTIALITY AGREEMENT

18. OtterBox and Seal Shield are parties to a Non-Disclosure/Confidentiality Agreement (“NDA”) dated September 26, 2012 and Non-Disclosure/Confidentiality Agreement Amendment No. 1 (collectively, the “NDA”). A true and correct copy of the NDA is attached as **Exhibit D**.

19. The NDA provides, *inter alia*, that confidential and/or proprietary information exchanged between OtterBox and Seal Shield thereunder and the purpose of the agreement shall not be used or disclosed without prior written approval of the party who provided the information. See **Exhibit D**, ¶ 1.

20. On August 8, 2012, without prior written approval from OtterBox,

KlearKase and Seal Shield used and disclosed information subject to the NDA in public filings made in *Treefrog Developments, Inc. d/b/a LifeProof v. KlearKase, LLC and Seal Shield, LLC*, Case No.: 13-CV-1575, pending in the United States District Court for the Southern District of California.

21. The NDA provides that OtterBox, as the disclosing party, “shall be entitled to immediate injunctive relief prohibiting any violation of this Agreement, in addition to any other rights and remedies available.” See **Exhibit D**, ¶ 14.

22. The NDA further provides that “This Agreement shall be governed in all respects solely and exclusively by the laws of the State of Colorado, U.S.A. without regard to conflict of laws principles and the competent courts of Colorado shall have exclusive jurisdiction to settle disputes hereunder.” See **Exhibit D**, ¶ 16.

23. The NDA further provides that “In the event any party shall bring any action to enforce or protect any of its rights under this Agreement, the prevailing party shall be entitled to recover, in addition to its damages, its reasonable attorneys’ fees and costs incurred in connection therewith.” See **Exhibit D**, ¶ 15.

FIRST CLAIM FOR RELIEF
Infringement of U.S. Patent No. 7,609,512

24. OtterBox incorporates by reference paragraphs 1 through 23 as if set forth in their entirety.

25. Defendants have made, used, sold, and/or offered to sell in the United

States and/or importing into the United States at least the Sea Lion for iPhone 5.

26. Defendants are have made, used, sold, and/or offered to sell in the United States and/or importing into the United States at least the KlearKase iPhone 4 case.

27. Defendants' activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States at least the Sea Lion for iPhone 5 constitutes infringement of the '512 Patent, in violation of 35 U.S.C. § 271.

28. Defendants' activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States at least the KlearKase iPhone 4 case constitutes infringement of the '512 Patent, in violation of 35 U.S.C. § 271.

29. On information and belief, Defendants' infringement of the '512 patent was and is willful.

30. Defendants' infringement of the '512 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

31. Defendants' infringement of the '512 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendants' infringement may continue unless enjoined by this Court.

SECOND CLAIM FOR RELIEF
Infringement of U.S. Patent No. 7,158,376

32. OtterBox incorporates by reference paragraphs 1 through 31 as if set forth in their entirety.

33. Defendants have made, used, sold, and/or offered to sell in the United States and/or importing into the United States at least the KlearKase iPhone 4 case.

34. Defendants' activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States at least the KlearKase iPhone 4 case constitutes infringement of the '376 Patent, in violation of 35 U.S.C. § 271.

35. On information and belief, Defendants' infringement of the '376 patent was and is willful.

36. Defendants' infringement of the '376 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

37. Defendants' infringement of the '376 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendants' infringement may continue unless enjoined by this Court.

THIRD CLAIM FOR RELIEF
Breach of Contract

38. OtterBox incorporates by reference paragraphs 1-37 as if set forth herein in their entirety.

39. The Non-Disclosure/Confidentiality Agreement is a binding and enforceable contract between OtterBox and Seal Shield.

40. Seal Shield materially breached the NDA by using and disclosing information subject to the NDA in its public court filings.

41. OtterBox has suffered irreparable harm as a result of Seal Shield's material breach of the NDA.

42. OtterBox has also suffered other damages as a result of Seal Shield's material breach of the NDA.

DEMAND FOR JURY TRIAL

43. OtterBox hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, OtterBox prays as follows on all claims:

A. For a temporary restraining order, and preliminary and permanent injunctions enjoining and restraining Defendants, and all related entities or persons acting in concert with them, from manufacturing, selling, or offering for sale the Sea Lion for iPhone 5 and the KlearKase for iPhone 4;

B. For an award of OtterBox's damages as appropriate under the patent laws of the United States, comprising:

- (i) Lost profits, in an amount to be ascertained at trial;
 - (ii) A reasonable royalty, in an amount to be ascertained at trial;
 - (iii) Treble damages;
- C. For a temporary restraining order, and preliminary and permanent injunctions enjoining and restraining Seal Shield, and all related entities or persons acting in concert with them, from using or disclosing any information subject to the Non-disclosure/Confidentiality Agreement;
- D. For an award of OtterBox's damages as a result of Seal Shield's breach of the Non-disclosure/Confidentiality Agreement;
- E. For its reasonable attorneys' fees and costs for all Counts; and
- F. For such other and further relief as the Court deems just and proper.

DATED: August 9, 2013

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