

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Eat Dirt, LLC,)	
)	Case No. 6:13-cv-1569-Orl-28TBS
Plaintiff,)	
)	
vs.)	
)	
Arriba Films, LLC d/b/a Arriba Design, a)	
California limited liability company, Pacific)	
Productions, Inc., a Nevada corporation, and)	
Zachary Michael Cram d/b/a Lightbulb)	
Moments, an individual,)	
)	
Defendants.)	
)	

AMENDED COMPLAINT

Plaintiff, Eat Dirt, LLC, sues Arriba Design LLC d/b/a Arriba Design, Pacific Productions, Inc., and Zachary Michael Cram d/b/a Lightbulb Moments, individually, and alleges:

Jurisdiction & Venue

1. Plaintiff Eat Dirt is a Florida limited liability company with its principal place of business in Orlando, Florida.

2. Defendant Arriba Films LLC d/b/a/ Arriba Design ("Arriba") is a California limited liability company owned, controlled, and managed by Defendant Cram with its principal place of business in Santa Barbara, California.

3. Defendant Pacific Productions, Inc. ("Pacific"), is a dissolved Nevada corporation owned, controlled, and managed by Defendant Cram with its principal place of business in Santa Barbara, California.

4. Defendant Zachary Michael Cram is the managing member of Arriba and held all corporate offices of Pacific. Cram, who has also held himself out as Lightbulb Moments, a California registered fictitious name, is the primary moving, active and conscious force behind Arriba and Pacific. Cram personally took part in the patent infringement described below and/or specifically directed other officers, agents or employees of Arriba and/or Pacific to commit patent infringement, and Cram actively aided and abetted Arriba's and Pacific's infringement of Plaintiff's patent, described below.

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over the Defendants on numerous grounds, including, *inter alia*:

a. Defendants maintain a fully interactive internet website, www.arribadesign.co, through which they engage, or offer to engage, in business transactions, including the sale of merchandise, with Florida residents, which sales included, at least as late as January 2, 2014, the sale of Defendants' infringing iPhone cover with built-in bottle opener, which they call "iBottleOpener" ("the Infringing Product") (see archived page from Defendants' website, attached hereto as **Exhibit A**);

b. Defendants, at least as late as August 2013, directly sold Infringing Products to at least one customer residing in Florida (see Invoice, attached hereto as **Exhibit B**);

c. Defendants sold the Infringing Products through national retail outlets such as Nordstrom, Dillards, Old Navy, American Eagle, and Urban Outfitters, all of

which operate stores throughout Florida (see Exhibit A and **Exhibit C**, archived website from September 20, 2013);

d. Defendants sold the Infringing Products to wholesale customers such as Coveroo, Inc., which then resold Infringing Products bearing what Defendants described as "officially licensed" collegiate logos, including the logos of the University of Florida and Florida State University and their affiliated fraternity and football organizations (e.g., Tebow Silhouette), which were targeted for sale to residents of Florida (see **Exhibit D** attached hereto); and

e. Defendants solicited funds from Florida residents on kickstarter.com.

7. Based on the foregoing, Defendants have committed tortious activities in Florida under Fla. Stat. 48.193(1)(a)(2) and have caused injury to persons in Florida arising out of acts committed by Defendants outside of Florida where Defendants were engaged in solicitation or service activities within this state and/or products, materials, or things processed, serviced, or manufactured by Defendants anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use under Fla. Stat. 48.193(1)(a)(6).

8. Based on the foregoing, Defendants have purposely directed their activities to Florida residents and personal jurisdiction over them in Florida is reasonable and fair.

9. Venue is proper in this district under the provisions of 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events giving rise to these claims arose in this judicial district and under 28 U.S.C. §§ 1391(b)(3) and (d), as well as under 28 U.S.C. § 1400(b) because the Defendant corporate entities are deemed to reside in this judicial district.

FACTUAL BACKGROUND

10. In 2009, inventors Dean Monaco and John Santo designed an iPhone case with a built-in bottle opener.

11. On March 29, 2010, Mr. Monaco and Mr. Santo filed their application for a patent on their invention. The application was published on September 29, 2011.

12. On July 16, 2013, the United States Patent and Trademark Office awarded United States Patent No. 8,485,404 (the "404 patent"), titled *Cases and Covers for Handheld Electronic Devices*, to inventors Dean Monaco and John Santo. A complete and authentic copy of the '404 patent is attached as **Exhibit E**.

13. Mr. Monaco and Mr. Santo assigned the '404 patent to My Innoventure, LLC. On August 9, 2013, My Innoventure, LLC, assigned the '404 patent to Eat Dirt, LLC. Eat Dirt remains the owner of the '404 patent. Copies of these assignments are attached hereto as **Exhibits F and G**.

14. Defendants made the Infringing Product, and then offered for sale and sold it on their internet website, www.arribadesign.co, and through various national retail outlets, described above, and wholesalers such as Coveroo, Inc.

15. Defendants have had constructive notice of the '404 patent since at least as early as September 29, 2011, the date it was published.

16. On September 26, 2013, Plaintiff served on Defendants a cease and desist letter; however, according to archival retrievals of Defendants' website, they continued to sell the Infringing Product until at least as late as January 2, 2014, if not thereafter.

PATENT INFRINGEMENT OF THE '404 PATENT

17. Plaintiff incorporates and realleges herein by reference paragraphs 1 through 12.

18. Defendants made, used, offered to sell, and sold the Infringing Products that infringe the '404 Patent under 35 U.S.C. § 271(a).

19. More specifically, Defendants' Infringing Product infringes, either literally and/or under the doctrine of equivalents, at least claims 1, 2, 9, 10, 11, 12 and 13 of the '404 patent.

20. Defendants, through their unlawful conduct, have caused third parties, including their retail and wholesale customers, to infringe the '404 patent.

21. Defendants' infringement of the '404 Patent will cause irreparable injury and damage to Plaintiff unless the Court enjoins them from continuing to do so.

22. Defendants conduct in infringing the '404 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eat Dirt prays that the Court award the following judgment and relief:

- a. that Defendants have infringed the '404 patent;
- b. that Eat Dirt is entitled to a permanent injunction barring Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of, the '404 patent;
- c. that Defendants shall account for and pay to Eat Dirt the damages to which Eat Dirt is entitled as a consequence of Defendants' infringement of the '404 patent;
- d. that Eat Dirt is further entitled to pre-judgment and post-judgment interest;

- e. that this case is exceptional and that Eat Dirt is entitled to its reasonable attorney fees, costs, and expenses that it incurs prosecuting this action under 35 U.S.C. § 285; and
- f. any other award or relief that is just and equitable.

DEMAND FOR JURY TRIAL

A jury is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: February 26, 2014

Respectfully submitted,

By: /s/ Nicolette Corso Vilmos
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 26th day of February 2014, I electronically filed the foregoing Amended Complaint with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the service list below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Matthew S. Nelles
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