

EdiZONE, LLC
Casey K. McGarvey (4882)
123 East 200 North
Alpine, Utah 84004
(801) 936-1039
casey@edizone.com

Attorney for Plaintiff,
EdiZONE, LLC

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

EDIZONE, LLC, a Delaware limited liability company, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> SPENCO MEDICAL CORPORATION, a Texas corporation, and DOES 1 – 50, <div style="text-align: right;">Defendants.</div>	COMPLAINT AND JURY DEMAND Case No.: 2:14-cv-00249-RJS Judge Robert J. Shelby
---	---

Plaintiff, EdiZONE, LLC, hereby alleges and claims against Defendants, Spenco Medical Corporation and Does 1 – 50, as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, EdiZONE, LLC (hereafter “EdiZONE”), is a Delaware limited liability company with its principle place of business in Alpine, Utah. EdiZONE is the current owner of the patent referenced below.

2. On information and belief, EdiZONE believes the following as to each of the Defendants:

a. Defendant Spenco Medical Corporation (hereafter “SPENCO”) is a Texas corporation with its principle place of business in Waco, Texas. SPENCO sells and distributes various products, including particular insole products with a honeycomb gel cushioning element, throughout the United States of America, including in the State of Utah. SPENCO has three directors who live in the State of Utah.

b. Defendants Does 1 – 50 are entities or individuals who have made wholesale purchases of SPENCO insole products with a honeycomb gel cushioning element, identified below, for retail sale to consumers within the United States of America, or who are otherwise liable to EdiZONE for patent infringement as alleged herein, and leave will be sought hereafter to bring them into this action as deemed necessary or appropriate and/or their identities become known.

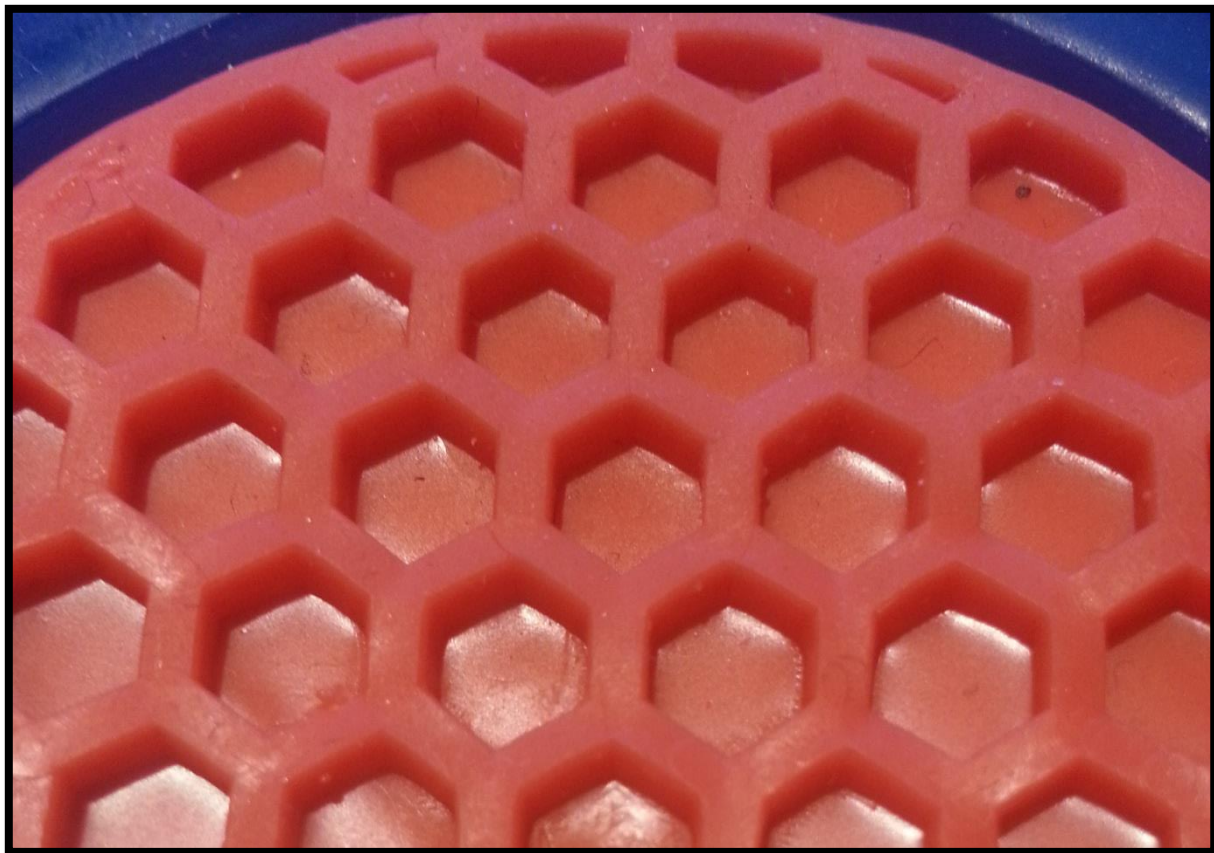
3. On information and belief, Defendants conduct business in the State of Utah and/or otherwise have substantial contacts with Utah and avail themselves of the benefits and protections of Utah law by shipping, distributing and/or selling products in Utah or in the stream of commerce with the intent that they are sold to consumers within the State of Utah. Each Defendant has committed patent infringement within the State of Utah in violation of the laws of the United States of America.

4. Accordingly, this Court has personal jurisdiction over SPENCO and will have personal jurisdiction over the other Defendants when they are added.

5. Subject matter jurisdiction and venue are founded upon 28 U.S.C. §§ 1331, 1332(a), 1338(a), 1391 and 1400(b).

GENERAL ALLEGATIONS

6. Defendants are selling within the United States of America insole products that include a honeycomb gel cushioning element which products are believed to include, but may not be limited to, the following products currently listed on SPENCO's website: Spenco® GEL Comfort Insoles; Spenco® GEL Heel Cushions; Spenco® GEL Heel Cups; IRONMAN® Gel Insoles; Spenco® GRF Basketball Replacement Insoles; and TOTAL SUPPORT® Original, Max and Thin (collectively, the "PRODUCTS"). Each of these PRODUCTS is shown on the copy of SPENCO's website attached hereto as Exhibit A. A representative example (heel cup) of the honeycomb gel cushioning element is shown (enlarged) here:



7. On February 22, 2000, U.S. Patent No. 6,026,527 (the “527 Patent”) issued; and on April 13, 2010 an Ex Parte Reexamination Certificate issued.

8. Claim 1 of the ‘527 Patent provides as follows:

1. A yieldable cushioning element that includes a flexible, resilient, gel cushioning media having shape memory and being substantially solid and non-flowable at temperatures below 130 degrees Fahrenheit, the cushioning element comprising:
a quantity of gel cushioning medium formed to have a top, a bottom, and an outer periphery, said cushioning medium being compressible so that it will deform under the compressive force of a cushioned object,
a plurality of hollow columns formed in said cushioning medium, each of said columns having a column wall which defines a column interior, and each of said columns having two ends;
wherein the cushioning element is adapted to have a cushioned object placed in contact with said top;
wherein each of said columns has a straight longitudinal axis extending along its length from said top to said bottom of said quantity of gel cushioning medium in an undeformed condition;
wherein each of said column ends is positioned at two different points of said longitudinal axis;
wherein at least one of said columns is positioned within said cushioning medium such that said longitudinal axis is positioned generally parallel to the direction of a compressive force exerted on the cushioning element by a cushioned object in contact with said cushioning medium; and
wherein at least one of said column walls is capable of buckling beneath a protuberance that is located on the cushioned object.

9. Claim 3 of the ‘527 Patent is a dependent claim that adds the following limitation to Claim 1:

3. A yieldable cushioning element as recited in claim 1, wherein at least one of said column ends of at least one of said columns is open to said column interior.

10. Upon information and belief, the honeycomb gel cushioning element of the PRODUCTS infringes at least both Claims 1 and 3 of the ‘527 Patent inasmuch as the honeycomb gel cushioning element literally, or under the doctrine of equivalents, embodies each

and every limitation of these claims. Upon further discovery from SPENCO, additional claims also may be infringed and asserted in this action.

11. The honeycomb gel cushioning element of the products is a flexible, resilient gel media for cushioning, it is compressible under force, it has multiple hollow columns with walls that surround the interiors of the columns, it is adapted so that force is applied to the ends of the column walls as opposed to the sides of the column walls, it has column walls that are straight when they are not deformed by a compressive force, as are the longitudinal axes of the columns which extend from one column end to the other column end and as such those axes are parallel to the direction of a compressive force on a column end, and it has at least one column wall that can buckle under a protuberance on a cushioned object. Also, it has hollow columns where at least one such column is open at one end.

12. Concurrent with the filing of this lawsuit, EdiZONE is providing SPENCO with written actual notice of the '527 Patent and EdiZONE's contention that it is infringed by SPENCO's PRODUCTS.

13. Plaintiff will pursue this action if SPENCO, after receiving such actual notice that its PRODUCTS infringe upon a patent owned by EdiZONE, refuses to cease and desist its unlawful conduct and/or refuses to pay to EdiZONE fair compensation for past, present and future use of the patented property owned by EdiZONE, as allowed by law.

CLAIM FOR RELIEF

14. EdiZONE incorporates herein its allegations set forth above in this Complaint.

15. Through various assignments, the '527 Patent is now legally assigned to and owned by EdiZONE who is solely entitled to recover damages for infringement of the '527 Patent and to obtain an injunction preventing continuing infringement.

16. SPENCO has actual notice of the '527 Patent through the filing of this Complaint and a written notice that has been sent to SPENCO, and Defendants may have received actual notice earlier in time in other ways.

17. Defendants do not have a licensed right under the '527 Patent to make, have made, import, use or sell the PRODUCTS in the United States of America.

18. Accordingly, Defendants are liable for direct infringement, either literally or through the doctrine of equivalents.

19. EdiZONE has licensees and continues to seek licensees of its patents, and if for any reason EdiZONE cannot grant Defendants a license to practice the subject matter of the '527 Patent, EdiZONE would suffer irreparable harm should Defendants continue their infringement of this patent.

20. EdiZONE is entitled to recover from Defendants, jointly and severally, monetary damages in an amount not less than a reasonable royalty for all units of PRODUCTS sold during the term of the '527 Patent. EdiZONE also may be entitled to appropriate injunctive relief until the expiry of the '527 Patent.

21. EdiZONE reserves the right to seek exemplary damages from SPENCO and/or the other Defendants should their infringement be found, at any point in time, to be willful and/or to be in deliberate disregard of EdiZONE's rights in the '527 Patent.

PRAYER

WHEREFORE, EdiZONE prays for the following relief:

1. Unless a license can be granted, a permanent injunction enjoining Defendants, their officers, agents, employees and attorneys, and all other persons in acts of concert or participation with any Defendant from further infringement of the '527 Patent, and any other equitable relief to prevent infringement and/or continuing harm to EdiZONE;
2. An award of a monetary judgment to compensate EdiZONE for past, present and future damages allowed by law, including at a minimum a reasonable royalty and prejudgment and post judgment interest thereon;
3. An award of EdiZONE's costs allowed by law; and
4. All such other relief as the Court deems necessary and appropriate in law or equity.

JURY DEMAND

EdiZONE demands a trial by jury on all issues presented herein.

DATED this 3rd day of April, 2014.

/s/ Casey K. McGarvey
Casey K. McGarvey
Attorney for EdiZONE, LLC

EXHIBIT A

Spenco Medical - Insoles



Spenco® Replacement Insoles

Spenco Insoles are divided into two main categories: **TOTAL SUPPORT® Stability** and **PolySorb® Cushioning**. Within these categories there are insoles that fit regular-volume shoes and insoles that fit low-volume and minimal shoes. Additionally, specialty products like **TOTAL SUPPORT® GEL**, **Q Factor for women** and **PolySorb® for kids** address the needs of specific users.

Stability

Cushioning

Classic Comfort

Specialty

Ironman®



TOTAL SUPPORT® Original
\$39.99



TOTAL SUPPORT® Max
\$39.99



TOTAL SUPPORT® Thin
\$39.99



PolySorb® Walker/Runner
\$24.99



PolySorb® Walker/Runner Wide
\$24.99



PolySorb® ProForm
\$19.99



PolySorb® Cross Trainer
\$19.99



PolySorb® Heavy Duty
\$19.99



ProForm GEL Full Length
\$14.99



ProForm GEL 3/4 Length
\$12.99



Spenco® GEL TOTAL
SUPPORT™
\$19.99



Spenco® GEL Comfort Insoles
\$14.99

[http://www.spenco.com/category.aspx?catid=2&cid=\[4/3/2014 12:04:51 PM\]](http://www.spenco.com/category.aspx?catid=2&cid=[4/3/2014 12:04:51 PM])

Spenco Medical - Insoles



Spenco® GEL Heel Cups
\$9.99



Spenco® GEL Ball-of-Foot
Cushions
\$6.99



Spenco® GEL Heel Cushions
\$6.99



Orthotic Arch Supports 3/4 Length
\$29.99



Thinsole® Orthotics Full Length
\$34.99



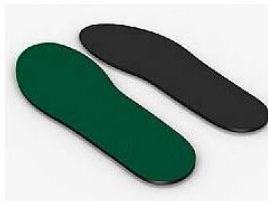
Thinsole® Orthotics 3/4-Length
\$29.99



Arch Cushion Full-Length
\$19.99



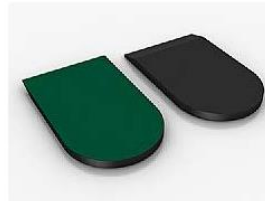
Arch Cushion 3/4-Length
\$17.99



Comfort Insoles
\$10.99



Ball-of-Foot Cushions
\$7.99



Heel Cushions
\$7.99



Spenco® Earthbound™
\$39.99



IRONMAN® Gel Insoles
\$14.99



IRONMAN® Sport Plus Insoles
\$14.99



Spenco® GRF Basketball
Replacement Insoles
\$39.99



IRONMAN® Race
\$49.99

Spenco Medical - Insoles



IRONMAN® Train
\$49.99

 WATCH VIDEO

Our Company

[Customer Service](#)
[Company](#)
[Contact](#)
[Privacy Policy & Terms](#)
[Return Policy](#)
[Shipping Information](#)
[Guidelines for Reviews](#)

Products

[Insoles](#)
[Healthcare](#)
[Footwear](#)
[Sale](#)
[Ambassadors](#)



Dealers

[Looking to Become a Spenco Dealer? >](#)

[Start Ordering Online at www.SpencoDirect.com](#)

© 2013 Spenco Medical Corporation | [Contact Us](#)