

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

GENFOOT INC., a corporation of Canada,  
and  
GENFOOT AMERICA INC., a corporation  
of Delaware,

Plaintiffs,

v.

LACROSSE FOOTWEAR, INC., a  
corporation of Wisconsin,

Defendant.

Case No. 1:13-cv-496-LM

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

NOW COME the plaintiffs, Genfoot Inc. and Genfoot America Inc. (collectively “Genfoot”), by and through their attorneys, Devine, Millimet & Branch, Professional Association, and complain against defendant LaCrosse Footwear, Inc. and state as follows:

1. This is an action by Plaintiffs Genfoot Inc. and Genfoot America Inc. (collectively “Genfoot”) for infringement of U.S. Patent No. 8,361,369 B1 (“the ‘369 Patent”). The ‘369 Patent covers processes for making waterproof footwear. Genfoot charges that Defendant has infringed the ‘369 Patent by importing, offering to sell and selling footwear made using processes covered by the ‘369 Patent, and/or by inducing others to import, offer to sell, and sell such products.

**JURISDICTION, VENUE AND PARTIES**

2. This action arises under the patent laws of the United States of America, 35 U.S.C. § 1, et seq., including 35 U.S.C. § 271. This Court has subject matter jurisdiction under

28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

3. Plaintiff Genfoot Inc. is a Canadian corporation organized under the laws of Canada, with a principal place of business at 1940 55<sup>th</sup> Avenue, Lachine, Quebec H8T 3H3.

4. Plaintiff Genfoot America Inc. is a wholly owned subsidiary of Genfoot Inc. Plaintiff Genfoot America Inc. is a Delaware corporation and has a principal place of business at 673 Industrial Park Road, Littleton, NH 03561-3953.

5. Genfoot is a leading manufacturer of footwear, including waterproof footwear. Genfoot has manufacturing facilities in Littleton, New Hampshire. Genfoot sells its footwear under the Kamik<sup>®</sup> brand.

6. On information and belief, Defendant Lacrosse Footwear, Inc. (“Lacrosse”) is a corporation of the state of Wisconsin. This Court has personal jurisdiction over Lacrosse because Lacrosse is doing business in this District. Further, Lacrosse has committed acts of infringement of the ‘369 Patent in this District by importing, offering to sell, and selling footwear that is made using a process covered by claims of the ‘369 Patent in violation of 35 U.S.C. § 271(g), and by purposefully distributing such footwear through established distribution channels through the stream of commerce into this District.

#### **THE GENFOOT PATENT**

7. On June 19, 2012, U.S. Patent Application Serial No. 13/527,246 (“the ‘246 application”) was filed in the United States Patent and Trademark Office (“USPTO”). The ‘246 application was directed to inventions by Gordon Cook and Joseph Bichai relating to methods and apparatus for making waterproof footwear. On January 29, 2013, the ‘369 Patent, based upon the ‘246 application and entitled “Method and Apparatus for Manufacturing Waterproof

Footwear with Attached Compressible Lining,” was duly and legally issued by the USPTO. The ‘369 Patent was assigned to Genfoot Inc. Genfoot Inc. is the owner of all right, title, and interest in the ‘369 Patent, and Genfoot Inc. has the exclusive right to sue and collect damages for infringement. Genfoot America Inc. is a licensee of the ‘369 Patent.

## **COUNT I**

### **INFRINGEMENT OF THE ‘369 PATENT**

8. Genfoot repeats and realleges paragraphs 1- 7 as if completely set forth herein.

9. On information and belief, Lacrosse has been and now is directly and/or indirectly infringing the ‘369 Patent by importing, offering to sell, selling, and/or using waterproof footwear that was made using one or more processes covered by at least one claim of the ‘369 Patent, and/or by inducing others to import, offer to sell, sell, and/or use waterproof footwear that was made using one or more processes covered by at least one claim of the ‘369 Patent. In particular, on information and belief, waterproof footwear that Lacrosse sells under the tradename Aerohead is made using a process covered by at least claim 1 of the ‘369 Patent.

10. Genfoot has investigated the nature of the processes used by Lacrosse to produce its Aerohead waterproof footwear. See [www.lacrossefootwear.com](http://www.lacrossefootwear.com). A substantial likelihood exists that Lacrosse’s Aerohead footwear is made by a process covered by the ‘369 Patent. The importation into the United States and the offering for sale, sale, and use of such products in the United States is a violation of 35 U.S.C. § 271(g), making Lacrosse liable for patent infringement.

11. Lacrosse had knowledge of the ‘369 Patent at least as early as December 12, 2013.

12. On information and belief, Lacrosse has been and currently is indirectly infringing the '369 Patent by actively inducing infringement of the '369 Patent in violation of 35 U.S.C. § 271(b). In particular, with knowledge of the '369 Patent, Lacrosse has been and currently is inducing infringement by knowingly and intentionally encouraging or aiding third parties (e.g., Lacrosse's distributors and/or customers) to offer to sell and sell the waterproof footwear marketed under the tradename Aerohead that was made using a process covered by at least claim 1 of the '369 Patent, in this judicial district and throughout the United States. These third parties have been and currently are directly infringing the '369 Patent by offering to sell and selling such footwear in the United States. Lacrosse, at least through its product literature and its marketing communications with these third parties, has actively induced and is actively inducing this infringement. Lacrosse is engaging and has been engaging in this inducing activity with the knowledge that these induced acts constitute infringement of the '369 Patent.

13. On information and belief, Lacrosse's infringement of the '369 Patent is and has been willful. In particular, Lacrosse is engaging and has been engaging in its infringing actions despite an objectively high likelihood that these actions constitute infringement of the '369 Patent, and, since at least as early as December 12, 2013, Lacrosse either knew or should have known of this objectively high likelihood that these actions constitute infringement of the '369 Patent.

14. Genfoot requests an injunction, preventing Lacrosse and those acting in concert with Lacrosse from importing into the United States and offering to sell, selling, and using in the United States any product made by a process covered by the '369 Patent, and from inducing others to do the same. Genfoot also requests damages for the infringement, increased damages

up to three times the amount of its compensatory damages to the extent facts show that the infringement has been willful, as well as its attorneys' fees and the costs of this action.

**RELIEF REQUESTED**

WHEREFORE, Genfoot respectfully requests the following relief:

- A. A judgment that Defendant Lacrosse has infringed valid U.S. Patent No. 8,361,369 under 35 U.S.C. § 271;
- B. That pursuant to 35 U.S.C. § 283, Defendant and all those acting in concert with Defendant who receive notice of this Court's judgment be enjoined from the importation into the United States and the manufacture, importation, use, offer to sell or sale within the United States of any product made by a process claimed in U.S. Patent No. 8,361,369;
- C. An award of damages sufficient to compensate for LaCrosse's infringement;
- D. Pursuant to 35 U.S.C. § 284, to the extent facts show that Defendant's acts of infringement are and have been willful, that the Court treble the compensatory damages awarded;
- E. Pursuant to 35 U.S.C. § 285, an award of attorneys' fees;
- F. An award of costs and expenses in this action; and
- G. Such further and other relief as this Court may deem just and proper.

**DEMAND FOR JURY**

Plaintiff demands a jury trial for all issues triable to a jury.

Respectfully submitted,

**GENFOOT INC. AND  
GENFOOT AMERICA INC.**

By their attorneys,

DEVINE, MILLIMET & BRANCH, P.A.

Dated: April 8, 2014

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**CERTIFICATE OF SERVICE**

I, Daniel E. Will, hereby certify that on this 7th day of April, 2014, I did cause a true and correct copy of Plaintiffs' FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL to be served by first class mail, postage prepaid, on the following:

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