

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALLYSON WALLACE

PRO-SE

789 SOUTH 18TH St.

NEWARK, NJ. 07103

(862)588-7822

Email address: truepink11@yahoo.com

ALLYSON WALLACE VS. IdeaVillage Product Corporation

AMENDED COMPLAINT

ALLYSON WALLACE

PLAINTIFF

VS.

IdeaVillage Product
Corporation.

DEFENDANTS

Civil Action No.2:06-cv- 05673(DMC)-MF

Jury Trail Demanded

COMPLAINT

- (1) Injunctive relief
- (2) Damages (including treble damages for willful infringement),
Lost profits and Reasonable Royalty
- (3) Attorneys' fees
- (4) Court costs

GENERAL ALLEGATIONS

JURISDICTION AND VENUE

(1). This action arises under the patent laws of the United States, 35 U.S.C. §§271, 281,283-285. Subject matter jurisdiction is conferred on this Court by U.S.C. §§ 1331 and 1338(a). Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b). 35 U.S.C. § 289(1994).

COMPLAINT

(2). Plaintiff Allyson Wallace, for her complaint of patent infringement against defendant IdeaVillage Products Corporation alleges as follows:

THE PARTIES

(3). The Plaintiff, Allyson Wallace is a citizen of the United States and a resident of the State of New Jersey.

(4). On information and belief, defendant IdeaVillage is a corporation organized under the laws of the State of New Jersey, having its principal place of business at IdeaVillage Products Corporation 155 Route 46 West, 4th Floor Wayne, New Jersey 07470. Phone: (973) 826 – 8400 Defendant's old website is www.infomercialratings.com/ideavillage.htm. Defendant's new website is <http://www.ideavillage.com/contactus.html>. Defendant 's IdeaVillage Products Corporation has, at all times material hereto, been registered to do business and has conducted business in the State of New Jersey.

BACKGROUND

(5). On February 3, 2004, United States Design Patent No. US D484,990 S was issued for an invention entitled "BODY WASHING BRUSH", listing Allyson Wallace as the inventor. A true and correct copy of the US D485,990 S patent is attached hereto as EXHIBIT "A".

(6). The United States Design Patent USD485,990 S conceptually speaking, this invention is a back washing aid which would be powered by battery or utilize water pressure to wash and massage a bather's back and other hard to reach areas, such as the feet.

(7). **Product Specifications.** The skin is the largest organ of the body. The skin's general condition will influence a person's overall health. Preparations for the care of the skin form a major portion of the cosmetics industry. These preparations include soaps, cleansing creams, moisturizers, lotions, and cleansing milks. In order to keep skin healthy, daily regimens must be followed.

(8). Skin care regimens should begin with regular bathing. In order for the skin to remain supple and healthy, it must be cleansed periodically. Oily skin requires daily or frequent washing, while a dry one should be bathed only often enough to keep clean. Because the upper and lower back areas can be hard to reach, in many cases, these areas are overlooked while bathing or showering. However, it is important for areas of the body to be cleansed with soap and warm water.

(9). With this in mind, Allyson Wallace has created "Body Washing Brush", which would be a shower stall or bathtub accessory item, which would assist bathers in washing their back. The "Body Washing Brush", would consist of a circular head designed with an elongated, curved handle. The unit would feature two separate compartments for water traveling through it. Or battery operated. Soap dispensing ports could be featured throughout the front panel of the unit. These ports would allow the soap to be automatically deposited onto the back as the unit is being used. The circumference of the rotating head would be approximately 4.5 inches to 5 inches .Or approximately 7 inches to 8 inches.

(10). To employ The "Body Washing Brush", the user would first place battery in the handle or would first attach it to the water outlet. While bathing, the user would simply move the rotating head across the back or other body part, with the use of the handle. The "Body Washing Brush", would be designed to effectively cleanse the entire back and other hard to reach areas, such as the feet. The unit could also massage the user's back, soothing soar and aching muscles and further enhancing a relaxing bathing experience. With the use of the "Body Washing Brush", consumers could leave the bath feeling thoroughly cleansed and refreshed. The "Body Washing Brush", would make washing one's Back less strenuous on the shoulders and arms, and would make effective cleansing of the difficult to reach middle back area possible. The "Body Washing Brush", could be beneficial in virtually any home in any bathroom. Although men, women and

children of all ages could enjoy this device, it could be particularly beneficial to those with back problems or limited mobility in the arms and shoulders.

(11). On information and belief, Defendant IdeaVillage Products Corporation has engaged in infringement of the "Body Washing Brush", the color, size and material characteristics, which are considered to be "off the shelf " type materials. This means they are readily available, Competitively priced and meet the standards set by the United States government, i.e., O.S.H.A., EPA, UL, etc. There is no difference in structural, function and overall appearance, which is substantially the same. There is not a significant difference in the overall product specification or shape.

(12). On February 3, 2004, United States Design Patent No. USD485, 990 S was issued for an invention entitled "Body Washing Brush", listing Allyson Wallace as the inventor. The IdeaVillage Products Corporation product the "Spin Spa" was patent pending in the year of 2004-2006. Prior to issuance, all right, title and interest in and to the US D485,990 S patent. Ms. Wallace conceived the idea for the "Body Washing Brush", during the month of December 1998 and first disclosed this information to others in January of 1999.

(13). On 5/14/99. Inventor Allyson Wallace requested from the Commissioner of Patent s, Washington DC. 20231 to accept her idea under the Discloser Program. The form stated the following: The undersigned, being the inventor of the disclosed invention, be preserved of two year. Please return the confirming copy with the Disclosure Document Number and the Date To the undersigned in the enclosed, self- envelope. Exhibit "B". In the year of 1999 I consulted with marketing consultant Jay Colombo at Advent Products Development Located in Edison NJ. to conduct a patent search and to construct a patent profile.

(14). On August 22, 2006, I sent a cease and desist letter to the IdeaVillage, located at IdeaVillage Products Corporation. 21 Law Dr. 2nd Floor. Fairfield, NJ 07004. Phone: (973)808-7355 www.infomercialratings.com/idea_village.htm. Defendant IdeaVillage never respond to my letter to cease and desist. Exhibit "C".

COUNT I

PATENT INFRINGEMENT

(15). Paragraphs 1-14 above, inclusive, are hereby incorporated herein by reference.

(16). Defendant IdeaVillage Products Corporation has used , sold or offered to sell, and will continue to use, sell or offer to sell, "Spin Spa" that infringes each of the elements of one or more claims of the US D485,990 S patent, without license from Allyson Wallace, in this judicial district and elsewhere throughout the United States.

(17). By using, selling , and /or offering for sale its "Spin Spa " over the Internet website services, Television , Department stores, Variety Stores, Orthopedic Appliances, Pharmacies, Home Centers, House wares Retail, Bathroom Fixtures and Accessories Retail, Plumbing Fixtures and Accessories Retail, Mail Order and Catalogue Shopping, and Radio. Defendant IdeaVillage Products Corporation has directly and contributory infringed, and will continue

(18). By making, using, selling, and or/offering for sale, defendant IdeaVillage Products Corporation has induced infringement of, and will continue to induce infringement of, one or more claims of the US D485,990 S patent under 35 U.S.C § 271 (b), and or (f), literally and /or under the doctrine of equivalents.

(19). As a direct and proximate consequence of the acts and practices of defendant, plaintiff Allyson Wallace small entity "BODY WASHING BRUSH", has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C § 284.

(20). As a direct and proximate consequence of the acts and practices of defendant, defendant has also caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to plaintiff Allyson Wallace for which there is no adequate remedy at law, and for which plaintiff is entitled to injunctive relief under 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, plaintiff ALLYSON WALLACE prays for the entry of a judgment from this Court:

- a. Declaring that United States Letters Patent US D485,990 S was duly and legally issued, is valid and is enforceable;
- b. Declaring that defendant IdeaVillage Products Corporation has directly infringed, contributory infringed, and /or induced infringement of one or more claims of the US D485,990 S patent;
- c. Declaring that defendant IdeaVillage Products Corporation has willfully infringed one or more claims of the US D485,990 S patent;
- d. Deeming this to be an "exceptional" case within the meaning of 35 U.S. C. § 285, entitling plaintiff to an award of its reasonable attorney fees, expenses and costs in this action; and
- e. Preliminarily and permanently enjoining defendant's IdeaVillage Products Corporation and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from committing further acts of infringement under 35 U.S.C. § 271 of any one or more claims of the US D 485,990 S patent pursuant to 35 U.S.C. § 283;
- f. Awarding plaintiff damages in accordance with 35 U.S.C. § 284;
- g. Awarding plaintiff its costs in connection with this action; and
- h. Whoever during the term of a patent for a design, without license of the owner (1) applies the patented design, or any colorable imitation thereof, manufacture for the purpose of sale, or (2) sell or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner in accordance with 35 U.S.C. § 289(1994);
- i. Awarding plaintiff such other and further relief as this Court may deem to be just and proper.

Dated: April 11, 2011

RESPECTFULLY SUBMITTED,

ALLYSON WALLACE

By: Allyson Wallace

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(862) 588-7822