

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)**

IOTTIE INC. and HSM Co., Ltd.,

Plaintiffs,

v.

BESTEK GROUP LTD.,

Defendant.

Civil Action No. 3:14-cv-166-HZH

**FIRST AMENDED COMPLAINT
FOR PATENT, TRADEMARK,
AND COPYRIGHT
INFRINGEMENT;
DEMAND FOR JURY TRIAL**

Plaintiffs iOttie, Inc. and HSM Co., Ltd. (respectively, “iOttie” or “HSM”, collectively and/or individually referred to as “Plaintiff” or “Plaintiffs”), for their complaint against Defendant Bestek Group Ltd. (“Bestek”) for preliminary and permanent injunctive and declaratory relief and for damages, including treble or multiple damages, for patent, trademark, and copyright infringement, states and alleges as follows:

NATURE OF THE ACTION

1. Plaintiffs allege that Bestek has infringed and continues to infringe one or more claims of the United States Patent No. 8,627,953 (“the ’953 Patent” or “Patent-in-Suit”). This is a civil action for patent infringement of the ’953 Patent, including willful infringement of the ’953 Patent by Bestek.

2. The technology at issue involves a holding mechanism and, more particularly, to a holder for a portable device.

3. Plaintiff alleges that Bestek infringes Plaintiff’s trademark rights, including common law rights and U.S. Registration No. 4,484,524 for the mark “EASY ONE TOUCH” covering in-car telephone handset cradles and other good related to portable cell phones (hereinafter “the ’524 registration).

4. Plaintiff alleges that Bestek infringes Plaintiff’s copyrights in original works of authorship including drawings, text, photographs, images, and written instructional works (hereinafter referred to as “copyrighted works” or “works”).

THE PARTIES

5. HSM is a corporation organized under the laws of the Republic of Korea, having a place of business located in Seoul, Korea. It is the owner of the ’953 Patent.

6. iOttie is a corporation organized under the laws of the State of New York and maintains its principal place of business at 214 State Street #102, Hackensack, New Jersey, 07601. iOttie is the exclusive licensee, from HSM, of the ’953 Patent.

7. On information and belief, Bestek is a California corporation with its principal place of business at 19295 E, Walnut Drive North City of Industry, California 91748.

JURISDICTION AND VENUE

8. This action is based upon and arises under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.* In particular §§ 271, 281, 283, 284 and 285 is intended to redress infringement of the '953 Patent owned and exclusively licensed by Plaintiffs.

9. This action also arises under the Federal Copyright laws 17 U.S.C. §101, *et seq.* and United States Trademark Act of 1946 ("the Lanham Act"), 15 U.S.C. §§ 1051-1127.

10. The Court has subject matter jurisdiction under 15 U.S.C. §§ 1116, 1121 and 28 U.S.C. §§ 1331 and 1338 and supplemental jurisdiction under 28 U.S.C. §1367

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a)(b).

12. Bestek has transacted and continues to transact business in the United States and in this judicial district and division by: using or causing to be used; making; importing or causing to be imported; offering to sell or causing to be offered for sale; and/or selling or causing to be sold directly, through intermediaries and/or as an intermediary, a variety of products that infringe the '953 Patent to customers in the United States, and infringes Plaintiff's trademark and copyrights, with sales to customers in this judicial district and division, and Defendant will continue to do so unless enjoined by this Court.

13. Upon information and belief, Bestek is subject to this Court's general and/or specific personal jurisdiction, because it has committed acts of infringement in the Commonwealth of Virginia as alleged below; and/or Bestek is engaged in continuous activities in the Commonwealth of Virginia. Bestek acts caused injury to Plaintiffs in the Commonwealth, and Bestek regularly does or solicits business, or engages in a course of conduct, or derives

substantial revenue from goods used or consumed or services rendered in this Commonwealth. Therefore, this Court has personal jurisdiction over Bestek.

14. Venue is proper in this district pursuant to 28 U.S.C §§1391 and 1400(b).

THE PATENT-IN-SUIT

15. On January 14, 2014, the '953 Patent, entitled "Holder for portable device" was duly and legally issued by the United States Patent and Trademark Office. HSM is the owner of all rights, title, and interest in and to the '953 Patent. A copy of the '953 Patent is attached as Exhibit A.

16. iOttie is an exclusive licensee of the '953 Patent and possesses the right to sue and to recover for infringement of the '953 Patent.

FACTUAL BACKGROUND

17. HSM is the owner of the '953 Patent, and has invested substantial time and money in designing, developing, manufacturing and producing holder products that incorporate the patented technology HSM, e.g., developed the "Easy One Touch" Car Mount Holder for a portable device.

18. HSM has granted to iOttie the exclusive right to sell, re-sell and distribute the products under iOttie's own brand name. iOttie has purchased and is purchasing the products from HSM. iOttie has sold and is selling the product in the United States using the EASY ONE TOUCH mark. iOttie is the owner of trademark rights under the '524 registration which is valid and enforceable, and common law trademark rights. iOttie is the owner of the copyrighted works.

19. iOttie holds full power and authority to bring and prosecute lawsuits against third parties for infringement of the '953 Patent, the '524 registration, and the "copyrighted works."

20. Bestek at least uses, causes to be used, makes, imports, causes to be imported, offers for sale, causes to be offered for sale, sells, and/or causes to be sold in the United States and in this judicial district a product (e.g., the Bestek Holder such as model no. BTCM01) for holding a portable device that incorporates the technology claimed in the '953 Patent.

21. Bestek has induced and continues to induce infringement of the '953 Patent in the United States and in this judicial district.

22. Bestek has used the mark EASY ONE TOUCH on packaging and in connection with marketing a car mount holder in the United States and in this judicial district.

23. Bestek has used Plaintiff's copyrighted works on packaging and instructional material in connection with sales of a car mount holder in the United States and in this judicial district. Bestek actively sells to and solicits business from customers and distributors located in the United States.

24. Bestek will continue to do so unless enjoined.

COUNT I

CLAIM FOR DIRECT INFRINGEMENT OF THE '953 PATENT

25. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 24.

26. On January 14, 2014, United States Letters Patent No. 8,627,953 was issued to the HSM for an invention in a holder for a portable device. HSM owned the patent throughout the period of Bestek's infringing acts and still owns the '953 Patent.

27. Bestek has used, made, sold, imported or offered a Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) for sale in the United States, and has used the Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) in conjunction with a portable device in the United States. Such sales and offers for sale are in this judicial district and division.

28. Bestek has infringed and is still infringing the Letters Patent by making, selling, offering for sale, and using the Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) for a portable device that embodies the patented invention, and Bestek will continue to do so unless enjoined by this court.

29. Plaintiffs have complied with the statutory requirement of placing a notice of the Letters Patent on Plaintiff's Car Mount Holder for the portable device it manufactures and sells and has given Defendant written notice of the infringement.

30. For at least some period of time, Bestek has known that the Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) used in conjunction with Bestek's portable devices, infringe certain claims of the '953 patent.

31. Bestek's actions constitute direct patent infringement under 35 U.S.C. § 271(a).

32. Plaintiffs are informed and believe that Bestek's infringement of the '953 patent will continue unless enjoined by this Court.

33. Bestek's direct infringement has been intentional, willful, and with a reckless disregard for the rights of Plaintiffs.

34. Bestek has caused Plaintiffs substantial injury, including lost profits, for which Plaintiffs are entitled to damages adequate to compensate them for direct infringement.

35. Bestek's direct infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT II

CLAIM FOR CONTRIBUTORY INFRINGEMENT OF THE '953 PATENT

36. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 35.

37. Bestek has made, sold, imported or offered the Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) for sale in the United States.

38. The Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) is especially made, or especially adapted, for use in the making of device that infringe certain claims of the '953 patent.

39. The Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) has no substantial non-infringing use.

40. For at least some period of time, Bestek has known that the Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) is especially made, advertised, and offered for sale for use by third party users, infringing certain claims of the '953 patent.

41. Bestek's actions constitute contributory patent infringement under 35 U.S.C. §271(c).

42. Plaintiffs are informed and believe that Bestek's contributory infringement of the '953 patent will continue unless enjoined by this Court.

43. Bestek's contributory infringement has been intentional, willful, and with a reckless disregard for the rights of Plaintiffs.

44. Bestek has caused Plaintiffs substantial injury, including lost profits, for which Plaintiffs are entitled to damages adequate to compensate them for contributory infringement.

45. Bestek's contributory infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT III

CLAIM FOR ACTIVE INDUCEMENT OF INFRINGEMENT

OF THE '953 PATENT

46. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 45.

47. Plaintiffs are informed and believe that third party users of the Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) are directly infringing certain claims of the '953 patent.

48. Plaintiffs are informed and believe that by advertising, offering for sale, selling and supporting the Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01), Bestek has knowingly and intentionally caused third party users of the Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) to infringe certain claims of the '953 patent.

49. Plaintiffs are informed and believe that, after having been put on notice of the existence of the '953 patent and the infringing use of the Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01), Bestek has continued to advertise, offer for sale, sell and support the Bestek Car Mount Holder (e.g., the Bestek Holder such as model no. BTCM01) to third party users with the intent to induce third party users to infringe the '953 patent.

50. Bestek's actions constitute active inducement of patent infringement under 35 U.S.C. § 271(b).

51. Plaintiffs are informed and believe that Bestek's active inducement of infringement of the '953 patent will continue unless enjoined by this Court.

52. Bestek's active inducement of infringement has been intentional, willful, and with a reckless disregard for the rights of Plaintiffs.

53. Bestek has caused Plaintiffs substantial injury, including lost profits, for which Plaintiffs are entitled to damages adequate to compensate them for direct infringement.

54. Bestek's active inducement of infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

CLAIM IV

TRADEMARK INFRINGEMENT UNDER SECTION 15 U.S.C. §1114

55. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 54.

56. Plaintiff's '524 registration was filed on June 27, 2013 and alleged a first use date of May 1, 2012. A copy of the '524 certificate of registration is attached at Exhibit B.

57. On information and belief Plaintiffs' first use date of the mark EASY ONE TOUCH (hereinafter "the mark") was prior to Bestek's earliest use of the mark.

58. Bestek has been using the mark on packaging and in connection with sales of car-mount holders. A copy of Bestek's product packaging prominently displaying the mark is attached at Exhibit C.

59. Besteks' uses of the mark creates a false affiliation which is likely to cause confusion and to cause mistake, and to deceive as to the affiliation, connection or source of Bestek's car mount holder with Plaintiff as to the origin, sponsorship, or approval of Plaintiff's products and commercial activities, in violation of the Lanham Act, 15 U.S.C. § 1114.

60. Bestek's acts, as set forth above, have caused irreparable injury to Plaintiffs' goodwill and reputation and will continue to injure Plaintiffs.

61. On information and belief Bestek had actual knowledge of Plaintiffs' prior use of the mark when Bestek adopted and commenced use of the identical mark.

62. Bestek's offers of its competing car mount holder using the mark have been priced at approximately half the retail price of Plaintiff's car mount holder.

63. On information and belief Bestek's adoption of Plaintiff's mark was willful and with intent to direct sales to Bestek and away from Plaintiff by undercutting Plaintiff's pricing for identical or nearly identical products sold under the identical or nearly identical mark.

64. Plaintiff is entitled to a preliminary and/or permanent injunction against Bestek, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, costs and attorneys' fees

CLAIM V

FEDERAL UNFAIR COMPETITION UNDER 35 U.S.C. §1125(a)

65. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 64.

66. Besteks' uses of the mark creates a false affiliation and false designation of origin which is likely to cause confusion and to cause mistake, and to deceive as to the affiliation,

connection or source of Bestek's car mount holder with Plaintiffs as to the origin, sponsorship, or approval of Plaintiffs' products and commercial activities, in violation of the Lanham Act, 15 U.S.C. § 1125 and Plaintiffs have been harmed thereby.

COUNT VI

UNFAIR COMPETITION

67. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 66.

68. Plaintiffs allege the aforesaid acts of trademark infringement violate common law rights and constitute unfair competition and Plaintiff has been harmed thereby.

COUNT VII

FEDERAL COPYRIGHT INFRINGEMENT

69. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 68.

70. At all times relevant hereto, Plaintiff has been and still is the owner and proprietor of all right, title, and interest in and to the copyrighted works.

71. The copyrighted works comprise original material and are copyrightable subject matter under the copyright laws of the United States.

72. The copyrighted works are subject to pending applications for registration before the U.S. Copyright Office.

73. With full knowledge of Plaintiff's rights herein, Bestek has infringed Plaintiff's copyrights by making slavish copies of Plaintiff's copyrighted works. Attached at Exhibit C is a comparison showing (1) Plaintiff's works, (2) Bestek's promulgated marketing material including photographic images, packaging and instructions; and (3) a side-by-side comparison of the two.

74. On information and belief Bestek had access to Plaintiff's copyrighted works.

75. There is near identical similarity between the promulgated marketing material including photographic images, drawings and text used by Bestek compared to the original works owned by Plaintiff.

76. Bestek's aforesaid acts violate Plaintiff's exclusive rights under §106 of the Copyright Act, 17 U.S.C. §106, and constitute infringement of Plaintiff's copyrights.

77. Bestek's slavish copying constitutes willful and deliberate infringement of Plaintiff's copyrights.

78. Bestek's copying causes irreparable harm and damages to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and seek relief against Defendant as follows:

A. An adjudication that one or more claims of the Patent-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant and/or the Defendant in conjunction with its customers;

B. An adjudication that Defendant has induced infringement of one or more claims of the Patent-in-Suit;

C. An adjudication that Defendant has contributed to the infringement of one or more claims of the Patent-in-Suit;

D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with prejudgment interest pursuant to 35 U.S.C. § 284;

E. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of its actions, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of infringement with respect to the claims of the Patent-in-Suit;

G. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285;

H. That the Court enter judgment against Bestek that it willfully infringed Plaintiff's copyrights under 17 U.S.C. §501, *et seq.*;

I. That Bestek be required to pay to Plaintiff such actual damages as sustained as a result of Bestek's copyright infringement pursuant to 17 U.S.C. §504(b);

J. That Bestek be required to pay to account for and disgorge to Plaintiff all gains, profits, and advantages derived by copyright infringement pursuant to 17 U.S.C. §504(b);

K. That Bestek be permanently enjoined from infringing Plaintiff's copyrights in the works;

L. That the Court enter judgment against Bestek that it willfully infringed Plaintiff's trademark rights under 15 U.S. C. §§ 1114 and 1125;

M. That Bestek be permanently enjoined from infringing Plaintiff's trademark rights and rights as afforded by the '524 trademark registration;

N. That the Court determine this case to be exceptional and enter judgment damages which adequately compensate Plaintiff and award attorney fees pursuant to 15 U.S.C. §1117;

O. That the Court issue a preliminary and final injunction enjoining further infringing activity;

P. That the Court require an accounting for all Bestek's sales and profits;

Q. That the Court award Plaintiffs Interests and costs; and

R. Any further relief that this Court deems just and proper.

Dated: June 5, 2014

Respectfully submitted,
By: /s/Sean Allen Passino

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Attorneys for Plaintiffs IOTTIE, INC. and HSM Co., Ltd.

Certificate of Service

I hereby certify that on this 5th day of June 2014, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

By:

/s/Jeffrey H. Greger

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