

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION**

(Electronically Filed)

BRIAN EDWARD DOSS)
A citizen of Kentucky)
978 U.S. Highway 68 East)
Benton, Kentucky 42025)

Plaintiff,)

v.)

Civil Action No. 5:14CV-202-R

SPIN CHILL CORP)
A Florida Corporation)
417 SW 40th Terrace)
Gainesville, Florida 32607)

Defendant)

Serve:)

Trevor W. Abbot)
Registered Agent)
5805 Lanate Ave.)
New Port Richey, Florida 34652)

COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiff, Brian Edward Doss (“Doss” or “Plaintiff”), by counsel, for his Complaint against Defendant, Spin Chill Corp (“SCC” or “Defendant”), alleges as follows:

INTRODUCTION

1. This is an action for patent infringement under 35 U.S.C. § 271. Plaintiff seeks monetary damages, enhanced damages (including treble damages), attorneys’ fees, costs, and permanent injunctive relief preventing continuing acts of infringement on the part of SCC.

THE PARTIES

2. Plaintiff is an individual residing in Kentucky with an address located at 978 U.S. Highway 68 East, Benton, Kentucky 42025.

3. Upon information and belief, SCC is a Florida Corporation with its principal place of business located at 417 SW 40th Terrace, Gainesville, Florida 32607.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction by virtue of the fact that this is a civil action under the Patent Act, 35 U.S.C. § 1 *et seq.*, jurisdiction being conferred in accordance with 28 U.S.C. §§ 1331 and 1338(a) and (b).

5. The Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. SCC, upon information and belief, transacts business nationwide, including within the Commonwealth of Kentucky and including within this judicial district. Further, SCC's infringement asserted herein is occurring throughout the United States, including within the Commonwealth of Kentucky, and including within this judicial district.

7. Further, upon information and belief, SCC regularly solicits and conducts business in the Commonwealth of Kentucky and derives substantial revenue from goods sold in Kentucky. In addition, SCC has caused tortious injury in the Commonwealth of Kentucky through actions taken in Kentucky and/or has caused tortious injury in Kentucky by actions taken outside the Commonwealth of Kentucky.

8. On information and belief, venue is properly laid in this Court under 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b), because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTS COMMON TO ALL CLAIMS

The Plaintiff and the Patent in Suit

9. This action involves allegations of infringement of U.S. Patent No. 7,637,120 entitled Container Holding Device (“the ‘120 Patent”), which relates to Plaintiff’s container holding device which can be attached to a hand held motorized rotary device and used to quickly cool the liquid in the container.

10. Plaintiff is the owner of, and claims rights under, the ‘120 Patent, which was issued by the United States Patent and Trademark Office (“PTO”) on December 29, 2009 in the name of inventor, Brian Edward Doss. The ‘120 Patent issued from application serial no. 11/365,183 having a filing date of March 1, 2006. A copy of the ‘120 Patent is attached hereto as **Exhibit 1** and incorporated by reference herein.

11. By virtue of his ownership of the ‘120 Patent, Plaintiff has the right to exclude others from making, using, selling or offering to sell, or importing into the United States embodiments of the inventions claimed in the ‘120 Patent. Plaintiff has not authorized SCC to make, use, sell or offer to sell, or import into the United States any invention under the ‘120 Patent.

The Defendant and the Infringing Products

12. Upon information and belief, SCC is a company which created and sells a beverage cooling device under the name “Chill Bit.” The Chill Bit is a device which can be connected to a hand held motorized rotary device and allows the user to attach a beverage to the device and spin the beverage in ice or ice water in order to cool the beverage in a manner faster

than the typical method of cooling beverages. SCC further created and sells a modified version of the Chill Bit under the name “Spin Chill.” The Spin Chill product is a self-contained, portable version of the Chill Bit which is also used to quickly chill beverages. The Chill Bit and the Spin Chill are hereinafter collectively referred to as the “Accused Devices.”

13. Upon information and belief, SCC sells the Accused Devices through its interactive website located at the domain name <http://www.spinchill.com> (“the Website”).

14. Upon information and belief, the Accused Devices are also sold through third party websites such as <amazon.com>.

15. Upon information and belief, the Accused Devices first appeared for sale on the Website and through third party websites such as Amazon.com, in or around November 2013.

16. Upon information and belief, SCC began selling and/or offering for sale the Accused Devices in some form at least as early as May 2013.

17. Upon information and belief, SCC has sold the Accused Devices in Kentucky and within this judicial district.

18. Sometime in and around March 2014, Plaintiff located a promotional segment for the Accused Devices by searching online.

19. Soon thereafter, in and around March 2014, Plaintiff contacted representatives of SCC to discuss his concern that the Accused Devices might infringe upon Plaintiff’s patent.

20. In that initial discussion, representatives of SCC indicated to Plaintiff that something could be worked out. However, Plaintiff never heard back from SCC after that initial discussion.

21. As a result, on April 2, 2014, counsel for Plaintiff sent SCC a letter outlining Plaintiff’s belief that the Accused Devices infringed upon Plaintiff’s patent rights and requested

that SCC cease and desist from any further sale and/or manufacture of the Accused Devices. A copy of the April 2, 2014 letter is attached hereto as **Exhibit 2**, and incorporated by reference herein.

22. In a response dated May 5, 2014, counsel for SCC incorrectly asserted that the Accused Devices did not infringe on Plaintiff's patent and further argued that the patent was invalid. SCC refused to otherwise comply with Plaintiff's demands. A copy of the May 5, 2014 letter is attached hereto as **Exhibit 3**, and incorporated by reference herein.

COUNT I
Infringement of the '120 Patent
(35 U.S.C. § 271)

23. Plaintiff repeats and realleges paragraphs 1 through 22 of this Complaint as if set forth herein.

24. Upon information and belief, SCC, without permission or license from Plaintiff, has unlawfully and wrongfully made, sold or offered for sale, used, and/or imported, contributed to the making, selling or offering for sale, using, and/or importing, or induced others to make, sell, or offer for sale, use and/or import, in direct competition with Plaintiff within the United States, including within this judicial district, the Accused Devices.

25. On information and belief, the Accused Devices, and the use thereof, contains, embodies and employs the invention(s) described and claimed in the '120 Patent, in violation of Plaintiff's exclusive rights thereunder, and infringes at least one claim of Plaintiff's '120 Patent, including but not necessarily limited to claims 1 and 7, to the great loss and injury to Plaintiff.

26. Upon information and belief, SCC's unlawful making, using, selling or offering for sale, or importing, or unlawfully contributing to the making, using, selling or offering to sell, or importing, or unlawfully inducing others to make, use, sell or offer to sell, or import the

Accused Devices within the United States including within this judicial district constitutes infringement of the '120 Patent as aforesaid.

27. Upon information and belief, SCC has derived, received, and will unless restrained and/or enjoined derive and receive from the aforesaid direct, contributory, and/or induced infringement of the '120 Patent, substantial gains, profits, and advantages, including gains profits and advantages from regular making and sales of infringing devices within this judicial district, in amounts to be proven at trial. As a direct and proximate result of the aforesaid infringement, Plaintiff has been, and will be, greatly damaged and has been, and will be, deprived and prevented from receiving, if such further infringement is not restrained and enjoined by this Court, all the gains and profits to which Plaintiff is lawfully entitled and which they would have derived and received, but for the aforesaid infringement by SCC.

COUNT II
Willful Patent Infringement
(35 U.S.C. § 284)

28. Plaintiff repeats and realleges paragraphs 1 through 27 of this Complaint as if set forth herein.

29. Upon information and belief, SCC had notice and knowledge of the '120 Patent, but despite such notice and knowledge has deliberately made, used, sold, offered for sale and/or imported the Accused Devices, and thereby has infringed and continues to infringe, has induced others to infringe and continues to induce others to infringe, and/or has contributed to the infringement and continues to contribute to infringement of the '120 Patent.

30. Because SCC has infringed or induced others to infringe or contributed to the infringement of the '120 Patent despite notice and knowledge thereof, SCC's infringement, inducement of infringement, and/or contributing to the infringement of the '120 Patent, has been,

and continues to be, willful, deliberate, and in conscious disregard for the rights of Plaintiff under the '120 Patent.

COUNT III
Injunctive Relief

31. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint as if set forth herein.

32. Upon a finding that the Accused Devices infringe the '120 Patent, Plaintiff is entitled to an order under 35 U.S.C. § 283 permanently enjoining SCC from making, selling or offering for sale, and unlawfully importing the Accused Devices in or into the United States.

COUNT IV
Accounting

33. Plaintiff repeats and realleges paragraphs 1 through 32 of this Complaint as if set forth herein.

34. Plaintiff demands an accounting of all earnings achieved by SCC as a consequence of SCC's manufacture, sale, use, or importing of the Accused Devices which results in direct or indirect infringement of the '120 Patent.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Brian Edward Doss requests a judgment in his favor and against Defendant, Spin Chill Corp ordering:

A. That Judgment be entered in favor of Plaintiff and against Defendant on Counts I through IV of the Complaint;

B. That Defendant, and each of its officers, directors, agents, servants, employees and representatives, and those persons in active concert or participation with them or any of them, be permanently enjoined and restrained from directly or indirectly making or causing to be

made, offering for sale, selling or causing to be sold, using or causing to be used, or importing or causing to be imported any product in accordance with or embodying any invention(s) set forth and claimed in the '120 Patent, including the Accused Devices;

C. That Defendant be directed to account to Plaintiff for all gains, profits and advantages realized by Defendant from its manufacturing, selling, importing, and marketing of the Accused Devices resulting in infringement of the '120 Patent and unlawful use and practice of the invention(s) patented in and by the '120 Patent, from the beginning of marketing the Accused Devices, and other products or necessary accessories sold in connection therewith, and other products which infringe the '120 Patent and accessories sold therewith, up to and including the time of trial;

D. That, in addition, Defendant be ordered to pay to Plaintiff such damages as have been sustained by Plaintiff as a result of Defendant's direct and/or indirect infringement of the '120 Patent up to the time of trial;

E. That, in addition, Defendant be ordered to pay to Plaintiff such damages recoverable under 35 U.S.C. § 284 and/or as have actually been sustained by Plaintiff as a result of said infringement of the '120 Patent by Defendant up to the time of trial.

F. That all damages awarded to Plaintiff be trebled by the Court pursuant to 35 U.S.C. § 284;

G. That Plaintiff recover his reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

H. That Plaintiff recover his costs and disbursements herein;

I. That Plaintiff recover prejudgment interest;

J. The Plaintiff have trial by jury on all issues so triable; and

K. That Plaintiff be awarded such other and further relief as the Court may deem just and proper.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE

Dated: October 31, 2014

Respectfully submitted,

/s/ Robert J. Theuerkauf _____

Robert Theuerkauf, KY Bar No. 89068

Brian P. McGraw, KY Bar No. 90447

MIDDLETON REUTLINGER

401 S. 4th Street, Suite 2600

Louisville, Kentucky 40202

Phone: (502) 584-1135

Fax: (502) 561-0442

rtheuerkauf@middletonlaw.com

bmcgraw@middletonlaw.com

ATTORNEYS FOR PLAINTIFF

BRIAN EDWARD DOSS