

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SPORTSTAR ATHLETICS, INC.

Plaintiff,

v.

**UNDER ARMOUR, INC. and
JR286, Inc.**

Defendants.

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C.A. NO. 4:14-cv-01304

DEMAND FOR JURY TRIAL

PLAINTIFF’S FIRST AMENDED COMPLAINT

Parties

1. Plaintiff SportStar Athletics, Inc. (“SportStar”) is a corporation organized under the laws of the State of Texas. SportStar has exclusively licensed at least all substantial rights to the patents-in-suit, including the exclusive right to sue for past, present and future infringement, and thus it has standing to pursue the claims herein.

2. Defendant Under Armour, Inc. (“Under Armour”) is a corporation that is incorporated under the laws of the State of Maryland. Under Armour has its principal place of business at 1020 Hull St., Baltimore, Maryland 21230. Under Armour has been served and has appeared in this case.

3. Defendant JR286, Inc. (“JR286”) is a corporation that is incorporated under the laws of the State of California. JR286 has its principal place of business at 20100 S. Vermont Ave., Torrance, California 90502-1361. JR286 has been served and has appeared in this case.

Jurisdiction and Venue

4. This is an action for patent infringement and damages arising under the Patent Laws of the United States, Title 35 of the United States Code. This is also an action for an injunction, a declaratory judgment and further necessary and proper relief under 28 U.S.C. §§ 2201, 2202. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1338(a) and/or 1367, and has personal jurisdiction over Defendants Under Armour and JR286.

5. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

Facts

6. SportStar is a leading manufacturer of sports-related equipment and paraphernalia, including molded, padded chin straps or chin guards for use with, *e.g.*, football helmets.

7. On June 15, 2010, the U.S. Patent and Trademark Office (“USPTO”) duly issued U.S. Patent No. 7,735,160 B1 (the “160 Splitter Patent”), entitled Chin Guard Apparatus for Use with a Helmet, naming Paul Schiebl (“Schiebl”), 1513 Story St., Houston, Texas (US) 77055 as the inventor. On March 1, 2011, USPTO duly issued U.S. Patent No. 7,895,677 B1 (the “677 Foam Fabric Bumps Patent”), entitled Chin Guard with Bumped Contact Surface, naming Paul Schiebl, Houston, Texas (US) as Inventor. On January 7, 2014, USPTO duly issued U.S. Patent No. 8,621,671 B1 (the “671 Two Strap-Receiving Slots Patent”), entitled Protective Chin Guard, naming Paul Schiebl, Houston, Texas (US) as Inventor.

8. Schiebl has exclusively licensed the rights to the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, and the 671 Two Strap-Receiving Slots Patent

(individually “Patent” and collectively the “Patents”) to SportStar. Inventions covered and protected by these Patents are made, used and/or sold in the United States and in this District. Products infringing the Patents are distributed and sold in the United States and in this District. SportStar as exclusive licensee had and has the rights to these Patents during the period of Defendant Under Armour’s and Defendant JR286’s infringement, and continues to possess those Patents’ rights.

9. Defendants Under Armour and/or JR286 have carried out various acts of infringement, including acts in deliberate, intentional and willful disregard of SportStar’s rights in the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, and/or the 671 Two Strap-Receiving Slots Patent. SportStar alleges that the Defendants will continue to infringe these Patents in the future.

10. On October 19, 2009, Under Armour employee John Drab visited SportStar’s website and purchased online three SportStar chin straps: a SFT Softcup Chin strap, a T-Rex Custom Color Chin strap and a Gx-4 HydroGel Chin strap. These chin straps were shipped to Under Armour’s offices in Baltimore, Maryland. The chin straps that Mr. Drab purchased included inventions and processes covered by one or more of the Patents.

11. Under Armour CEO Kevin Plank, as well as several other Under Armour employees, subsequently visited a SportStar booth on or about January 11, 2010, at a tradeshow conducted as part of the American Football Coaches Association convention in Orlando, Florida. These Under Armour personnel spoke in detail with a SportStar representative at the booth about SportStar chin straps or chin guards covered by the Patents, and the unique qualities and attributes of these chin straps as compared to

other available products. SportStar CEO Paul Schiebl followed up with an email to Plank on January 18, 2010, to continue the discussions Under Armour initiated at the tradeshow, and to express interest in making and selling a SportStar chin strap or chin guard for the Under Armour brand. As Schiebl noted, some of the National Football League's top players, e.g., Eli Manning, Andre Johnson, Drew Brees, DeMarcus Ware, Ben Roethlisberger and others wore SportStar gear featuring the technology covered by the Patents.

12. Schiebl's email culminated in an in-person meeting, with Schiebl being invited to Under Armour's Baltimore offices to discuss a licensing or production agreement for chin straps chin guards covered by the Patents. At this February 4, 2010 meeting, Schiebl made a detailed presentation to Under Armour about SportStar and its technology and product line.

13. Under Armour employee Jarred Law followed up on the February 4, 2010 meeting with an email to Schiebl thanking him for coming to Under Armour's offices, listing those in attendance, and stating that he would communicate re: needed "next steps in the near future." In addition, Law asked Schiebl whether SportStar would be willing to put the Under Armour brand on SportStar's "number one style" of chin strap.

14. On March 17, 2010, Schiebl sent an email to Jarred noting that he was "finishing work on our deal this week." Toward this end, Schiebl also asked how many chin straps Under Armour sold in 2009, with breakouts for adult chin straps and youth chin straps. Under Armour's Law responded with figures for 2009-09 on March 18, 2010.

15. Schiebl sent another email to Under Armour's Law on April 14, 2010,

copying Kevin Plank, Kevin Culley, Edward Giard, Chris Kurman, Rich Schwanke, and John Drab. This detailed email addressed an Under Armour/SportStar prospective licensing structure, and addressed sales and business goals, strategies to achieve those goals, relationship structure, structure for 2011, future structures, issues to be resolved in future structures and related topics.

16. Law responded on April 22, 2010, with an email stating that Under Armour had decided that it was not the right timing for “Under Armour to partner with a company to enter the chin strap market.” Though providing no reasons for Under Armour’s decision, Law noted that Under Armour was very impressed with the SportStar product and with Schiebl’s presentation. Law also expressed Under Armour’s view that its decision was not reflective of Under Armour’s opinion of Schiebl or the SportStar chin straps’ technology.

17. The USPTO issued the 160 Splitter Patent on June 15, 2010. On June 22, 2010, Schiebl sent an email to Under Armour’s Kevin Plank, again copying Law, Culley, Giard, Kurman, Schwanke, and Drab. The email notified Under Armour that SportStar had just received the patent for the chin strap technology that Schiebl had invented and used on SportStar’s chin straps. However, the email notified Under Armour that this same technology also now appeared to be used on Under Armour brand chin straps made by, or at the direction of, JR286. The email was positive and of a friendly tone, and expressed interest in having Under Armour continue to use SportStar’s patented technology through several proposed options: SportStar making chin straps or chin guards for Under Armour, SportStar becoming a licensee of Under Armour and providing Under Armour with a turnkey chin strap product, or Under Armour

licensing the patented technology for an appropriate royalty. On or about July 1, 2010, Schiebl received a letter from patent counsel confirming that the Under Armour “Defender” chin guard infringed the 160 Splitter Patent.

18. Under Armour’s associate counsel for patents Wesley Muller responded to Schiebl’s email on June 30, 2010. Muller stated that Under Armour was investigating the matter, and requested further information from Schiebl to aid in Under Armour’s analysis. Muller expressed interest in considering SportStar’s licensing offer, and also requested terms that Schiebl would consider as “adequate terms to facilitate a license allowing Under Armour’s use” of the 160 Splitter Patent.

19. Schiebl replied on July 6, 2010, advising Muller that Schiebl’s patent attorney had sent Schiebl an opinion letter determining that Under Armour’s “Defender” model chin strap infringed the 160 Splitter Patent. To respond to Muller’s June 30, 2010 inquiry into appropriate terms for licensing agreement, Schiebl requested the following information from Under Armour: (1) anticipated annual sales volumes, (2) proposed manufacturer suggested retail price and wholesale prices, and (3) an indication of whether Under Armour had already decided to manufacture its own chin straps “in house,” or would consider allowing SportStar to manufacture those chin straps for the Under Armour name.

20. Muller responded to Schiebl’s July 6, 2010 email on July 30, 2010. Muller confirmed that, as Schiebl had indicated in his prior email, JR286 manufactured and sold Under Armour chin straps or chin guards pursuant to a license agreement between the two companies. Muller further explained that due to the existing relationship with JR286, Under Armour would not itself begin selling chin straps before January 1, 2011.

Accordingly, Muller indicated that he did not have information needed to answer the first two questions posed in Schiebl's July 6, 2010 email. Muller also requested more information from Schiebl before Under Armour could sufficiently analyze a potential business relationship with SportStar. In particular, Muller wanted to know the "full scope" of SportStar's patent portfolio. Muller also indicated that he was aware that Schiebl and/or SportStar then had pending at least two related U.S. patent applications. Finally, Muller inquired as to additional matters, such as whether Schiebl was seeking an exclusive or non-exclusive licensing arrangement, proposed patent royalty rates, etc.

21. Under Armour continued to sell the infringing "Defender" model chin strap; in fact, SportStar has confirmed that these chin straps were continuing to be sold in area "big box" stores such as the Sports Authority in, *e.g.*, August 2010.

22. In July, August and September of 2010, however, Jon Hirshberg, CEO of Defendant JR286, began to call Schiebl. Hirshberg would rarely (if ever) communicate to Schiebl or to SportStar in writing or by email, preferring instead to talk by cell phone or to simply leave messages asking Schiebl to return his calls. Hirshberg stated that he was a person responsible for any issues surrounding the Under Armour "Defender" chin straps' infringement of SportStar's Patent, as those chin straps were made by his JR286. Hirshberg expressed his desire to "work something out." For example, Hirshberg suggested that his company JR286 had an agreement with Nike, and suggested that SportStar and Schiebl explore making the Nike chin straps for JR286 to supply to Nike.

23. On or about September 18, 2010, Schiebl met with Hirshberg at JR286's offices in Redondo Beach, California. Hirshberg subsequently set up a meeting with

Nike on or about January 14, 2011, at Nike headquarters. Nike declined the opportunity to make a chin strap product due to potential liability issues. Schiebl suggested other products that SportStar might make for Nike which would not entail such issues. Hirshberg, however, stopped the discussion and offered no further solutions or alternatives for “working something out.”

24. Despite the written notices that Schiebl or SportStar had provided to Under Armour on or about, *e.g.*, June 22, 2010, a 2011 “Team Fall” equipment catalog featured an Under Armour “Fusion” chin strap incorporating a chin strap apparatus and/or components protected by the 160 Splitter Patent. Moreover, as of January 2011, the infringing Under Armour “Defender” chin strap that JR286 provided for Under Armour was being shown for sale on Under Armour’s website.

25. As of May 2011, the Under Armour “Fusion” chin strap continued to be sold in big box retailers in a package showing a chin strap splitter protected by the 160 Splitter Patent and/or other apparatuses and/or components covered by the 677 Foam Fabric Bumps Patent. Under Armour “Fusion” chin straps in this package were exhibited for sale, *e.g.*, in the Academy store in Webster, Texas, in time frames including at least the late spring or early summer of 2011. In the same time frame, this chin strap was being sold at other sporting goods stores, *e.g.*, the Jock Shop in Las Vegas, Nevada.

26. On May 2, 2011, SportStar received an opinion letter from its patent attorney expressing the view that Under Armour chin strap models infringed the 677 Foam Fabric Bumps Patent. Having already placed notice of the 166 Splitter Patent on SportStar chin straps, SportStar added notice of the 677 Foam Fabric Bumps Patent to

its chin strap line.

27. Under Armour's current product line comprises "Armourfuse" chin strap models.

Infringement of the Patents

28. The above-referenced Under Armour chin straps or chin guards infringe Claim 12 of the 160 Splitter Patent, and other Patent claims. The Under Armour chin guards show each element of this Claim 12, as well as other Patent claims. Both the 160 Splitter Patent and the Under Armour chin guards are composed of a shell with a resilient layer inside the shell to contact the human chin. This Patent teaches, and the Under Armour chin guards possess, the following: a first strap affixed to one side of the shell and extending outwardly therefrom, with the first strap suitable for attachment to the helmet; a second strap affixed to an opposite side of the shell and extending outwardly there from, with the second strap suitable for attachment to the helmet; a first strap splitter through which the first strap extends, with the first strap splitter comprising a unitary body having a first slot in a spaced relationship to a second slot, and the first strap splitter having a fixed bar formed therewith and positioned between this first slot and this second slot, with the second slot having a length that is greater than the length of the first slot and the first strap having a first portion and a second portion juxtaposed together in the first slot and angularly diverging from each in the second slot, with the first portion and the second portion being angularly adjustable with respect to each other so as to allow one of the first and second portions to be attached to either the high hook-up or low hook-up of the helmet. The 160 Splitter Patent teaches, and the Under Armour chin guards also possess, the following: a second strap splitter through which

the second strap extends, with the second strap splitter comprising a unitary body having a first slot in a spaced relationship to a second slot, and the second strap splitter having a fixed bar formed therewith and positioned between this first slot and this second slot, and the second slot of the second strap splitter having a length that is greater than a length of the first slot of the second strap splitter, with the first strap having a first portion and a second portion juxtaposed together in the first slot of the second strap splitter and angularly diverging from each in the second slot of the second strap splitter, and the first portion and second portion of the second strap being angularly adjustable with respect to each other so as to allow one of the first and second portions of the second strap to be attached to either the high hook-up or low hook-up of the helmet. The Under Armour chin guards infringe Claim 12 of the 160 Splitter Patent, as well as other Patent claims.

29. The above-referenced Under Armour chin straps or chin guards infringe Claim 13 of the 160 Splitter Patent, and other Patent claims. The Under Armour chin guards show each element of this Claim 13, as well as other Patent claims. Both the 160 Splitter Patent and the Under Armour chin guards are composed of a shell with a resilient layer inside the shell to contact the human chin. This Patent teaches, and the Under Armour chin guards possess, first and second slots of the unitary body of each of the first and second strap splitters being an arcuate slot, with this body having a button element position over and adjacent to the first slot. The Under Armour chin guards infringe Claim 13 of the 160 Splitter Patent, as well as other Patent claims.

30. The above-referenced Under Armour chin straps or chin guards infringe Claim 7 of the 671 Two Strap-Receiving Slots Patent, and other Patent claims. The

Under Armour chin guards show each element of this Claim 7, as well as other Patent claims. Both the 671 Two Strap-Receiving Slots Patent and the Under Armour chin guards are composed of a shell with a resilient layer inside the shell to contact the human chin. This Patent teaches, and the Under Armour chin guards possess, a slot opening through a thickness of the shell with a first strap-receiving slot and a second strap-receiving slot on the opposite side. Both Patent and the Under Armour chin guards possess a first strap splitter that extends over the first strap. The strap splitter results in the portions of the strap changing direction and diverging away from each other for both the Patent and the Under Armour chin guards. Finally, the Patent and the Under Armour chin guards both have a second strap splitter extending over the second strap, which also results in portions of the second strap changing direction and diverging away from each other. The Under Armour chin guards infringe Claim 7 of the 671 Two Strap-Receiving Slots Patent, as well as other Patent claims.

31. The above-referenced Under Armour chin straps or chin guards infringe Claim 10 of the 671 Two Strap-Receiving Slots Patent and other Patent claims. The Under Armour chin guard shows each element of Claim 10 of the 671 Two Strap-Receiving Slots Patent, as well as other Patent claims. Both the 671 Two Strap-Receiving Slots Patent and the Under Armour chin guards are composed of a shell with a resilient layer inside the shell to contact the human chin. The Patent teaches, and the Under Armour chin guards possess, a slot opening through a thickness of the shell with a first strap-receiving slot and a second strap-receiving slot on the opposite side. Both the Patent and the Under Armour chin guards possess a first strap splitter that extends over the first strap. The strap splitter results in the portions of the strap changing

direction and diverging away from each other for both the Patent and the Under Armour chin guards. Finally, the Patent and the Under Armour chin guards both have a second strap splitter extending over the second strap, which also results in portions of the second strap changing direction and diverging away from each other. The Under Armour chin guards infringe Claim 10 of the 671 Two Strap-Receiving Slots Patent, as well as other Patent claims.

32. The above-referenced Under Armour chin guards infringe Claim 5 of the 677 Foam Fabric Bumps Patent, and other Patent claims. The Under Armour chin guards show each element of Claim 5 of the 677 Foam Fabric Bumps Patent as well as other Patent claims. Both the Patent and the Under Armour chin guards are composed of a shell with a resilient layer inside the shell to contact the human chin. The Patent teaches that the interior surface of the resilient layer has bumps extending substantially over the interior surface. The Under Armour chin guards likewise possess a honeycomb design, which results in a non-smooth, irregular and bumpy surface. The Patent also teaches a plurality of holes in the shell of the chin guard, which are aligned with holes in the resilient layer. The Under Armour chin guards exemplify this feature, containing breathable holes in the resilient layer that align with holes in the shell of the Under Armour chin guards. The Under Armour chin guards infringe Claim 5 of the 677 Foam Fabric Bumps Patent, as well as other Patent claims.

Causes of Action

33. **Section 271(a) Direct Infringement** – Plaintiff incorporates the above allegations here. Under Armour and JR286 infringe and/or have infringed the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, and/or the 671 Two Strap-

Receiving Slots Patent by making, causing to be made, selling, causing to be sold, using and/or causing to be used a chin strap or chin guard that, among other things, includes and/or embodies inventions and processes covered and protected by one or more of the Patents. Defendants committed these acts during the term of the Patents. Defendants committed these acts without authority from SportStar to do so. Plaintiff has given Under Armour and JR286 the notice required under 35 U.S.C. § 287 of the Patents and of the infringement, by among other things, sending letters or other written communications to Under Armour and/or JR286 and/or their counsel, and by filing this action, and by serving Defendants with this Complaint. Plaintiff has placed, or caused to be placed, a notice of the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, the 671 Two Strap-Receiving Slots Patent, or a notice that the Patents were pending, on the chin strap or chin guard products allowed to use the apparatuses, assemblies, claims, components, concepts, designs, ideas, invention, materials, processes and/or technology covered and protected by the Patents.

34. **Section 271(b) Induced Infringement** – Plaintiff incorporates the above allegations here. Defendants Under Armour and JR286 directly infringe the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, and/or 671 Two Strap-Receiving Slots Patent, which SportStar owns and in which S2 holds substantial rights. Under Armour and JR286 had notice of these Patents. Under Armour knowingly induced JR286 to infringe one or more of these Patents by soliciting JR286 to supply it with infringing chin guards or chin straps. Under Armour had the specific intent to encourage JR286 to infringe of one or more of the Patents. Alternatively, JR286 knowingly induced Under Armour to infringe one or more of these Patents by persuading Under Armour to allow

JR286 to supply Under Armour with the infringing chin straps. JR286 had the specific intent to encourage Under Armour to infringe of one or more of the Patents in order that JR286 might profit.

35. **Section 271(c) Contributory Infringement** – Plaintiff incorporates the above allegations here. There exists an actual and direct infringement of the 160 Splitter Patent, 677 Foam Fabric Bumps Patent, and/or the 671 Two Strap-Receiving Slots Patent by Defendants Under Armour and JR286. Under Armour and JR286 sell and cause to be sold, and/or import and cause to be imported, a chin guard or chin strap apparatus or component for use in practicing the inventions or processes covered by these Patents. That chin strap apparatus or component is a material part of practicing the invention or process covered by the 160 Splitter Patent, 677 Foam Fabric Bumps Patent, and/or 671 Two Strap-Receiving Slots Patent. Under Armour and/or JR286 have committed these acts with knowledge of the Patents, and also with knowledge that the chin guard or chin strap apparatus or component was and is especially made or adapted for use in infringing the 160 Splitter Patent, 677 Foam Fabric Bumps Patent, and/or the 671 Two Strap-Receiving Slots Patent. The chin guard or chin strap apparatus or component sold and/or imported by Under Armour and JR286 is not a staple article or commodity of commerce suitable for substantial non-infringing uses.

36. **Doctrine of equivalents** – Plaintiff incorporates the allegations above as if fully set out herein. With the above acts and/or omissions, Defendants have infringed Plaintiff's patent(s) either literally and/or directly or, alternatively, under the doctrine of equivalents.

37. **Section 284 Willfulness** – Plaintiff incorporates the allegations above as if fully set out herein. Defendants’ infringement, whether literally and/or directly, or under the doctrine of equivalents, was willful. Plaintiff is entitled to enhanced, double and/or treble damages under 35 U.S.C. § 284.

38. **Damages, Declaratory and Injunctive Relief** – SportStar has suffered damages by reason Under Armour’s and JR286’s infringement of the 160 Splitter Patent, the 677 Foam Fabric Bumps Patent, and/or the 671 Two Strap-Receiving Slots Patent, as well as by Defendants’ actively and knowingly inducing and contributing to the infringement of these Patents. Pursuant to 35 U.S. Code § 284, Plaintiff seeks recovery of damages adequate to compensate for the infringement, including lost profits if deemed applicable by the judge or jury, but in no event less than a reasonable royalty for the use made of the invention by these infringers. SportStar will suffer additional damages unless this Court enjoins Under Armour and JR286 from continuing such acts in the future. Accordingly, Plaintiff requests injunctive relief under 28 U.S.C. §§ 2201, 2202. Plaintiff further seeks a declaration that Defendants’ acts have infringed one or more of the Patents. Defendants are making meaningful preparations for infringing activity, and have engaged in infringing activity. Defendants have the ability and definite intention to undertake and continue infringing activity. Defendants’ acts indicate a refusal to change the course of their actions in the face of acts by Plaintiff sufficient to create a reasonable apprehension that a suit would be forthcoming.

39. Pursuant to 35 U.S. Code § 285, Plaintiff seeks a finding that this is an exceptional case such that the Court should award reasonable attorney fees to Plaintiff as the prevailing party.

40. Pursuant to FRCP 38(b), SportStar requests a trial by jury.

Prayer

WHEREFORE, SportStar prays for a preliminary and permanent injunction against continued infringement, money damages, an accounting for damages, and an assessment against Under Armour and JR286 of interest, costs and reasonable attorneys' fees incurred by SportStar, and such other relief as the Court may deem proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per LR-5. Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

October 17, 2014

/s/ John R. Strawn, Jr.

John R. Strawn, Jr.