

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nifty Home Products, Inc.

Plaintiff,

v.

Civil Action #: _____

Big Lots Stores, Inc.

Defendant.

COMPLAINT

Plaintiff Nifty Home Products, Inc. (“Nifty”), for its Complaint against Defendant Big Lots Stores, Inc. (“Big Lots”), states and alleges as follows:

PARTIES

1. Plaintiff Nifty is a Minnesota corporation with its principal place of business in Madison Lake, Minnesota. Nifty designs and sells a variety of kitchen accessories.

2. Defendant Big Lots, on information and belief, is an Ohio corporation having its corporate headquarters in Columbus, Ohio.

JURISDICTION AND VENUE

3. This is a claim of patent infringement under 35 U.S.C. §§ 271 and 281-285.

4. This Court has jurisdiction over the subject matter over Nifty’s federal claims by virtue of 28 U.S.C. §§ 1331 and 1338(a) and (b).

5. This Court has personal jurisdiction over defendant Big Lots, as Big Lots has engaged in acts of patent infringement in the United States and in the District of Minnesota. Defendant Big Lots regularly does business in the state of Minnesota by distributing its products in Big Lots stores operating in the United States, including Minnesota. Big Lots allows

Minnesota customers to purchase infringing products in Big Lots stores located in Minnesota. Venue is proper under 28 U.S.C. §§ 1391(b) as defendant Big Lots has committed acts of infringement in this District.

PATENTS-IN-SUIT

6. On or about February 20, 2007, the United States Patent and Trademark Office (“USPTO”) issued U.S. Design Patent D536,936 (“the ‘936 Patent”) for the “Single Cup Beverage Container Holder” to Frank Tiemann based on an application filed on or about January 5, 2006. The ‘936 Patent was assigned to Nifty. A copy of the ‘936 Patent is attached to this Complaint as Exhibit 1.

7. On or about February 9, 2010, the USPTO issued U.S. Design Patent D609,533 (“the ‘533 Patent”) for “Coffee Pod Carousel” to Frank Tiemann based on an application filed on or about March 10, 2009. The ‘533 Patent is assigned to Nifty. A copy of the ‘533 Patent is attached to this Complaint as Exhibit 2

8. On or about May 22, 2012, the USPTO issued U.S. Design Patent D660,088 (“the ‘088 Patent”) for a “Drawer For Holding Beverage Cartridges” to Frank Tiemann based on an application filed on or about Feb 23, 2011. The ‘088 Patent is assigned to Nifty. A copy of the ‘088 Patent is attached as Exhibit 3.

9. On or about April 1, 2014, the USPTO issued U.S. Design Patent D701,733 (“the ‘733 Patent”) for a “Drawer for Holding Beverage Cartridges” to Frank Tiemann based on an application filed on or about October 19, 2012. The ‘733 Patent is assigned to Nifty. A copy of the ‘733 Patent is attached as Exhibit 4.

BACKGROUND

10. Nifty has been selling its patented beverage cartridge carousels and drawers directly to consumers, and wholesale to a variety of retailers, since at least 2006. Nifty's patented products have been marked with their individual patent numbers.

11. In late 2014, Nifty became aware that Big Lots was offering for sale and selling in its retail stores a coffee pod carousel which infringes the '936 and '533 Patents. The infringing coffee pod carousel is sold by Big Lots under the "GREAT GATHERINGS" trademark.

12. GREAT GATHERINGS is a registered trademark of Consolidated Property Holdings, Inc., a Nevada corporation having its principal place of business at 330 East Warm Springs Road, Las Vegas, Nevada 89119. According to a Notice of Opposition filed collectively by Big Lots and Consolidated Property Holdings, Inc., Consolidated Property Holdings, Inc. owns the intellectual property used by Big Lots.

13. Nifty purchased the GREAT GATHERINGS Coffee Pod Carousel from the Big Lots store located at 10590 France Avenue South, Bloomington, Minnesota 55431-3538. The packaging for the GREAT GATHERINGS Coffee Pod Carousel indicates that Big Lots is the distributor of the GREAT GATHERINGS Coffee Pod Carousel, and that the GREAT GATHERINGS Coffee Pod Carousel is imported by Big Lots from China.

14. Nifty also discovered in late 2014 that Big Lots was offering for sale and selling in its retail stores a coffee pod drawer under the GREAT GATHERINGS trademark which infringes the '088 and '733 Patents.

15. Nifty purchased the GREAT GATHERINGS Coffee Pod Drawer from the Bloomington, Minnesota Big Lots store. The packaging for the GREAT GATHERINGS Coffee Pod Drawer indicates that Big Lots is the distributor of the GREAT GATHERINGS Coffee Pod

Drawer and that the GREAT GATHERINGS Coffee Pod Drawer is imported by Big Lots from China.

**COUNT I
(PATENT INFRINGEMENT – ‘936 PATENT)**

16. The allegations of Paragraphs 1 to 15 of the Complaint are re-alleged and incorporated herein by reference.

17. Big Lots has infringed and continues to infringe the ‘936 Patent by offering to sell and selling in the United States, and importing into the United States, without Nifty’s authorization, coffee pod carousels that are substantially the same as the design illustrated and described in the ‘936 Patent. The resemblance between Nifty’s patented Single Cup Beverage Container Holder and Big Lots’ unauthorized GREAT GATHERINGS Coffee Pod Carousel is such as to permit an ordinary observer to purchase the unauthorized GREAT GATHERINGS Coffee Pod Carousel supposing it to be the Nifty Single Cup Beverage Container Holder.

18. Big Lots’ actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

19. Big Lots’ infringement of the ‘936 Patent has been willful and deliberate, and undertaken despite knowledge of the ‘936 Patent.

**COUNT II
(PATENT INFRINGEMENT – ‘533 PATENT)**

20. The allegations of Paragraphs 1 to 19 of the Complaint are re-alleged and incorporated herein by reference.

21. Big Lots has infringed and continues to infringe the ‘533 Patent by offering to sell and selling in the United States, and importing into the United States, without Nifty’s

authorization, coffee pod carousels that are substantially the same as the design illustrated and described in the '936 Patent. The resemblance between Nifty's patented Coffee Pod Carousel and Big Lots' unauthorized GREAT GATHERINGS Coffee Pod Carousel is such as to permit an ordinary observer to purchase the unauthorized GREAT GATHERINGS Coffee Pod Carousel supposing it to be the Nifty Coffee Pod Carousel.

22. Big Lots' actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

23. Big Lots' infringement of the '533 Patent has been willful and deliberate, and undertaken despite knowledge of the '533 Patent.

**COUNT III
(PATENT INFRINGEMENT – '088 PATENT)**

24. The allegations of Paragraphs 1 to 23 of the Complaint are re-alleged and incorporated herein by reference.

25. Big Lots has infringed and continues to infringe the '088 Patent by offering to sell and selling in the United States, and importing into the United States, without Nifty's authorization, coffee pod drawers that are substantially the same as the design illustrated and described in the '088 Patent. The resemblance between Nifty's patented Drawer For Holding Beverage Cartridges and Big Lots' unauthorized GREAT GATHERINGS Coffee Pod Drawer is such as to permit an ordinary observer to purchase the unauthorized GREAT GATHERINGS Coffee Pod Drawer supposing it to be the Nifty Drawer For Holding Beverage Cartridges.

26. Big Lots' actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

27. Big Lots' infringement of the '088 Patent has been willful and deliberate, and undertaken despite knowledge of the '088 Patent.

**COUNT IV
(PATENT INFRINGEMENT – ‘733 PATENT)**

28. The allegations of Paragraphs 1 to 27 of the Complaint are re-alleged and incorporated herein by reference.

29. Big Lots has infringed and continues to infringe the ‘088 Patent by offering to sell and selling in the United States, and importing into the United States, without Nifty’s authorization, coffee pod drawers that are substantially the same as the design illustrated and described in the ‘088 Patent. The resemblance between Nifty’s patented Drawer For Holding Beverage Cartridges and Big Lots’ unauthorized GREAT GATHERINGS Coffee Pod Drawer is such as to permit an ordinary observer to purchase the unauthorized GREAT GATHERINGS Coffee Pod Drawer supposing it to be the Nifty Drawer For Holding Beverage Cartridges.

30. Big Lots’ actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

31. Big Lots’ infringement of the ‘088 Patent has been willful and deliberate, and undertaken despite knowledge of the ‘088 Patent.

DEMAND

WHEREFORE, Plaintiff Nifty prays for judgment as follows:

- (a) In favor of Nifty and against Big Lots on all counts of the Complaint.
- (b) Preliminarily and permanently enjoining and restraining Big Lots, its officers, directors, agents, servants, employees, attorneys, affiliated companies and all others acting under or through them, from directly infringing or inducing others to infringe U.S. Design Patents D536,936; D609,533; D660,088; and D701,733.
- (c) Awarding Nifty damages under 35 U.S.C. §§ 284 and 289, including Big Lots’ profits and treble damages for willful infringement.

- (d) Awarding Nifty's reasonable attorneys' fees, costs, expenses, and interest pursuant to 35 U.S.C. § 285 and other applicable law.
- (e) Awarding Nifty such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

Date: December 12, 2014

s/Peter G. Nikolai/

Peter G. Nikolai (#322,052)

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**ATTORNEYS FOR PLAINTIFF
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