

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

EZ PRODUCTS OF SOUTH
FLORIDA, LLC,

Plaintiff,

v.

DOLLAR TREE STORES, INC.,

Defendant.

Civil Action No.: 1:14-CV-1398-TWT

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW EZ Products of South Florida, LLC (hereinafter “EZP International”), the Plaintiff herein, and by and through its counsel, files this Complaint against the Defendant, Dollar Tree Stores, Inc., and in support thereof respectfully show the Court as follows:

NATURE OF THE CASE

1. Plaintiff seeks legal and equitable remedies for infringement of United States Patent No. D674,566 for a “CLEANING CLOTH” (hereinafter the ‘566 Patent), resulting from the actions and conduct of Defendant as set forth herein.

PARTIES

2. Plaintiff EZP International is a Florida corporation having a regular and established place of business at 1800 Military Trail #150, in Boca Raton, Florida.

3. Upon information and belief, Defendant Dollar Tree Stores, Inc. (hereinafter “Dollar Tree”) is a Virginia corporation with a regular and established place of business at 500 Volvo Parkway in Chesapeake, Virginia.

4. Upon information and belief, Defendant Dollar Tree does business in this District and offers for sale and/or sells the offending products in this District, including selling the offending products at Dollar Tree retail locations located within this District.

5. Upon information and belief, Defendant Dollar Tree has a registered agent within this District, CT Corporation System, 1201 Peachtree Street in Atlanta, Georgia.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35 of the United States Code, including 35 U.S.C. § 271 *et seq.*

7. Upon information and belief, the Defendant is subject to this Court’s specific and general personal jurisdiction, pursuant to due process and/or the Georgia Long

Arm Statute, due at least to its substantial business in this forum, including related to the infringements alleged herein.

8. Upon information and belief, the Defendant has an interactive website through which the infringing products are sold in this District to the general public, and the Defendant sells the infringing products to the general public in this District through its Dollar Tree retail stores.

9. Upon information and belief, the Defendant is also subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in this District.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b) for at least the reasons that a substantial part of the events giving rise to these claims occurred in this District, because Plaintiff has suffered injury in this District, and because Defendant resides in this District under the patent venue statute by virtue of having committed acts of patent infringement in this District.

FACTS

11. On January 15, 2013, the '566 Patent was duly and legally issued by the USPTO to Joseph Colangelo.

12. The '566 Patent issued from an application filed with the USPTO on April 11, 2012 and has been at all times since its date of issue, valid and enforceable.

13. The claim of the '566 Patent covers an ornamental design for a cleaning cloth, as shown and described in the '566 Patent. A true and correct copy of the '566 Patent is attached hereto as Exhibit "A."

14. EZP International is now the owner the '566 Patent by virtue of assignment of the '566 Patent from Joseph Colangelo to EZP International.

15. EZP International has standing to bring this lawsuit for infringement of the '566 Patent.

16. EZP International has been advertising, promoting, marketing and selling cleaning products under the '566 Patent. EZP International has marked advertising materials and product packaging with the numbers of the '566 Patent.

17. Upon information and belief, Defendant has been offering for sale and selling products that infringe the '566 Patent, including a product under the name Scrub Buddies, UPC # 3937710913.

18. Upon information and belief, Defendant has offered for sale and/or sold its infringing products, including the Scrub Buddies product, to third-parties located in this District through Defendant's retail stores located in this District and through the Internet.

19. The Defendant's offer for sale and sale of the infringing products, including the Scrub Buddies product, has been without the permission, authority, or license of Plaintiff.

20. On April 9, 2014 representatives of Plaintiff contacted Dollar Tree by letter and informed Dollar Tree of the infringement of the '566 Patent.

21. Upon information and belief, Defendant has refused to stop selling products that infringe the '566 Patent, and continues to sell such products.

COUNT ONE: PATENT INFRINGEMENT- '566 PATENT

22. The allegations of each and every of the foregoing paragraphs are repeated and realleged as if set forth herein.

23. Upon information and belief, Defendant has infringed and is presently infringing the '566 Patent by making, importing, using, selling, and/or offering to sell within the United States, cleaning products, including the Scrub Buddy product.

24. The Defendant's acts have been without the permission, license, or consent of the Plaintiff.

25. Upon information and belief, the Defendant's infringement of the '566 Patent has been for the purpose of deriving revenue or other financial gain.

26. Upon information and belief, the Defendant will continue to infringe the '566 Patent unless enjoined by this Court.

27. The acts of Defendant constitute patent infringement in violation of 35 U.S.C. § 271 *et seq.*

28. Plaintiff is entitled to an injunction pursuant to 35 U.S.C. § 283, restraining Defendant, its officers, agents, employees, and all persons acting in concert with it from engaging in further infringement of Plaintiff's '566 Patent.

29. Plaintiff is entitled to recover its damages sustained as a result of the Defendant's infringement, including the Defendant's profits pursuant to 35 U.S.C. § 289, but in any event no less than a reasonable royalty pursuant to 35 U.S.C. § 284.

30. Plaintiff is further entitled to recover its costs, expenses and reasonable attorney's fees incurred in bringing the present action pursuant to 35 U.S.C. § 284.

31. The circumstances of this case renders this case an exceptional case under 35 U.S.C. § 285.

32. The circumstances of this case justify an enhancement of the damages under 35 U.S.C. § 284, up to three times the actual damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an Order of this Court, entering judgment:

- A. That the Defendant has infringed the '566 Patent;
- B. That Defendant, its officers, agents, servants, employees, representatives, and all others acting in concert or participation therewith, be permanently enjoined from further infringement of the '566 Patent;
- C. That Plaintiff is awarded all of the profits generated by Defendant's infringement pursuant to 35 U.S.C. § 289;

D. That Plaintiff is awarded damages pursuant to 35 U.S.C. § 284 in an amount adequate to compensate Plaintiff for the patent infringement (in no event less than a reasonable royalty);

E. That based on the willful nature of the infringement, the damages are increased to three times the amount of damages found or assessed, and Plaintiff is awarded its costs and reasonable attorney's fees, all in accordance with 35 U.S.C. §§ 284-285;

F. That this case is exceptional under 35 U.S.C. § 285 such that Plaintiff is awarded its reasonable attorney's fees;

G. That the Defendant shall destroy or surrender all infringing products, at Plaintiff's election;

H. That Defendant be directed to file with the Court and serve on Plaintiff, no later than thirty (30) days after the issuance of an injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's injunction;

I. That Plaintiff is awarded its taxable costs, expenses, and pre-judgment and post-judgment interest; and

J. That Plaintiff is awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury of any and all issues so triable by right.

Respectfully submitted, this 8th day of May, 2014.

/s/ Robert B. Dulaney III
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Attorney for Plaintiff,
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with LR 7.1(D), NDGa.
The font and point size used in preparing the foregoing is Times New Roman, 14 pt.

/s/ Robert B. Dulaney III
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