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Attorneys for Plaintiffs
Blue Gentian, LLC and National Express, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BLUE GENTIAN, LLC and
NATIONAL EXPRESS, INC.

Plaintiffs,

v.

TELEBRANDS CORPORATION,

Defendant.

: Civil Action No. 13-481 (FSH) (JBC)

:

: Hon. Faith S. Hochberg, U.S.D.J.

: Hon. James B. Clark, III, U.S.M.J.

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SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, BLUE GENTIAN, LLC (“Blue Gentian”) and NATIONAL EXPRESS, INC.
 (“National Express”) sue Defendant, TELEBRANDS CORPORATION (“Telebrands”) for
Patent Infringement under the Patent Act and complain as follows:

JURISDICTION AND VENUE

1. This is an action for Patent Infringement under the Patent Act, 35 U.S.C. § 271.
2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1338(a).
3. This court has personal jurisdiction over Telebrands in that Telebrands has its principal place of business in this District, has marketed and sold the accused Pocket Hose

product in this District and throughout the State of New Jersey, and has submitted to jurisdiction in this Court by filing a complaint for declaratory judgment with respect to the Patents-in-Suit in the case styled *Telebrands Corp. v. National Express, Inc., et al.*, Civil Action No. 12-cv-6671-FSH-SCM prior to the transfer of the present action from the Southern District of Florida.

4. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b & c) and 1400(b), because the Telebrands is subject to personal jurisdiction in the District and has committed acts of Patent Infringement in the District.

THE PARTIES

5. Plaintiff Blue Gentian is a Florida limited liability company having its principal place of business at 223 Skylark Point, Jupiter, Florida.

6. Plaintiff National Express is a Connecticut corporation having its principal place of business at 2 Morgan Avenue, Norwalk, Connecticut.

7. Defendant Telebrands is a New Jersey corporation having its principal place of business at 79 Two Bridges Road, Fairfield, New Jersey.

BACKGROUND

8. Blue Gentian's principal, Michael Berardi, has conceived and invented a novel hose product that is light in weight, does not kink when unwrapped or uncoiled, and can be substantially reduced in length and width when not in use simply by turning off the flow of water into it. The product has been marketed in the United States, under the XHose® trademark, since March 24, 2012.

9. Blue Gentian is the owner of all intellectual property rights in connection with the XHose® product invented by Berardi including the patent rights asserted in this Complaint, Blue Gentian is the owner of U.S. Patent No. 8,291,941, entitled "Expandable and Contractible Hose"

(“the ‘941 Patent”). Blue Gentian is also the owner of U.S. Patent No. 8,291,942, entitled “Expandable Hose Assembly” (“the ‘942 Patent”). Copies of the ‘941 and ‘942 Patent are attached as Exhibits “A” and “B” hereto, respectively.

10. Blue Gentian has granted National Express the exclusive right under the ‘941 and ‘942 Patents to make, use, sell, offer for sale, import, market, promote and/or distribute expandable/retractable hoses embodying the inventions disclosed in the ‘941 and ‘942 patents, within certain non-geographic markets, including the direct-to-consumer and retail markets in which Telebrands sells the accused Pocket Hose product. As such, National Express maintains the right to exclude all others from practicing the patents within those defined markets.

11. Consistent with such license, both the packaging for the XHose® and the product’s website advised of pending patent protection as early as March, 2012. On April 23, 2012 a representative of Telebrands and National Express had a telephone conference, during which Telebrands inquired about distributing the XHose® in the United States to various retail accounts. National Express informed Telebrands that all distribution rights in the United States had already been granted, and therefore none would be available for Telebrands.

12. Indicative of the ingenuity and popularity of the Xhose® product, as well as Telebrands’s determination to sell the product, since August, 2012 Telebrands has promoted and sold a knock-off expandable hose product embodying the inventions protected under the ‘941 and ‘942 Patents. Screen shots of Telebrands’s websites promoting such product, initially under the brand “Mini Max Hose” and now under the brand “Pocket Hose”, are attached as composite Exhibit “C” hereto.

13. From a time prior to issuance of the ‘941 and ‘942 Patents on October 23, 2012, Telebrands has known of the allowance of those Patents, and of the date for their issuance.

Telebrands has had actual knowledge of the issuance of the '941 and '942 Patents since October 23, 2012, and has also continued to conduct and perform the infringing acts complained of below, despite its knowledge that its actions constituted infringement of valid patents, or in reckless disregard of such knowledge.

COUNT I
DIRECT PATENT INFRINGEMENT
('941 Patent)

14. This Count alleges direct Patent Infringement of the '941 Patent against Telebrands, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-13 above.

15. Telebrands has infringed and is still infringing one or more claims of the '941 Patent by making, using, selling and offering to sell and, upon belief, importing into the United States a hose product embodying the invention protected under the '941 Patent, and will continue to do so unless enjoined by this Court.

16. Telebrands's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

17. Telebrands's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

COUNT II
INDIRECT PATENT INFRINGEMENT
(‘941 Patent)

18. This Count alleges indirect Patent Infringement of the ‘941 Patent against Telebrands, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-13 above.

A. INDUCEMENT OF INFRINGEMENT

19. Telebrands has induced others to infringe and continues to induce others to infringe one or more claims of the ‘941 Patent.

20. Telebrands’s customers, by using the accused Pocket Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘941 Patent.

21. Despite having knowledge of the issuance of the ‘941 Patent prior to the date thereof, and actual knowledge of its issuance since October 23, 2012, Telebrands has sold and offered to sell the accused Pocket Hose product with specific intent to encourage and cause their customers’ infringement of the ‘941 Patent.

22. Since at least the date of the issuance of the ‘941 Patent, Telebrands has had actual knowledge of the claims of the Patent, and the fact that its Pocket Hose product infringes one or more of those claims, including through its copying of the XHose®. Upon belief, it has taken no steps to remedy any infringement.

23. Telebrands should have known, and has known, that selling and offering to sell, and, upon belief, importing into the United States the Pocket Hose product would cause the direct infringement of the ‘941 Patent.

24. Telebrands's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

25. Telebrands's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

B. CONTRIBUTORY INFRINGEMENT

26. Telebrands has contributorily infringed and continues to contributorily infringe the '941 Patent.

27. Telebrands's customers, by using the accused Pocket Hose product, have directly infringed and continue to directly infringe one or more claims of the '941 Patent.

28. Despite having knowledge of the announced issuance of the '941 Patent prior to the date thereof, and actual knowledge of its issuance since October 23, 2012, Telebrands has sold and offered to sell the accused Pocket Hose product with the specific intent to encourage and cause its customers' infringement of the '941 Patent.

29. Since at least the date of the issuance of the '941 Patent, Telebrands has had actual knowledge of the claims of the Patent, and the fact that its Pocket Hose product infringes one or more of those claims, including through its copying of the XHose®. Upon belief, it has taken no steps to remedy any infringement.

30. Telebrands has sold and offered to sell the accused Pocket Hose product for use in practicing the patented method claimed in one or more claims of the '941 Patent, and has done so

with knowledge that the product is especially made or adapted for use in an infringement of the ‘941 Patent.

31. Telebrands’s Pocket Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

32. Telebrands’s acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

33. Telebrands’s acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

COUNT III
DIRECT PATENT INFRINGEMENT
(‘942 Patent)

34. This Count alleges direct Patent Infringement of the ‘942 Patent against Telebrands, pursuant to 35 U.S.C. § 271(a). Plaintiff repeats and realleges Paragraphs 1-13 above.

35. Telebrands has infringed and is still infringing one or more claims of the ‘942 Patent by making, using, selling, offering to sell and, upon belief, importing in to the United States a hose product embodying the invention protected under the ‘942 Patent, and will continue to do so unless enjoined by this Court.

36. Telebrands's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

37. Telebrands's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

COUNT IV
INDIRECT PATENT INFRINGEMENT
(‘942 Patent)

38. This Count alleges indirect Patent Infringement of the ‘942 Patent against Telebrands, pursuant to 35 U.S.C. § 271(b). Plaintiffs repeat and reallege Paragraphs 1-13 above.

A. INDUCEMENT OF INFRINGEMENT

39. Telebrands has induced others to infringe and continue to induce others to infringe one or more claims of the ‘942 Patent.

40. Telebrands's customers, by using the accused Pocket Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘942 Patent.

41. Despite having knowledge of the announced issuance of the ‘942 Patent prior to the date thereof, and actual knowledge of its issuance since October 23, 2012, Telebrands has sold and offered to sell the accused Pocket Hose product with specific intent to encourage and cause their customers' infringement of the ‘942 Patent.

42. Since at least the date of the issuance of the ‘942 Patent, Telebrands has had actual knowledge of the claims of the Patent, and the fact that its Pocket Hose product infringes

one or more of those claims, including though its copying of the XHose®. Upon information and belief, it has taken no steps to remedy any infringement.

43. Telebrands should have known, and has known, that selling and offering to sell and, upon belief, importing into the United States the Pocket Hose product would cause the direct infringement of the '942 Patent.

44. Telebrands's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

45. Telebrands's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

B. CONTRIBUTORY INFRINGEMENT

46. Telebrands has contributorily infringed and continues to contributorily infringe the '942 Patent.

47. Telebrands's customers, by using the accused Pocket Hose product, have directly infringed and continue to directly infringe one or more claims of the '942 Patent.

48. Despite having knowledge of the announced issuance of the '942 Patent prior to the date thereof, and actual knowledge of its issuance since October 23, 2012, Telebrands has sold and offered to sell the accused Pocket Hose product with the specific intent to encourage and cause its customers' infringement of the '942 Patent.

49. Since at least the date of the issuance of the '942 Patent, Telebrands has had actual knowledge of the claims of the Patent, and the fact that its Pocket Hose product infringes

one or more of those claims, including through its copying of the XHose®. Upon belief, it has taken no steps to remedy any infringement.

50. Telebrands has sold and offered to sell the accused Pocket Hose product for use in practicing the patented method claimed in one or more claims of the '942 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '942 Patent.

51. Telebrands's Pocket Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

52. Telebrands's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

53. Telebrands's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Telebrands is enjoined from doing so by this Court.

DEMAND FOR JURY TRIAL

Plaintiffs request that all issues in this case be tried to a jury.

WHEREFORE, Plaintiffs pray that this Court:

A. Enter judgment against Telebrands for infringement of the '941 Patent and permanently enjoin Telebrands, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

B. Enter judgment against Telebrands for infringement of the '942 Patent and permanently enjoin Telebrands, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

C. Enter judgment for Plaintiff for an accounting as to all damages arising from Telebrands's infringement of the '941 Patent;

D. Enter judgment against Telebrands for damages arising from the infringement of the '941 Patent, pursuant to 35 U.S.C. § 284;

E. Enter judgment for Plaintiff for an accounting as to all damages arising from Telebrands's infringement of the '942 Patent;

F. Enter judgment against Telebrands for damages arising from the infringement of the '942 Patent, pursuant to 35 U.S.C. § 284;

G. Enter judgment that this case is exceptional, and award treble damages, attorney fees and costs incurred in connection therewith, pursuant to 35 U.S.C. § 285; and

H. Enter judgment granting Plaintiff such other relief as this Court deems appropriate.

Respectfully submitted,

s/ Thomas R. Curtin

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