



## VENUE AND JURISDICTION

4. This is an action for patent infringement arising under Title 35 U.S.C. § 1, *et. seq.* and for copyright infringement arising under Title 17 U.S.C. § 501, *et. seq.* Accordingly, this Court has jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

5. Personal Jurisdiction over the defendant is proper in this Court as the defendant has its principal place of business in this district. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b) in that a substantial part of the events giving rise to the patent infringement claims herein have taken place and may still be taking place in this judicial district.

## FACTS

6. Since at least as early as 1993, ARIEL has been, and is, in the business of designing, making, distributing and selling a variety of molded plastic or foam soft sculpture toys, promotional and novelty items, commonly known as “stress relievers.”

7. Over the years, ARIEL has developed a number of unique styles and designs for its various stress relievers and has registered with the United States Copyright Office its copyrights in these unique designs.

8. Over the years, ARIEL has developed a number of unique designs for certain of its pedometer products. ARIEL has applied for and obtained design patent protection on various of its designs for stress relievers.

9. Defendant ANGA is also engaged in the business of making, distribution and selling a variety of molded plastic or foam stress relievers in competition with ARIEL. Among the various stress relievers made, distributed and sold by ANGA are ones resembling and representing several of the stress relievers made by ARIEL.

10. Without ARIEL's advance knowledge or consent, ANGA copied and used ARIEL's copyrighted and patented designs in making, distributing and selling its own line of stress relievers and pedometers. These products are virtually identical in design and appearance to ARIEL's proprietary ones.

11. Attached as Exhibit A is a side-by-side comparison of several of ANGA's products which it advertises for sale on its website juxtaposed with ARIEL's copyrighted products identified by copyright registration number.

12. Attached as Exhibit B is a side-by-side comparison of several of ANGA's products which it advertises on its website juxtaposed with figures from ARIEL's design patents which protect ARIEL's proprietary designs.

13. ARIEL has recently placed ANGA on notice that its stress relievers infringe ARIEL's intellectual property rights.

## **CAUSES OF ACTION**

### **I. Copyright Infringement**

14. ARIEL incorporates the allegations made in paragraphs 1-13 as if fully set forth herein.

15. Defendant has committed copyright infringement under 17 U.S.C. § 501 *et. seq.*, directly, by inducement, or by way of contributory liability, by knowingly aiding, causing or committing, the unauthorized practice or execution of one or more exclusive rights owned by ARIEL set forth in 17 U.S.C. § 106, said exclusive rights having been perfected by U.S. Copyright Registrations identified in Exhibit A.

16. On information and belief, ANGA's direct and induced infringements are and have been knowing and willful. By this unlawful copying, use, and distribution, ANGA has violated ARIEL's exclusive rights under 17 U.S.C. § 106.

17. ANGA has realized unjust profits, gains and advantages as a proximate result of its infringement.

18. ARIEL is entitled to an injunction restraining ANGA from engaging in any further such acts in violation of the United States copyright laws. Unless ANGA is enjoined and prohibited from infringing ARIEL's copyrights, inducing others to infringe Plaintiff's copyrights, and unless all infringing products and advertising materials are seized, ANGA will continue to intentionally infringe and induce infringement of Plaintiff's registered copyrights.

19. As a direct and proximate result of ANGA's direct and indirect willful copyright Infringement, ARIEL has suffered, and will continue to suffer, monetary loss to its business, reputation, and goodwill.

20. Plaintiff is entitled to recover from ANGA, in amounts to be determined at trial, the damages ARIEL has sustained and will sustain, and any gains, profits, and advantages obtained by ANGA as a result of ANGA's acts of infringement and ANGA's use and publication of the copied materials.

## **II. Patent Infringement**

21. As set forth above, ARIEL is the owner of several design patents that protect certain of ARIEL's products. Defendant ANGA is making, using, selling, offering for sale, and/or importing knock-offs which are virtually indistinguishable (but for quality) from ARIEL's patented designs, said patented designs being identified in the attached Exhibit B.

22. ANGA's actions in infringing ARIEL's patented designs can only have been done in knowing violation of ARIEL's patent rights, and as such constitute willful infringement making this an exceptional case under 35 U.S.C. § 285.

23. Defendant ANGA'S actions constitute patent infringement under 35 U.S.C. § 271, *et. seq.*

#### **PRAYER FOR RELIEF**

24. WHEREFORE, Plaintiff, ARIEL prays for the following relief:

A. An order entering judgment in favor of ARIEL and awarding damages to ARIEL in the amount of ARIEL's actual damages and any profits of the Defendant attributable to the infringing acts alleged herein, consistent with 17 U.S.C. § 504(a)(1), or, upon election, an award of statutory damages consistent with 17 U.S.C. § 504(a)(2) together with prejudgment and post-judgment interest;

B. An order permanently enjoining ANGA, its officers, agents, servants, employees, attorneys and affiliated companies, its assigns and successors in interest, and those persons in active concert or participation with it, from continued acts of infringement of the patents and copyrights at issue in this litigation.

C. An order that all copies made or used in violation of Plaintiff's patents and copyrights, and all means by which such copies may be reproduced, be impounded and destroyed or otherwise reasonably disposed of.

D. An award of full costs and reasonable attorney's fees against Defendant and in favor of ARIEL pursuant to 17 U.S.C. § 505.

E. An award of Defendant's profits under 35 U.S.C. § 289.

F. An award of Plaintiff's actual damages, including lost profits and/or a reasonable royalty, and increased or enhanced damages as permitted under 35 U.S.C. § 284.

G. A finding that this case is exceptional and an award to Plaintiff of its attorneys' fees and costs as may be appropriate and as provided by 35 U.S.C. § 285.

H. Any and all other legal and equitable relief as may be available under law and which the court may deem just and proper.

### **JURY DEMAND**

25. ARIEL demands a trial by jury for all issues so triable.

Respectfully submitted,

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