

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Blue Water Investment LLC,
Plaintiff,

Civil Action No. : _____

v.

COMPLAINT

Creative Bath Products, Inc., and
Kmart Corporation, Inc.,
Defendant.

Plaintiff, Blue Water Investment LLC, for its Complaint against the defendants,
Creative Bath Products, Inc., and Kmart Corporation, alleges as follows:

PARTIES

1. Plaintiff, Blue Water Investment LLC, is a Massachusetts limited liability company having a principal place of business at 62 South Main Street, Sharon, MA 02067 (hereinafter “plaintiff”).
2. On information and belief, defendant Creative Bath Products, Inc., is a New York corporation having a principal place of business at 250 Creative Drive, Central Islip, NY 11722 (hereinafter “defendant Creative Bath”).
3. On information and belief, defendant Kmart Corporation, is a Michigan corporation having a principal place of business at 3333 Beverly Road, Hoffman Estates, IL 60179 (defendant Kmart”).

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*
5. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§1331 and 1338(a).
6. This Court has personal jurisdiction over defendant based upon their contacts with this forum, including, the sale of infringing products within the Commonwealth of Massachusetts.
7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and 1400(b).

GENERAL FACTS

8. Plaintiff is the sole owner of U.S. Patent No. D487,695 that issued on March 23, 2004 (the “‘695 Patent”). A copy of the ‘695 Patent is attached hereto as Exhibit A. The ‘695 Patent is valid and enforceable.
9. Plaintiff is the sole owner of U.S. Patent No. D493,096 that issued on July 20, 2004 (the “‘096 Patent”). A copy of the ‘096 Patent is attached hereto as Exhibit B. The ‘096 Patent is valid and enforceable.
10. On information and belief, defendant Kmart is importing, making, using, offering for sale, and/or selling a first set of bed risers under the trademark ESSENTIAL HOME to consumers throughout the United States, including the Commonwealth of Massachusetts (the “First Product”).

11. A picture of the First Product and its packaging purchased from one of defendant Walmart's retail stores located within the Commonwealth of Massachusetts is attached hereto as Exhibit C.

12. Upon information and belief, defendant Creative Bath imports, manufactures, and/or sells the First Product to defendant Walmart and to other retailers who sell to consumers throughout the United States, including the Commonwealth of Massachusetts.

13. Upon information and belief, defendant Creative Bath imports, manufactures, and sells a set of bed risers under the mark CREATIVEWARE (Item Nos. GBR01BLK and GBR11 BLK) to retail stores which sell to consumers throughout the United States, including the Commonwealth of Massachusetts (hereinafter the "Second Product").

14. A picture of defendant's web-site showing the Second Product is attached hereto as Exhibit D.

COUNT I - PATENT INFRINGEMENT - U.S. PATENT NO. D487,695

15. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1-14 as if fully alleged herein.

16. Defendant Creative Bath's manufacture, use, offer for sale, and/or sale of the First Product and the Second Product infringes the '695 Patent in violation of 35 U.S.C. §271.

17. Defendant Creative Bath's infringement of the '695 Patent has caused and continues to cause plaintiff irreparable harm.

18. Defendant Creative Bath's infringement of the '695 Patent has caused and continues to cause plaintiff monetary damage.

COUNT II - PATENT INFRINGEMENT - U.S. PATENT NO. D493,096

19. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1-18

as if fully alleged herein.

20. Defendant Creative Bath's import, manufacture, use, offer for sale, and/or sale of the First Product and the Second Product infringes the '096 Patent in violation of 35 U.S.C. §271.

21. Defendant Creative Bath's infringement of the '096 Patent has caused and continues to cause plaintiff irreparable harm.

22. Defendant Creative Bath's infringement of the '096 Patent has caused and continues to cause plaintiff monetary damage.

COUNT III - PATENT INFRINGEMENT - U.S. PATENT NO. D487,695

23. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1-22 as if fully alleged herein.

24. Defendant Kmart's manufacture, use, offer for sale, and/or sale of the First Product infringes the '695 Patent in violation of 35 U.S.C. §271.

25. Defendant Kmart's infringement of the '695 Patent has caused and continues to cause plaintiff irreparable harm.

26. Defendant Kmart's infringement of the '695 Patent has caused and continues to cause plaintiff monetary damage.

COUNT IV - PATENT INFRINGEMENT - U.S. PATENT NO. D493,096

27. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1-26 as if fully alleged herein.
28. Defendant Kmart's import, manufacture, use, offer for sale, and/or sale of the First Product infringes the '096 Patent in violation of 35 U.S.C. §271.
29. Defendant Kmart's infringement of the '096 Patent has caused and continues to cause plaintiff irreparable harm.
30. Defendant Kmart's infringement of the '096 Patent has caused and continues to cause plaintiff monetary damage.

REQUESTED RELIEF

Plaintiff requests this Court to enter judgment in favor of plaintiff and against the defendants Creative Bath and Kmart on the above counts and grant it the following relief:

1. Pursuant to 35 U.S.C. §283, an Order that defendants Creative Bath and Kmart be preliminary enjoined from making, importing, using, offering for sale, and/or selling the First Product, the Second Product or any other product that infringes U.S. Patent Nos. D487,695 and D493,096;
2. Pursuant to 35 U.S.C. §283, an Order that defendants Creative Bath and Kmart be permanently enjoined from making, importing, using, offering for sale, and/or selling the Product or any other product that infringes U.S. Patent Nos. D487,695 and D493,096;
3. Pursuant to 35 U.S.C. §284, that defendants Creative Bath and Kmart pay

Plaintiff actual damages as may be proved at trial, and in no event less than a reasonable royalty;

4. Pursuant to 35 U.S.C. §289, that defendant Creative Bath pay plaintiff an amount of damages equal to the profits realized by defendant Creative Bath's sales of the First Product and the Second Product as may be proved at trial;

5. Pursuant to 35 U.S.C. §289, that defendant Kmart pay plaintiff an amount of damages equal to the profits realized by defendant Kmart's sales of the First Product as may be proved at trial;

6. Pursuant to 35 U.S.C. §284, that plaintiff be awarded interest on damages;

7. Pursuant to 35 U.S.C. §284, that plaintiff be awarded its costs; and

8. Such other relief as this Court deems equitable and just.

REQUEST FOR A JURY

Plaintiff hereby requests a jury on all issues triable by a jury.

Respectfully submitted,

Blue Water Investment LLC

By its Attorney,

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Dated: 08-10-2015