

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

COOL GEAR INTERNATIONAL, LLC,
Plaintiff,

v.

ZAK DESIGNS, INC.,

Defendant.

COMPLAINT

Civil Action No. 1:15-cv-13261

JURY TRIAL DEMANDED

Plaintiff, Cool Gear International, LLC (“Cool Gear”), by its undersigned counsel, for its Complaint against Defendant, Zak Designs, Inc. (“Defendant” or “Zak”), alleges as follows:

The Parties

1. Plaintiff Cool Gear is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business is at 10 Cordage Park Circle in Plymouth, Massachusetts, 02360.

2. Cool Gear is in the business of designing, manufacturing and marketing innovative green products that provide cool, clean water with the aim of eliminating plastic bottle waste.

3. On information and belief, Defendant Zak is a corporation organized and existing under the laws of the state of Washington, with its principal place of business at 1603 S. Garfield Road, Airway Heights, WA 99001.

4. On information and belief, Zak is a manufacturer, importer and national online retailer in the business of operating an online retail store offering hundreds of houseware products including but not limited to lids on its Tritan line of bottles (the “Accused Products”).

On information and belief, Zak sells its houseware products, including the Accused Products, nationally, including within this Judicial District.

Jurisdiction and Venue

5. This action arises under the patent laws of the United States, 35 U.S.C. § 271 *et al.* This Court has jurisdiction over this matter pursuant to at least 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Zak because Zak conducts business in the Commonwealth of Massachusetts by marketing and selling the Accused Products in Massachusetts. Upon information and belief, Defendant has purposely availed itself to the privileges of conducting business within Massachusetts and/or has committed acts of patent infringement within the Commonwealth. Further, upon information and belief, Defendant has placed their infringing products into the stream of commerce with the expectation that they will be purchased by consumers in Massachusetts.

7. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §§ 1391 and/or 1400.

Factual Background

8. The allegations of paragraphs 1 – 7 above are incorporated herein by reference.

9. United States Patent No. D688,093 (“the ‘093 patent”), entitled “Lid,” a true and correct copy of which is appended hereto as **Exhibit A**, was duly issued on August 20, 2013 to inventors Donna Roth and John Mason and assigned to Cool Gear.

10. Plaintiff Cool Gear has been and still is the owner through assignment of the ‘093 patent.

11. On information and belief, Zak is in the business of manufacturing, importing and operating an online retail store offering for sale hundreds of houseware products, including the Accused Products. In particular, Zak sells the Accused Products embodying the claimed design of the '093 patent in this judicial district..

12. The design of the Accused Product is substantially the same as the design that is the subject matter of the '093 patent.

13. Zak has had pre-suit knowledge of the '093 Asserted Patent since at least July 16, 2015 when counsel for Cool Gear sent Zak a cease and desist letter notifying Zak of Cool Gear's rights in the '093 patent and Zak's infringement of those rights by its sales and offers for sale of the Accused Product. Included in the cease and desist letter, counsel for Cool Gear included a copy of the '093 patent.

14. Notwithstanding Zak's knowledge of the '093 patent, Zak has continued to sell and offer for sale the Accused Product

COUNT I
(Infringement of the '093 Patent – 35 U.S.C. § 271)

15. Plaintiff Cool Gear repeats and incorporates herein by reference each of the foregoing paragraphs as if fully set forth herein.

16. In violation of 35 U.S.C. § 271, Zak has made, used, offered for sale, distributed, imported, and/or sold in this judicial district and elsewhere in the United States, the Accused Product having a design that is substantially the same as the ornamental design of the '093 patent.

17. Upon information and belief; Zak's acts of infringement have been willful.

18. Cool Gear has suffered and will continue to suffer serious and irreparable injury unless Zak's infringement of the '093 patent is enjoined.

19. Cool Gear is entitled to damages adequate to compensate for Zak's infringement of the '093 patent in an amount to be determined at trial, but in no event less than a reasonable royalty, treble damages pursuant to 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action pursuant to 35 U.S.C. § 285.

20. Cool Gear is alternatively entitled to recover Zak's total profits from its sales of the Accused Products pursuant to 35 U.S.C. § 289.

PRAYER FOR RELIEF

- A. Cool Gear prays that the Court:
- B. Enter judgment that Defendant has infringed the '093 patent;
- C. Temporarily, preliminarily and permanently enjoins Defendant, her parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives, and all parties in active concert and/or participation with them, from engaging in the aforesaid unlawful acts of infringement;
- D. Award Cool Gear all damages, including increased damages pursuant to 35 U.S.C. § 284, caused by Defendant's willful unlawful acts together with interest thereon;
- E. Award Cool Gear its attorney fees pursuant to 35 U.S.C. § 285;
- F. Grant Cool Gear such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Cool Gear hereby demands a jury trial of all issues triable of right by jury.

Respectfully submitted,

COOL GEAR INTERNATIONAL, LLC.,
By its Attorneys,

/s/ Adam P. Samansky

Adam P. Samansky (MA Bar No. 661123)

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