

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

OCTANE FITNESS, LLC, a Minnesota
limited liability company, and

NELLIE'S EXERCISE EQUIPMENT,
INC., a California corporation,

Plaintiffs,

v.

ICON HEALTH & FITNESS, INC., a
Delaware corporation,

Defendant.

Case No.:

(Demand For Jury Trial)

**DECLARATORY JUDGMENT
COMPLAINT AGAINST ICON HEALTH & FITNESS, INC.**

Comes now Plaintiffs, Octane Fitness, LLC ("Octane") and Nellie's Exercise Equipment, Inc. ("Nellie's") (collectively Plaintiffs), and for their Declaratory Judgment Complaint against Defendant Icon Health & Fitness, Inc. ("Icon") state as follows:

INTRODUCTION

1. This action is for a declaratory judgment that Plaintiffs have not infringed U.S. Patent Nos. 5,104,120 ("the '120 patent") and 6,019,710 ("the '710 patent") (collectively "the Asserted Patents") and for a declaratory judgment that the Asserted Patents are invalid and/or unenforceable. *See* Asserted Patents attached as Exhibits A and B, respectively.

2. This complaint arises out of Icon's recently filed California lawsuit asserting infringement of the '120 patent and the '710 patent against Plaintiffs. Although neither Octane nor Icon have offices in California, Icon brought suit in the United States District Court for the Central District of California, joining as a defendant, Nellie's, a small Octane distributor in California. On information and belief, Icon filed suit in this fashion for the sole purpose of

preventing transfer under 28 U.S.C. §1404 to a more convenient and expeditious forum, such as Minnesota.

3. Contemporaneous with this suit, Plaintiffs intend to seek to (a) sever Nellie's from the California action and stay the action against Nellie's, and (b) transfer the Octane case from California to Minnesota and then consolidate it with the present suit.

THE PARTIES

4. Plaintiff Octane is a Minnesota limited liability company with its principal place of business at 9200 Wyoming Avenue North, Suite 380, Brooklyn Park, Minnesota 44554. Octane is a leading manufacturer of elliptical exercise machines.

5. Plaintiff Nellie's is a California corporation having a principal place of business at 2410 Wardlow Road, Suite 103, Corona, California 92880. Nellie's is a small Octane distributor.

6. Upon information and belief, Icon is a Delaware corporation with a principal place of business at 1500 South 1000 West, Logan, Utah 84321. On information and belief, Icon manufactures and markets home fitness equipment. Icon claims to be the owner of all right and title to U.S. Patent Nos. the '120 patent and the '710 patent.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202, and Fed. R. Civ. Proc. 57.

8. On information and belief, Icon and is subject to personal jurisdiction in this judicial district for the actions alleged in this Complaint.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

10. On April 22, 2008, Icon filed a Complaint in the United States District Court for the Central District of California, alleging that Octane and Nellie's have infringed, and continue to infringe, the Asserted Patents ("the Lawsuit").

11. More specifically, Icon claims that Plaintiffs have infringed the '120 patent and the '710 patent by making, using, selling offering for sale or importing products embodying claims of the Asserted Patents, including allegedly, the Octane Fitness Q47 Series (the "Accused Products")

12. Octane manufactures the Octane Fitness Q47 Series. Nellie's is an authorized Octane distributor and offers for sale various Octane products, including the Octane Fitness Q47 Series.

13. An actual, justiciable controversy now exists between Plaintiffs and Icon relating to the Asserted Patents.

COUNT I

Declaration of Non-Infringement of the '120 Patent

14. Plaintiffs incorporate by reference the allegations of paragraphs 1-13, as if fully set forth herein.

15. The manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement of the '120 patent.

16. Plaintiffs are entitled to a declaratory judgment that manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement, either directly, contributorily, or by inducement, of any claim of the '120 patent, literally or under the doctrine of equivalents.

COUNT II

Declaration of Invalidity of the '120 Patent

17. Plaintiffs incorporate by reference the allegations of paragraphs 1-16, as if fully set forth herein.

18. The '120 patent is invalid and/or unenforceable for failure to satisfy one or more of the requirements set forth in 35 U.S.C. § 1, *et seq.*, including one or more of the following: 35 U.S.C. §§ 101, 102, 103 and 112.

19. Plaintiffs are entitled to a declaratory judgment that the '120 patent is invalid and/or unenforceable.

COUNT III

Declaration of Non-Infringement of the '710 Patent

20. Plaintiffs incorporate by reference the allegations of paragraphs 1-19, as if fully set forth herein.

21. The manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement of the '710 patent.

22. Plaintiffs are entitled to a declaratory judgment that manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement, either directly, contributorily, or by inducement, of any claim of the '710 patent, literally or under the doctrine of equivalents.

COUNT IV

Declaration of Invalidity of the '710 Patent

23. Plaintiffs incorporate by reference the allegations of paragraphs 1-22, as if fully set forth herein.

24. The '710 patent is invalid and/or unenforceable for failure to satisfy one or more of the requirements set forth in 35 U.S.C. § 1, et seq., including one or more of the following: 35 U.S.C. §§ 101, 102, 103 and 112.

25. Octane is entitled to a declaratory judgment that the '710 patent is invalid and/or unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- A. A declaration that Plaintiffs have not infringed, directly or indirectly, the '120 patent.
- B. A declaration that the '120 patent is invalid and/or unenforceable.
- C. A declaration that Plaintiffs have not infringed, directly or indirectly, the '710 patent.
- D. A declaration that the '710 patent is invalid and/or unenforceable.
- E. A declaration that this case is exceptional pursuant to 35 U.S.C. § 285.
- F. Plaintiffs be awarded their attorneys fees, costs and expenses.
- G. For all other relief that the Court deems just and proper.

DATED: September 10, 2008

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