

copied Bernardo's innovative designs, violating JPT's valuable intellectual property rights embodied by Bernardo branded products.

THE PARTIES

3. Plaintiff JPT is a Delaware limited liability company having a principal place of business in Bend, Oregon.

4. On information and belief, Defendant Steven Madden Retail Inc. is a Delaware corporation having an office and place of business at 52-16 Barnett Avenue, Long Island City, New York 11104.

5. On information and belief, Defendant Steven Madden, Ltd. is a Delaware corporation having an office and place of business at 52-16 Barnett Avenue, Long Island City, New York 11104.

JURISDICTION & VENUE

6. This action arises under the patent statutes of the United States, 35 U.S.C. § 271 *et seq.* Accordingly, the Court has federal question jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1338(a).

7. The court has personal jurisdiction over the Steven Madden Defendants because they conduct, have conducted and do conduct, business within the State of Texas through multiple sales outlets located within the State of Texas and at least one location in this District. Further, Defendant Steven Madden Retail, Inc. is registered to conduct business in the State of Texas.

8. Upon information and belief, the Steven Madden Defendants have existing business relationships in Texas and have purposefully directed business activities to Texas consumers through multiple sales outlets, including consumers this District.

9. Upon information and belief, the Steven Madden Defendants committed and continue to commit acts of infringement in violation of 35 U.S.C. § 271 and have and continue to

purposefully place infringing products into the stream of commerce. Upon information and belief, the Steven Madden Defendants, either directly or through affiliates, distributors, franchisees and/or others, ship, distribute, offer for sale, sell and market products in the United States, the State of Texas and this District. Upon information and belief, the Steven Madden Defendants expect their actions to have consequences within this District and derive substantial revenue from the sale of infringing products in interstate commerce and this District. The acts by the Steven Madden Defendants caused injury to JPT within this District.

10. Venue is properly within this District in accordance with 28 U.S.C. § 1391 (b) and (c) and § 1400 (b).

FACTS AND BACKGROUND

The JPT Patents

11. On September 23, 2008, United States Patent No. D577,182 (the “D182 Patent”) entitled Sandal was duly and legally issued. A copy of the ‘D182 Patent is attached as Exhibit A and incorporated herein.

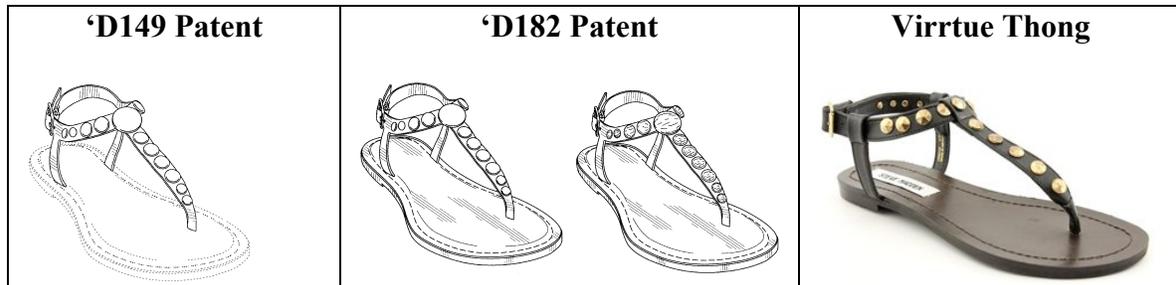
12. On November 25, 2008, United States Patent No. D581,149 (the “D149 Patent”) entitled Sandal was duly and legally issued. A copy of the ‘D149 Patent is attached as Exhibit B and incorporated herein.

13. The above referenced patents relate to the ornamental designs claimed in the ‘D182 Patent and ‘D149 Patent (collectively the “JPT Patents”). JPT owns all right, title and interest in and to the JPT Patents by assignment dated February 11, 2014.

14. The ornamental designs of the JPT Patents are embodied in the successful *MOJO* sandal, which is sold by JPT under its Bernardo brand.

Steven Madden's Infringement of the JPT Patents

15. As the representative side-by-side comparisons shown below reveal, the Steven Madden Defendants misappropriated JPT's patented ornamental sandal designs in the accused products, including through their *VIRRTUE THONG* sandals as depicted below (the "Accused Products").



16. On information and belief, the Steven Madden Defendants contracted with suppliers to have manufactured in China the Accused Products for sale in the U.S., Texas and this District. Shortly after manufacturing, the Steven Madden Defendants began importing the Accused Products into the U.S., Texas and this District for sale through its sales outlets.

17. On information and belief, the Steven Madden Defendants displayed or caused to be displayed the Accused Products in sales outlets and marketed them on their company website and third party websites.

18. On further information and belief, the Steven Madden Defendants have sold significant volumes of the Accused Products through its expansive sales outlets and distribution channels throughout the U.S., Texas and this District.

19. JPT has complied with the statutory requirement of placing a notice of the JPT Patents on the *MOJO* sandal sold under its Bernardo brand, which embody the JPT Patents. On information and belief, the Steven Madden Defendants had notice of their infringement and the JPT Patents through JPT's statutory product marking, the Steven Madden Defendants' product design

process, and/or the Steven Madden Defendants' monitoring of patents in connection with its release of new products.

Patent Infringement

20. JPT incorporates herein the allegations set forth in Paragraphs 1 through 19 above.

21. Under 35 U.S.C. §§ 271 *et seq.*, the Steven Madden Defendants have infringed the JPT Patents by the manufacture, use, sale, offer for sale, and importation of the Accused Products or alternatively by contributing or inducing others to manufacture, use, sell, offer for sale, or import the Accused Products, literally and/or under the doctrine of equivalents.

22. Upon information and belief, the Steven Madden Defendants have applied the design of the JPT Patents, or a colorable imitation thereof, to the Accused Products for the purpose of sale, and/or selling or exposing for sale the Accused Products.

23. On information and belief, the Steven Madden Defendants will continue to infringe the claims of the JPT Patents unless enjoined by this Court.

24. JPT has been damaged and will continue to be damaged by the Steven Madden Defendants' infringing acts.

25. On information and belief, the Steven Madden Defendants were actually aware of the JPT Patents and willfully committed acts of infringement.

JURY DEMAND

26. JPT demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, JPT prays the Court to:

- (a) grant a permanent injunction against the Steven Madden Defendants' continued infringement;
- (b) award damages for the Steven Madden Defendants' infringement of the JPT Patents under 35 U.S.C. § 284 or § 289;

- (c) in the event JPT elects to collect damages under 35 U.S.C. § 284, find that the Steven Madden Defendants' infringement has been willful and increase such damages to three times the awarded amount;
- (d) award prejudgment and post judgment interest;
- (e) find that this case is an exceptional case under 35 U.S.C. § 285 and award attorneys' fees;
- (f) award costs; and
- (g) grant all other relief to which JPT is entitled.

Date: November 5, 2015

Respectfully submitted,

/s/ J. Reid Bumgarner

J. Reid Bumgarner

State Bar No. 24053118

S.D. Tex. ID No. 631284

Port & Bumgarner LLP

6750 West Loop South, Suite 748

Bellaire, Texas 77401

Telephone: 713/893-7255

Email: RBumgarner@PortBumgarner.com

For Plaintiff JPT