

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

Tervis Tumbler Company, Inc.	:	
Plaintiff,	:	Civil Action No.:
	:	
v.	:	COMPLAINT
	:	
TJX Companies, Inc.	:	
And Gourmet Home Products LLC.,	:	
	:	JURY TRIAL
Defendants.	:	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tervis Tumbler Company, Inc. (“Tervis”), by and through its attorneys, brings this Complaint against Defendants, TJX Companies, Inc. (“TJX” or “Defendant TJX”) and Gourmet Home Products LLC (“GHP” or “Defendant GHP”) (TJX and GHP collectively “Defendants”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action brought pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. Seq.*

PARTIES

2. Plaintiff Tervis is a corporation organized under the laws of the State of Florida with its principal place of business at 201 Triple Diamond Boulevard, North Venice, Florida 34275.

3. Upon information and belief, Defendant TJX is a corporation organized under the laws of the State of Delaware with a principal place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

4. Upon information and belief, Defendant GHP is a New York Domestic Limited Liability Company with a principal place of business at 347 5th Avenue, New York, New York 10016.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over TJX because TJX is a corporation incorporated in the State of Delaware.

7. This Court has personal jurisdiction over GHP because GHP is subject to the general and specific jurisdiction in the State of Delaware. Defendant GHP has established minimum contacts with this judicial district. Upon information and belief, Defendant GHP is doing business in the State of Delaware, including manufacturing, selling, and/or offering to sell products in this judicial district. Defendant GHP's actions constitute patent infringement in this judicial district in violation of 35 U.S.C. § 271 and place infringing products into the stream of commerce, with the knowledge and understanding that such products are sold in this judicial district. The acts by Defendant GHP causes injury to Tervis within this judicial district.

8. Venue is proper in this judicial district pursuant to 24 U.S.C. §§ 1391 and 1400 and because Defendants transact business within this judicial district and offer for sale in this judicial district products that infringe U.S. Patent No. D669,310.

COUNT 1 – INFRINGEMENT OF U.S. PATENT NO. D669,310

9. Tervis reasserts and incorporates herein by reference the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

10. In March, 2011, Tervis completed its unique ornamental design for a portable beverage container. On August 30, 2011 an application for a United States Letters Patent was filed with the United States Patent and Trademark Office (USPTO) to protect this ornamental design.

11. Shortly after the application for patent was filed, Tervis began successfully marketing the portable beverage container incorporating its ornamental design.

12. On October 23, 2012 the United States Patent and Trademark Office duly and legally issued U.S. Patent No. D669,310 (the “‘310 Patent”) entitled “Portable Beverage Container”. A true and correct copy of the ‘310 Patent is attached hereto as Exhibit A.

13. Tervis is the owner of all right title and interest in the ‘310 Patent. Tervis has owned the ‘310 Patent throughout the period of Defendants’ infringing acts.

14. A portable beverage container has recently been marketed by Defendants under the mark TRITAN. A photograph of the portable beverage container sold by Defendants is attached as Exhibit B.

15. Upon information and belief, Defendants became aware of the successful launch of the Tervis portable beverage container covered by the ‘310 Patent and copied the same. A copy of the Tervis portable beverage container covered by the ‘310 Patent is attached as Exhibit C.

16. Upon information and belief, Defendants manufacture and sell the accused products to customers.

17. Upon information and belief, Defendants had knowledge that the accused product is an infringement of the patent-in-suit and has willfully made and sold the product.

18. Defendants have infringed and are still infringing the '310 Patent by making, using and selling the accused container which is accused of infringing the '310 Patent.

19. Defendants' infringement has injured Tervis and Tervis is entitled to recover damages adequate to compensate for such infringement, including but not limited to, lost profits, a reasonable royalty award, disgorgement of the profits received by Defendants, treble damages, costs, pre and post judgmental interest at the maximum allowable rate, attorneys' fees, and such other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court to grant the following relief:

- A. A judgment that the Defendants have infringed the '310 Patent;
- B. A permanent injunction prohibiting Defendants, their predecessors, successors, parents, subsidiaries, and affiliates thereof, including, but not limited to, all past or present directors, officers, agents, servants, employees, attorneys, representatives, and those persons in active concert or participation with them who receive actual notice of the Order, from committing further acts of infringement;
- C. An award of damages to Plaintiff, including via 35 U.S.C. § 289 an increase in damages under 28 U.S.C. § 284, together with prejudgment interest from the date the infringement began and post-judgment interest;
- D. Declaring that the Defendants have willfully infringed the claim of the '310 Patent;
- E. A finding that this case is "exceptional" within the meaning of 35 U.S.C. § 285, and an award to Plaintiff of its reasonable attorney fees and expenses;
- F. An award of costs to Plaintiff; and

G. Such other and further relief as this Court deems proper and just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by a jury on all issues so triable.

Dated; April 26, 2016

CAESAR RIVISE, PC

/s/ R Touhey Myer

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