

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

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|----------------------|---|------------------------------------|
| RIDDELL, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 3:08-cv-00711-BBC |
| |) | |
| SCHUTT SPORTS, INC., |) | Jury Trial Demanded |
| |) | |
| Defendant. |) | |

SECOND AMENDED COMPLAINT

Plaintiff Riddell, Inc. ("Riddell") alleges the following claims against Defendant Schutt Sports, Inc. ("Schutt"):

THE PARTIES

1. Plaintiff Riddell is an Illinois corporation, with its principal place of business located at 9801 West Higgins Road, Suite 800, Rosemont, Illinois, 60018.
2. Riddell is a leading supplier of protective sports equipment, including football helmets and faceguards.
3. Upon information and belief, Defendant Schutt is an Illinois corporation, with its principal place of business located in Litchfield, Illinois.
4. Upon information and belief, Defendant makes, sells, offers for sale in the United States, and/or imports into the United States, sports equipment, including football helmets and faceguards.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et. seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant, because Defendant engages in business within this district, and has placed infringing products into the stream of commerce by shipping products into this district (and/or knowing that the products would be shipped into this judicial district), and such infringing products have been sold and used in this district.

7. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b), because, among other reasons, Defendant is subject to personal jurisdiction in this district and has committed acts of infringement in this district.

COUNT I
Patent Infringement of U.S. Patent No. 6,934,971

8. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-7 as though fully set forth herein.

9. Plaintiff is the owner by assignment of U.S. Patent No. 6,934,971, which was duly and lawfully issued by the United States Patent and Trademark Office on August 30, 2005, entitled "Football Helmet" ("the '971 patent"). A true and correct copy of the '971 patent is attached as Exhibit A and made a part hereof.

10. Regarding the '971 patent, Plaintiff has complied with the statutory notice provisions of 35 U.S.C. § 287.

11. Defendant has at no time been licensed under the '971 patent.

12. Defendant has infringed, and is currently infringing at least claims 42-47, 53-59 and 71-73 of the '971 patent, in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b), (c), and (f), directly, indirectly, contributorily, and by inducement of and action with others, regarding making, using, selling, offering to sell in the United States, and/or importing into the United States products that embody one or more claims of the '971 patent, including without limitation football helmets identified with the DNA™ and ION™ model names.

13. Defendant induces infringement of the '971 patent by inducing its customers to use the DNA and ION football helmets in the United States.

14. On information and belief, Defendant's infringement of the '971 patent has been and will continue to be willful and intentional.

15. Plaintiff has been injured and damaged by Defendant's infringement of the '971 patent. Defendant's infringement has caused, and will continue to cause, irreparable harm to Plaintiff, for which Plaintiff has no adequate remedies at law, unless and until enjoined by this Court.

COUNT II
Patent Infringement of U.S. Patent No. 7,240,376

16. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-15 as though fully set forth herein.

17. Plaintiff is the owner by assignment of U.S. Patent No. 7,240,376, which was duly and lawfully issued by the United States Patent and Trademark Office on July 10, 2007, entitled "Sports Helmet" ("the '376 patent"). A true and correct copy of the '376 patent is attached as Exhibit B and made a part hereof.

18. Regarding the '376 patent, Plaintiff has complied with the statutory notice provisions of 35 U.S.C. § 287.

19. Defendant has at no time been licensed under the '376 patent.

20. Defendant has infringed, and is currently infringing at least claims 1-6, 9-20 and 22-28 of the '376 patent, in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b), (c), and (f), directly, indirectly, contributorily, and by inducement of and action with others, regarding making, using, selling, offering to sell in the United States, and/or importing into the

United States products that that embody one or more claims of the '376 patent, including without limitation its DNA, ION and AIR XP™ (claims 20 and 22-24 only) football helmets.

21. Defendant induces infringement of the '376 patent by inducing its customers to use the DNA, ION and AIR XP football helmets.

22. On information and belief, Defendant's infringement of the '376 patent has been and will continue to be willful and intentional.

23. Plaintiff has been injured and damaged by Defendant's infringement of the '376 patent. Defendant's infringement has caused, and will continue to cause, irreparable harm to Plaintiff, for which Plaintiff has no adequate remedies at law, unless and until enjoined by this Court.

COUNT III
Patent Infringement of U.S. Patent No. 7,036,151

24. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-23 as though fully set forth herein.

25. Plaintiff is the owner by assignment of U.S. Patent No. 7,036,151, which was duly and lawfully issued by the United States Patent and Trademark Office on May 2, 2006, entitled "Face Guard For A Sports Helmet" ("the '151 patent"). A true and correct copy of the '151 patent is attached as Exhibit C and made a part hereof.

26. Regarding the '151 patent, Plaintiff has complied with the statutory notice provisions of 35 U.S.C. § 287.

27. Defendant has at no time been licensed under the '151 patent.

28. Defendant has infringed, and is currently infringing, at least claims 14-19, 23 and 25 of the '151 patent, in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b), (c), and (f), directly, indirectly, contributorily, and by inducement of and action with others, regarding

making, using, selling, offering to sell in the United States, and/or importing into the United States products that embody one or more claims of the '151 patent, including without limitation: faceguards purposely designed and marketed to fit the Riddell Revolution® Helmet, presently denoted by a Schutt product number beginning with "REVO."

29. Defendant induces infringement of the '151 patent by inducing its customers to use the REVO faceguards in the United States.

30. On information and belief, Defendant's infringement of the '151 patent has been and will continue to be willful and intentional.

31. Plaintiff has been injured and damaged by Defendant's infringement of the '151 patent. Defendant's infringement has caused, and will continue to cause, irreparable harm to Plaintiff, for which Plaintiff has no adequate remedies at law, unless and until enjoined by this Court.

COUNT IV
Violation of §43(a) of the Lanham Act: 15 U.S.C. §1125(a)

32. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-31 as though fully set forth herein.

33. Plaintiff sells football helmets including but not limited to the Revolution® line of helmets which are sold for use in all levels of play including recreational, high school, college and pro football. The Revolution® helmets are sold to and/or used by the general consuming public as well as to professional, collegiate, high school and youth organizations.

34. On or about December 15, 2008, in response to Plaintiff's filing of the original Complaint in this action, Defendant issued a Press Release entitled "Schutt Responds to Lawsuit: Utterly False and Without Merit." (A copy of the Press Release is attached hereto as Exhibit D and made a part hereof). The Press Release was posted on Schutt's website,

<http://www.schuttsports.com> and has also been picked up by numerous news services and posted on various other publicly available websites such as www.forbes.com, www.businesswire.com, www.earthtimes.org, www.marketwatch.com, www.pr-inside.com, www.topix.net, www.newstin.co.uk, and www.tmcnet.com.

35. The Press Release contains false and misleading statements about Plaintiff's products including but not limited to the following statements: (1) that "Riddell is losing significant market share in football" and that "Schutt is the fastest growing helmet in the NFL®, Collegiate and Varsity ranks;" (2) that the "Revolution® helmets are demonstrably less protective than DNA™, ION4D™, or AIR XP™ helmets made by Schutt;" and (3) that Schutt "has reason to believe that the Revolution® product design is fatally flawed and potentially dangerous."

36. These false and/or misleading statements in the Press Release have deceived or have the tendency to deceive the purchasing public, the football industry and the marketplace.

37. The statements in the Press Release are material as they go to the quality and safety of Plaintiff's products and are likely to influence purchasing decisions.

38. The false and/or misleading statements have been widely disseminated in interstate commerce via the internet and other publications and promotional activities nationwide and within the State of Wisconsin for the purpose of damaging Plaintiff in the marketplace.

39. Defendant's conduct in making and publishing these false and/or misleading statements constitutes unfair competition.

40. Plaintiff has been injured or is likely to be injured as a result of Defendant's false and/or misleading statements.

41. The foregoing action of Defendant acts constitute a violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

COUNT V
Trade Libel and Product Disparagement

42. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-41 as though fully set forth herein.

43. At the time Defendant published the false and/or misleading statements set forth in the Press Release about Plaintiff's Revolution® helmets, Defendant knew or should have known that the statements were false and/or misleading and Defendant acted with reckless disregard as to the truth or falsity of those statements.

44. As a result of Defendant's false statements regarding Plaintiff's products, Plaintiff has been injured or is likely to be injured in the marketplace.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment that:

- A. Defendant has infringed the '971 patent, the '376 patent, and the '151 patent;
- B. Defendant's infringement of the '971 patent, the '376 patent, and the '151 patent is willful;
- C. Defendant, its officers, directors, employees, agents, subsidiaries, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert or participation with Defendant, be preliminarily and permanently enjoined from infringement of the '971 patent, the '376 patent, and the '151 patent under 35 U.S.C. § 283;

D. Plaintiff be awarded all damages adequate to compensate Plaintiff for Defendant's infringement of the '971 patent, the '376 patent, and the '151 patent, and such damages be trebled under 35 U.S.C. § 284 and awarded to Plaintiff, with prejudgment interest;

E. This case be adjudged an exceptional case under 35 U.S.C. § 285, and that Plaintiff be awarded attorneys' fees, costs, and all expenses incurred in this action;

F. Defendant be enjoined from disparaging the nature and quality of Plaintiff's Revolution® helmets;

G. Plaintiff be awarded all actual and compensatory damages;

H. Plaintiff be awarded Defendant's profits; and

I. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable by jury.

Dated: January 21, 2009

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