

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KIEL JAMES PATRICK LLC,

Plaintiff,

v.

CVS PHARMACY, INC.

Defendant.

Case No.: 1:16-cv-06564

Judge Robert W. Gettleman

DEMAND FOR JURY TRIAL

AMENDED COMPLAINT

Plaintiff Kiel James Patrick LLC (“KJP” or “Plaintiff”) complains and alleges as follows against Defendant CVS Pharmacy, Inc. (“CVS” or “Defendant”).

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to patents).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendant since the Defendant directly targets business activities toward consumers in the United States, including Illinois, in this Division and elsewhere in this Judicial District. Defendant engages in interstate commerce and committed tortious acts in Illinois, and has wrongfully caused KJP substantial injury in the State of Illinois.

THE PARTIES

3. Kiel James Patrick LLC is a Rhode Island limited liability company having its principal place of business at 925 Central Avenue, Pawtucket, RI 02861.

4. CVS is a Delaware corporation with its principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895.

BACKGROUND AND NATURE OF THE ACTION

5. This action has been filed by KJP to combat infringements, counterfeiting deceptive practices, and other tortious and concerted acts by CVS trading on KJP's reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed products featuring KJP's patented design in willful and reckless disregard for reputational and other injuries inflicted upon KJP with CVS' unwillingness to cease and desist despite being put on notice in several communication exchanges between the parties. At times critical to the summer season trade from mid-April through late June, Defendant's products remained on shelves and offered for sale in CVS stores in this Division of Illinois and elsewhere despite CVS' promise to remove the unauthorized products.
6. American-made manufacturing is the heart and soul of KJP. KJP strives to provide quality products, redefine originality, and inspire people to live their American Dream.
7. KJP was founded in 2009 as a fashion and jewelry manufacturer and lifestyle brand and KJP is a leading designer and manufacturer of jewelry, bracelets, necklaces, fashion accessories and apparel.
8. Starting in 2009, KJP mastered the art of leveraging social media to build brand awareness and recognition.
9. As an innovative designer, jewelry and apparel manufacturer, KJP had invested substantial time, money and effort in business marketing channels and through social media and other sales and marketing approaches to develop a valuable fan base. The KJP brand is leveraged

on reputation and through the use of social media to promote its products and the KJP Fan base.

10. KJP has developed into a much storied brand. Kiel James Patrick, and his wife Sarah Vickers, run the Kiel James Patrick Brand which is a growing brand inspired by classic New England style, see e.g., The New York Times July 2, 2014 article, Designing a Perfect Summer, The Designer Kiel James Patrick Evokes the Perfect New England Summer.
11. This mastery of social media as a marketing platform has continued in the seven years since KJP's inception. Currently, KJP's following on social media is in excess of 1 million followers. Many of these followers are die-hard fans of the brand and a large percentage of them identify with the Plaintiff's determination to create high quality products in the United States.
12. Kiel James Patrick McKivergan and Sarah Vickers—co-founders of KJP and both presently 33 years old—are emblematic of the American Dream, having risen from modest roots to create a company that presently directly employs in excess of 25 employees in the United States.
13. Both Kiel and Sarah have thousands of followers on their Facebook, Instagram, Twitter and other social media accounts where they post pictures of their exciting lifestyle and adventures with friends while also promoting their products.
14. Introduced in 2012, KJP's anchor bracelet product line has become representative of KJP's inspiration and mission to provide high quality American made products manufactured in Rhode Island. The anchor bracelet has resonated with consumers, nationwide and is one of KJP's most successful products. Samples of the distinctive KJP anchor bracelets are below:



15. KJP's creative achievements have resulted in various intellectual property protection for KJP's innovations, including its design patent. Nevertheless, KJP's innovations have been the subject of widespread emulation by its competitors, who have attempted to capitalize on KJP's success by imitating KJP's innovative design and by attempting to trade-off of the widespread consumer recognition and good-will KJP has developed.

16. One imitator is CVS. CVS has offered for sale and sold bracelets which look like the patented design.

17. By this action, KJP seeks to put a stop to CVS' illegal conduct and obtain compensation for the violations that have occurred thus far.

DEFENDANT'S INFRINGEMENTS

18. Defendant CVS was notified on April 15, 2016, and despite several documented communications exchanges between the parties, Defendant's infringements continued unabated.

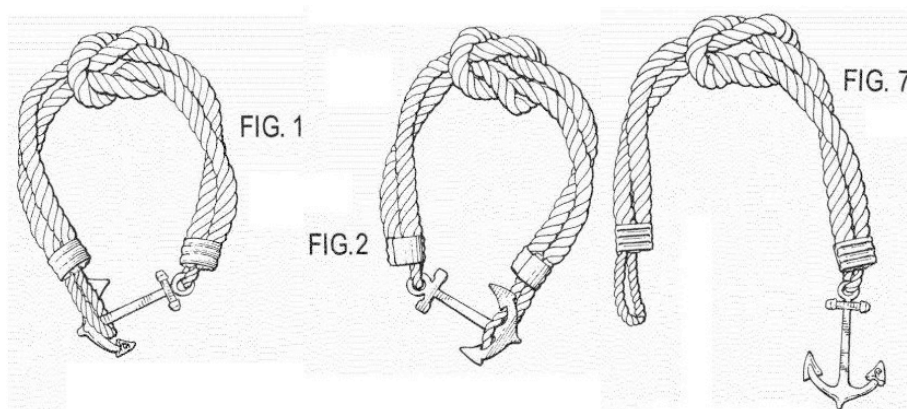
19. The counterfeit bracelets sold and offered for sale by CVS use an exact copy of KJP's ornamental Design patent. CVS' bracelets look no different than the patented design. CVS' unauthorized actions adversely associates KJP products with CVS poor quality bracelets,

reflects adversely on KJP's product and works to ruin KJP's hard-earned good name and reputation, and their continued infringement can only serve to sully the KJP brand.

KJP'S INTELLECTUAL PROPERTY RIGHTS

KJP'S DESIGN PATENT

20. To protect its innovative designs, applied for and obtained United States Design Patent No. D719,043 entitled "Bracelet" which was duly and legally issued on December 9, 2014 (the '043 Patent). A true and correct copy of the '043 Patent is attached as Exhibit A.
21. The '043 Patent claims the following ornamental design for a bracelet:



DEFENDANT'S INFRINGING PRODUCTS

22. Rather than innovate and develop its own bracelet designs, CVS chose to copy KJP's distinctive anchor designs with multiple infringing products, one example of which is:



23. Defendant's bracelet infringes the ornamental design for a bracelet of the '043 Patent.

COUNT I

INFRINGEMENT OF U.S. DESIGN PATENT NO. D719,043 AGAINST CVS

24. Plaintiff repeats and incorporates by reference herein its allegations contained in the above paragraphs of this Complaint.

25. Defendant CVS makes, uses, sells, offers to sell and/or imports into the United States for subsequent distribution, sale or use, products that infringe the '043 Patent.

26. The activities of CVS have been done and continue to be done without license or permission from KJP.

27. The activities of CVS have been and continue to be to the injury and detriment and irreparable harm to KJP.

WHEREFORE, Plaintiff KJP prays for judgment against CVS that the Court:

- A. Find that CVS has committed acts of patent infringement;
- B. Enter judgment against CVS and in favor of KJP on the applicable count for infringement of the asserted design patent;
- C. Find the activities of CVS were in all respects conducted willfully and for profit;
- D. Award to KJP damages, including, but not limited to, lost profits as damages sustained by KJP because of CVS' acts of patent infringement;
- E. A judgment that CVS has infringed the asserted design patent;
- F. An order and judgment permanently enjoining CVS and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement the asserted design patent;

G. A judgment awarding KJP all damages adequate to compensate for CVS' infringement of the asserted patent including but not limited to CVS' total profits pursuant to 35 U.S.C. § 289.

H. Award to KJP for damages sustained because of the conduct of CVS' infringing acts including but not limited to a reasonable royalty being determined based on hypothetical negotiation analysis contemplating Plaintiff patentee as an unwilling licensor where Plaintiff might be considered to grant a license only if it received a royalty based on the per unit profits that Plaintiff forgoes.

I. A judgment awarding KJP all damages, fees, costs, and interest, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest.

J. An accounting of CVS' profits.

K. An accounting of CVS' units produced, sold, received and sold at retail;

L. An accounting of CVS' destruction of the infringing products; and

M. Grant KJP such other and further relief as justice may require.

DATED: September 19, 2016

Respectfully submitted,

/s/ Keith A. Vogt

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, Keith A. Vogt, hereby certify that on September 19, 2016, I electronically filed the foregoing with the Clerk of the U.S. District Court, Northern District of Illinois, Eastern Division, using the CM/ECF System which will send notification of said filing to all counsel of record.

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