

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

SURE FIT INC.,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 1:16-cv-06415
	)	Honorable Amy J. St. Eve
v.	)	
	)	JURY TRIAL DEMANDED
GLOBAL HOMEWARES GROUP LTD.,	)	
CABER SURE FIT, INC.,	)	
	)	
Defendants.	)	

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**FIRST AMENDED COMPLAINT**

Plaintiff Sure Fit Inc. (“Sure Fit”) states as follows for its First Amended Complaint against defendants Global Homewares Group Ltd. (“Global Homewares”) and Caber Sure Fit Inc. (“Caber”):

**THE PARTIES**

1. Sure Fit is a Delaware corporation with its principal place of business at 8000 Quarry Road, Alburtis, Pennsylvania 18011.
  
2. On information and belief, Global Homewares is a Delaware corporation with its principal place of business at 10 North Martingale Road #400, 286, Schaumburg, Illinois 60173. On information and belief, Global Homewares is authorized to do and is doing business in Illinois and in this judicial district.
  
3. On information and belief, Caber is a Canadian company with its principal place of business at 25a East Pearce Street, Unit 2, Richmond Hill, Ontario, L4B 2M9. On information and belief, Caber is doing business in Illinois and in this judicial district.

4. On information and belief, Bernard Weinstein owns and/or directs the activities of defendants Global Homewares and Caber.

#### **JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271, breach of contract, and trademark infringement under the Lanham Act, 15 U.S.C. §§ 1114 & 1125(a).

6. Subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (patents and trademarks). Sure Fit's federal claims arise under the trademark and patent laws of the United States, specifically 15 U.S.C. §§ 1051 *et seq.* (Lanham Act) and 35 U.S.C. §§ 1 *et seq.* (Patent Act). Subject matter jurisdiction exists over any remaining claims under 28 U.S.C. § 1367(a) because the claims are so related that they form part of the same case or controversy.

7. On information and belief, this Court has specific and personal jurisdiction over Defendants pursuant to due process and/or the Illinois Long Arm Statute, due at least to Defendants' substantial business in this forum, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent causes of conduct, and/or deriving substantial revenue from goods and services provided to persons and other entities in Illinois and this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants have purposely transacted business in this judicial district and have committed acts of joint, direct, and/or indirect infringement in this judicial district.

**COUNT I**  
**(Against Defendant Global Homewares)**  
**(Infringement of United States Patent No. 7,422,281)**

9. On September 9, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,422,281 (the “‘281 Patent”), entitled “Knit Form-Fit Slipcover,” to Sure Fit. A copy of the ‘281 Patent is attached as Exhibit A.

10. Sure Fit is the owner by assignment of all right, title and interest in and to the ‘281 Patent.

11. The ‘281 Patent is valid and enforceable.

12. Sure Fit has complied with the marking requirements of 35 U.S.C. § 287 with respect to the ‘281 Patent.

13. Global Homewares is directly and/or indirectly infringing at least one claim of the ‘281 Patent in this judicial district and elsewhere by, among other things, making, using, offering for sale, selling and/or importing infringing products, including its infringing Furniture Skins slip covers, and will continue to do so unless enjoined by this Court.

14. Global Homewares’ infringing activities were taken with full knowledge and with notice that it was in violation of Sure Fit’s patent rights. Sure Fit expressly notified Global Homewares that Global Homewares is infringing the ‘281 Patent (see Exhibit B), and Sure Fit has tried to resolve this matter without judicial intervention. However, Global Homewares has refused to discontinue its infringing activities.

15. Global Homewares’ infringement has damaged Sure Fit and will continue to injure Sure Fit, unless and until such infringement is enjoined by this Court.

16. Pursuant to 35 U.S.C. § 283, Sure Fit is entitled to injunctive relief in accordance with the principles of equity to prevent the further infringement of its patent rights.

17. Pursuant to 35 U.S.C. § 284, Sure Fit is entitled to damages adequate to compensate for Global Homewares' infringement, although in no event less than a reasonable royalty, together with interest and costs to be taxed to Global Homewares.

18. Global Homewares' infringing activity brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, and thus Sure Fit requests an award of its attorneys' fees incurred in this action.

**COUNT II**  
**(Against Defendant Caber)**  
**(Breach of Contract)**

19. Plaintiff repeats and realleges the allegations of paragraphs 1 through 8 above, as though fully set forth herein.

20. On July 1, 2008, Plaintiff Sure Fit Inc. and Sure Fit Home Furnishings, Ltd. entered into an agreement to govern the supply of goods and services in the United States by Sure Fit Inc. and in Canada by Sure Fit Home Furnishings, Ltd. (the "Agreement"). A copy of the Agreement is attached as Exhibit B.

21. In 2008, Caber Distributors, Inc. acquired Sure Fit Home Furnishings, Ltd. The resulting company is the Defendant Caber.

22. The Agreement is valid and binding on Caber and the result of Sure Fit's offer, Caber's acceptance of that offer, and valid consideration.

23. Paragraph 10 of the Agreement states that the Agreement inures to the benefit of each party's successors and assigns.

24. Paragraph 13 of the Agreement states that the Agreement cannot be modified or amended unless in writing and signed by both parties.

25. The Agreement permitted Caber to market and resell Sure Fit-branded products only in Canada. Pursuant to the Agreement, Caber cannot sell Sure Fit-branded products outside of Canada without Plaintiff Sure Fit Inc.'s prior, written consent.

26. The Agreement also requires Caber to pay a five percent (5%) royalty to Plaintiff Sure Fit Inc. if a certain amount of product is transshipped to the United States by one of Caber's customers.

27. Caber breached the Agreement by selling Sure Fit-branded products in the United States without Sure Fit's consent and without paying the required royalty.

28. Sure Fit has complied with all material terms of the Agreement. Sure Fit has fully performed its material obligations under the Agreement.

29. As a direct and proximate result of Caber's breach of the Agreement, Sure Fit has suffered damages in excess of \$120,000.

**COUNT III**  
**(Against Defendant Caber)**  
**(Infringement of Trademark SURE FIT®, Reg. No. 3,043,711)**

30. Plaintiff repeats and realleges the allegations of paragraphs 1 through 8 and 20–29 above, as though fully set forth herein.

31. Sure Fit is owner of record of U.S. Trademark Registration No. 3,043,711, which was filed on June 17, 2004, and granted on Jan. 17, 2006, for the SURE FIT® mark in connection with pillows; cushions; chairs; slipcovers, online retail store and ordering services and mail order catalog services in the field of home décor.

32. Sure Fit first used its SURE FIT® mark in commerce with slip covers at least as early as 1926 and has used the mark continuously since then.

33. U.S. Trademark Registration No. 3,043,711 is incontestable under 15 U.S.C. § 1065, and is prima facie evidence of Sure Fit's ownership and exclusive right to use the SURE FIT® mark.

34. Caber is infringing the SURE FIT® mark by selling Sure Fit-branded slipcovers and other furniture protectors in the United States.

35. Caber's unauthorized use of the SURE FIT® mark is likely to cause confusion, mistake, or deception as to source, sponsorship, affiliation, connection or approval of Caber's products, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

36. Consumers and potential consumers of Caber's products offered under the infringing SURE FIT® mark are likely to mistakenly believe that Caber's products are connected with, authorized, approved or sponsored by, affiliated, or related to Sure Fit and/or its products or services, when in fact no such connection, authorization, approval, sponsorship, affiliation or relationship exists.

37. Sure Fit has been damaged by Caber's infringement of Sure Fit's SURE FIT® mark, and will continue to suffer immediate and irreparable damage as long as Caber's infringement continues.

38. Caber's acts of trademark infringement have been and continue to be deliberate, willful and/or reckless, making this an exceptional case within the meaning of 15 U.S.C. § 1117, such that Sure Fit should be awarded enhanced damages and its attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Sure Fit respectfully requests that this Court enter:

A. A judgment in favor of Sure Fit that Global Homewares has infringed the '281 Patent;

B. A permanent injunction enjoining Global Homewares, its members, principals, owners, officers, directors, agents, representatives, servants, affiliates, employees, divisions, branches, subsidiaries, parents, successors and assigns, and all others acting in active concert or privity with any of them, from direct, indirect and/or joint infringement of the '281 Patent pursuant to 35 U.S.C. § 283;

C. An award of damages to Sure Fit pursuant to 35 U.S.C. § 284 to compensate for Global Homewares' infringement of the '281 Patent;

D. An order finding this an exceptional case under 35 U.S.C. § 285 and awarding Sure Fit its reasonable attorneys' fees incurred in this action;

E. A judgment in favor of Sure Fit and against Caber in the amount of at least \$120,000, plus costs, for breach of the Agreement dated July 1, 2008;

F. A permanent injunction enjoining Caber, its members, principals, officers, directors, owners, affiliates, divisions, branches, subsidiaries, parents, employees, agents, representatives, servants, successors and assigns, and all those acting in privity or acting in concert with any of them, from using the mark SURE FIT®, or any other word or mark confusingly similar to the SURE FIT® mark;

G. A permanent injunction enjoining Caber, its principals, members, officers, directors, owners, affiliates, divisions, branches, subsidiaries, parents, employees, agents, representatives, successors, and assigns, and all those in privity or acting in concert with any of them, from holding themselves out as the owner of, or as otherwise authorized to use, the SURE FIT® mark in connection with Caber's goods or services or other related goods or services;

H. Awarding Sure Fit all damages appropriate under 15 U.S.C. § 1117;

- I. Awarding Sure Fit its costs and attorneys' fees pursuant to 15 U.S.C. § 1117;
- J. Any other relief that the Court deems proper, including ordering Caber to destroy and/or deliver up for destruction all advertisements, promotional materials, order forms, signage or other materials bearing the SURE FIT® mark or any other similar mark or design.

**DEMAND FOR JURY TRIAL**

Sure Fit requests a trial by jury on all issues so triable, pursuant to Fed. R. Civ. P. 38.

Respectfully submitted,

**THOMPSON COBURN LLP**

Date: October 6, 2016

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**CERTIFICATE OF SERVICE**

I, Michelle Ware Skinner, an attorney, certify that on October 6, 2016, I caused a true and complete copy of the foregoing FIRST AMENDED COMPLAINT (corrected) to be served on the following counsel of record via the Court's ECF-filing system:

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*/s/ Michelle Ware Skinner*