

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Esther A. L. Verbovszky)
325 N. Falmouth Drive)
Rocky River, Ohio 44116)

Case No. 1:16-cv-2382

Judge Gaughan

and)

Hug Me Joey, LLC)
325 N. Falmouth Drive)
Rocky River, Ohio 44116)

Plaintiffs,)

FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT

v.)

GOODBABY (Hong Kong) Ltd.)
Room 2001, 20/E)
Two Chinachem Exchange Square)
338 King's Road, North Point, Hong Kong,)

*(filed with opposing party's consent per
Fed. Civ. R. 15(a)(2))*

Defendant.)

(Jury Demand Endorsed Hereon)

NOW COMES Plaintiffs, *Esther A. L. Verbovszky* (hereinafter "EV") and *Hug Me Joey, LLC* (hereinafter "HMJ"), by and for their complaint against Defendant, *Goodbaby (Hong Kong) Limited* (hereinafter "GB"), alleges as follows:

THE PARTIES

1. EV is an individual ideal and is a resident of Rocky River, Ohio, which is in Cuyahoga County.
2. HMJ is a limited liability company organized under the laws of Ohio, and has its principal place of business in Rocky River, Ohio, which is in Cuyahoga County.
3. Upon information and belief, Defendant is a Hong Kong corporation with a principal place of business in Hong Kong. Defendant is engaged in the manufacture and sale of the GBChild Asana35 AP Infant Car Seat. Defendant has offered for sale and sold its product in Ohio and elsewhere.

JURISDICTION AND VENUE

4. This is an action for patent infringement. The patent claims arise under the patent laws of the United States, specifically 35 U.S.C. §281. This Court has subject matter jurisdiction over the patent infringement claim by virtue of 28 U.S.C. §1331, 1338, and U.S.C. §281.
5. This Court has diversity jurisdiction over all claims asserted in this action pursuant to 28 U.S.C. §1332, because the parties are citizens of different states and the amount in controversy exceeds the jurisdictional amount of \$75,000, excluding interests and costs.
6. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) and/or 28 U.S.C. §1400(b) because a substantial part of the events giving rise to the claims occurred in this judicial district, the Defendant is subject to personal jurisdiction in this district, and the infringement occurred within this judicial district.

FACTUAL ALLEGATIONS

7. Since 1998, the Plaintiffs have designed, produced, and marketed products to improve breathing problems and decrease digestive troubles occurring in poorly-positioned infants.
8. EV has dedicated extensive time to the understanding of breathing problems and digestive troubles that are related to the positioning of infants.
9. Along with proper positioning, the Plaintiffs' products help to make infants more comfortable when being positioned, especially during transport.
10. EV strives to develop truly unique and innovative products and, in fact, EV is listed as an inventor in 10 Letters Patent.
11. EV is the founded and Chief Executive Officer of HMJ Limited Liability Company.
12. On October 22, 2002, United States Letters Patent No. 6,467,840, entitled "Child's Car Seat Insert" (hereinafter referred to as the '840 patent) fully and legally issued to EV, as joint

inventor, for the aforementioned child's car seat insert. *(See a true and accurate copy of the '840 patent as issued, attached here to as "Exhibit 1.")*

13. At all times relevant, all rights to the '840 patent, including but not limited to the right to recover for infringement there under, has been solely assigned to EV.
14. The Plaintiff have manufactured and marketed a product in commerce that reads on the '840 patent, namely, the Plaintiffs' Hug Me Joey child's car seat insert (hereinafter "HMJ insert").
15. The Plaintiffs' insert has enjoyed sales success, but less success than should be but for the Defendant's actions.
16. Upon information and belief, the Defendant, at all times relevant, had actual knowledge of the Plaintiffs' HMJ insert and of the existence of the '840 patent.
17. The Defendant has been and is currently making, using, offering for sale, selling, and/or importing child safety toys that infringe the '840 patent. The Defendant has infringed the Plaintiffs' patent by, including but not limited to, making, using, offering for sale, selling, and importing the GBChild Asana35 AP Infant Car Seat. (See the Defendant's product packaging of the infringing product attached here to as "Exhibit 2.")
18. The Defendant's product infringes the claims of the '840 patent. (See an infringement chart relative to the Defendant's product compared to the '840 patent, attached here to as "Exhibit 3.")
19. The '840 patent includes claims directed to a child's car seat insert for preventing slouching of a child adapted to be placed on the insert in a car seat in a travel position. The Defendant's product GBChild Asana35 AP Infant Car Seat is directed towards small infants to achieve a snug fit of the nearness around the infants when placed in a car seat which read on the claims of the '840 patent.

20. The specimen sample of the Defendant's infringing product GBChild Asana35 AP Infant Car Seat as depicted in "Exhibits 2 and 3" was sold and purchased in Ohio within this judicial district. (See a copy of the receipt order attached here to as "Exhibit 4.")
21. The aforementioned activities of the Defendant have injured and threaten future injury to the Plaintiffs. More specifically, the Defendant's activities have diminished the Plaintiffs' goodwill and caused the Plaintiffs to lose sales that they otherwise would have made but for the sales of the Defendant's infringing GBChild Asana35 AP Infant Car Seat.
22. The Defendant is not authorized in any way to sell their infringing products or to use the patent jointly owned and fully assigned to EV.
23. Plaintiffs are entitled to an award of damages against the Defendant for patent infringement.

CLAIM NO. 1

(Patent Infringement 35 U.S.C. §271)

24. Plaintiffs hereby incorporate by reference each statement herein, whether stated above or below, as if each is fully re-written herein.
25. The Defendant has been and is currently making, using, offering for sale, selling, and/or importing child safety products that infringe the '840 patent. (Ex. 2 and 3.)
26. The Defendant has sold its infringing product, the GBChild Asana35 AP Infant Car Seat, in this judicial district as demonstrated by a purchased evidenced by "Exhibit 4"
27. The Defendant has infringed the '840 patent because the Defendant's accused article, namely the GBChild Asana35 AP Infant Car Seat, reads on the claims of the '840 patent or any equivalent thereof. (Ex. 2 and 3.)
28. The Defendant's conduct is an infringement of the '840 patent, and in violation of 35 U.S.C. §271 within this judicial district and elsewhere.
29. The Defendant will continue to make, use, offer for sale, sell, and import their infringing products unless enjoined by this Court.

30. The Defendant has been, and is, actively inducing infringement of the '840 patent by offering for sale and selling their infringing products to dealers at wholesale prices who have, and will continue to, offer them for sale and sell them to end users.
31. The Defendant's infringement is, and at all times has been, deliberate, willful, with full knowledge of the Plaintiff's patent rights, and wanton, and as a result, the Plaintiff is entitled to treble damages pursuant to 35 U.S.C. §284.
32. This is an exceptional case within the meaning 15 U.S.C. §285, and the award of appropriate attorneys' fees is justified.

PRAYER FOR RELIEF / REQUEST FOR REMEDIES

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. A preliminary the injunction enjoining the Defendant from making, using, or selling any product that infringes upon the '840 patent;
- B. A permanent injunction enjoining the Defendant from making, using, or selling any product that infringes upon the '840 patent;
- C. An accounting for damages resulting from Defendant's patent infringement and contributory infringement and the trebling of such damages because of the knowing, willful, and wanton nature of the Defendant's conduct;
- D. As assessment of interest on the damages so computed;
- E. An award of attorney's fees and costs in this action under 36 U.C.S. §285;

Judgment against Defendant indemnify in the Plaintiffs from any claims brought against the Plaintiffs for negligence, debts, malpractice, product liability, or other breaches of any duty owed by the Defendant to any person who was confused as to some association between the Plaintiffs and Defendant as alleged in this Complaint;

F. Judgment against Defendant for indemnify in the Plaintiffs from any claims brought against the Plaintiffs for negligence, debts, malpractice, product liability, or other breaches of any duty owed by the Defendant to any person who was confused as to some association between the Plaintiffs and Defendant as alleged in this Complaint;

G. Judgment against Defendant for an accounting and monetary award in an amount to be determined at trial;

H. Requiring Defendant to account to the Plaintiffs for all sales and purchases that have occurred to date, and requiring the Defendant to disgorge any and all profits derived by Defendant to selling infringing product

I. Requiring Defendant to provide full disclosure of any and all information relating to its supplier or suppliers of infringing product;

J. Requiring Defendant to provide the location of any and all manufacturing equipment, including but not limited to molds used to manufacture infringing product;

K. Requiring Defendant to destroy any and all manufacturing equipment use to manufacture infringing product or to deliver said equipment to the Plaintiffs;

L. Ordering a product recall of infringing product for destruction;

M. Requiring Defendant to file with this Court and serve on the Plaintiffs within thirty (30) days of this Court's order a report setting forth the manner in which they complied with the order;

N. Requiring Defendant to provide to Plaintiffs all sales records, including but not limited to email, mail, and advertising lists;

O. Damages according to each cause of action herein' and

P.. Prejudgment interest.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served on all counsel via electronically on the date electronically time-stamped above.

/s/ David A. Welling
C. VINCENT CHOKEN (0070530)
DAVID A. WELLING (0075934)

Counsel for the Plaintiff