

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF MAINE**

RANGE OF MOTION PRODUCTS LLC,

Plaintiff,

v.

THE ARMAID COMPANY INC.

Defendant.

C.A. No.: _____

JURY TRIAL DEMANDED

INJUNCTIVE RELIEF SOUGHT

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Range of Motion Products, LLC (“RoM”), by and through its attorneys, hereby demands a jury trial and complains of the Defendant, The Armaid Company, Inc. (“Armaid”), as follows:

NATURE OF THE ACTION

1. This is a complaint for willful violations of federal patent laws arising from Defendant’s sales of products in contravention of RoM’s patent rights and resulting damages to RoM.

2. Specifically, this is a civil action for patent infringement, injunctive relief, and damages arising under the United States Patent Act, 35 U.S.C. §§ 1, et seq., to enjoin infringement and obtain damages resulting from Defendant’s unauthorized and willful manufacture, use, sale, offer to sell and/or importation into the United States for subsequent use or sale of products that infringe the claim of United States Patent, U.S. Pat. No. D802,155 S, (the “D’155 Patent”) (attached as Exhibit 1) entitled “Body Massaging Apparatus”.

3. RoM seeks injunctive relief to prevent Defendant from continuing to infringe the D'155 Patent. In addition, Plaintiff seeks to recover monetary damages resulting from Defendant's past infringement of the D'155 Patent.

THE PARTIES

4. RoM is a Limited Liability Company organized and existing under the laws of California, with a principal place of business located at 1445 Distribution Way, Suite A, Vista, California 92081.

5. Defendant is a corporation organized under the laws of Maine and has a principal place of business at P.O. Box 1505, Blue Hill, Maine 04614.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over claims for patent infringement pursuant to the United States Patent Act, 35 U.S.C. §§ 1, *et seq.*, particularly including §271, and pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant is subject to personal jurisdiction in Maine and requiring Defendant to respond to this action will not violate due process. Defendant has committed acts of direct infringement, contributory infringement, and/or inducement of infringement, of the claims of the D'155 Patent resulting in injury from this judicial district and division.

8. Furthermore, Defendant is subject to the personal jurisdiction of this Court and is amenable to service of process because Defendant is incorporated and maintains its headquarters and principal place of business in Maine.

9. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 and 1400 at least because Defendant is subject to personal jurisdiction in this district, has infringed the D'155 Patent in this district, a substantial part of the events giving rise to the patent infringement claim(s) have taken

place and continue to take place in this judicial district, and Defendant is incorporated and has a principal place of business in Maine.

GENERAL ALLEGATIONS

10. RoM is the lawful assignee and exclusive owner of all right, title, and interest in and to the D'155 Patent, which is valid and subsisting, including rights to sue for acts of past, present, and future infringement.

11. The D'155 Patent is directed to a design for a body massaging apparatus and was duly and legally issued on November 7, 2017.

12. A true and accurate copy of the D'155 Patent is attached hereto as Exhibit 1 and incorporated herein.

13. RoM markets and sells the Rolflex® and Rolflex® Pro therapeutic roller (the "Rolflex Roller"), one of the products having a design covered by the D'155 Patent.

14. RoM has spent considerable time, effort, and financial resources developing and promoting products, including, but not limited to, the Rolflex Roller, that embody the non-functional design features of the D'155 Patent.

15. Defendant is engaging in commercial activities including, but not limited to, the making, using, selling, or offering for sale of one or more roller devices that are substantially similar to the D'155 Patent and/or the design of the Rolflex Roller.

16. Without authorization, Defendant has copied the protected non-functional elements of the Rolflex Roller and in so doing has infringed the D'155 Patent causing harm and damages to RoM.

DEFENDANT'S ACTS INFRINGE RoM'S PATENT

17. Defendant is selling the Armaid (the "Infringing Device") on its website, <https://www.armaid.com/products/armaid-1>. Exhibit 2.

18. Defendant, by way of making, using, importing, exporting, distributing, selling and/or offering for sale the Infringing Device directly infringes, contributorily infringes, and/or induces others to infringe the claim of the D'155 Patent.

19. A comparison of the Infringing Device, included by way of example but not limitation, with the ornamental design claimed in the D'155 Patent confirms infringement.

20. The following is a comparison of a side view of Defendant's Infringing Device (right) with RoM's D'155 Patent design (Fig. 3) (left):



21. The following is a comparison of a side view of Defendant's Infringing Device with RoM's D'155 Patent design (Fig. 3) overlaid thereon:



22. The following is another comparison of the side view of Defendant's Infringing Device with RoM's D'155 Patent design (Fig. 3) overlaid thereon:



23. The similarities between Defendant's Infringing Device and the ornamental design of the D'155 Patent are unmistakable and striking and can only be the result of intentional copying as the design elements serve no functional purpose.

24. Terry Cross ("Mr. Cross") is an individual residing in the State of Maine. Mr. Cross owns a membership interest of forty-five percent (45.0%) in RoM.

25. On March 12, 2019, in violation of the terms of RoM's Operating Agreement, and in breach of fiduciary duty and the implied covenant of good faith and fair dealing, Mr. Cross filed a non-provisional patent application, Application No. 16/351,465, entitled "Body Massaging Device" (the "Cross Application"), attached hereto as Exhibit 3, directed to a roller having a substantially similar design to the design of the D'155 Patent.

26. The Cross Application was assigned to the Defendant on March 11, 2019 and received by the United States Patent and Trademark Office (the "USPTO") on March 15, 2019. The assignment data for the Cross Application from the USPTO's database is attached hereto as Exhibit 4.

27. Mr. Cross is the registered agent for the Defendant.

28. Upon information and belief, Mr. Cross has an ownership interest in the Defendant.

29. The Cross Application is based on the technology embodied in both the Rolflex Roller and the Infringing Device.

30. Mr. Cross, as a member of RoM, took the molds used to create the Rolfex Roller to create Defendant's Infringing Device.

31. RoM, by a certified letter from counsel to Mr. Cross, dated March 15, 2019, attached hereto as Exhibit 5, placed Defendant on actual notice of the D'155 Patent and gave

Defendant constructive knowledge that the design of the Infringing Device infringed RoM's D'155 Patent.

32. Defendant and Mr. Cross disregarded RoM's demands and willfully continued its infringement.

33. Defendant's infringement of RoM's valuable patent rights is irreparably harming RoM.

34. Defendant's unauthorized manufacture and/or importation of the Infringing Device which incorporates RoM's D'155 Patent design threatens the value of RoM's valuable patent rights.

35. Defendant's disregard for RoM's property rights similarly threatens RoM's relationship with potential and existing customers and licensees of the D'155 Patent design.

36. Defendant has enjoyed and will continue to derive a competitive advantage over RoM's existing and/or potential licensees from using RoM's patented design without paying compensation for such use.

37. Accordingly, unless and until Defendant's acts of infringement are enjoined, RoM will suffer irreparable harm for which there is no adequate remedy at law.

COUNT I
(Infringement Of United States Patent No. D802,155 S)

38. RoM hereby incorporates by reference paragraphs 1 through 31 as if fully restated herein.

39. RoM is the lawful owner of and continues to maintain all right, title and interest in and to the D'155 Patent, including the right to sue thereon and the right to recover for infringement thereof.

40. Defendant makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use the Infringing Device which infringes, directly and/or indirectly the claim of the D'155 Patent.

41. The following is a comparison of a side view of Defendant's Infringing Device (right) with RoM's D'155 Patent design (Fig. 3) (left):



42. The following is a comparison of a side view of Defendant's Infringing Device with RoM's D'155 Patent design (Fig. 3) overlaid thereon:



43. The following is another comparison of the side view of Defendant's Infringing Device with RoM's D'155 Patent design (Fig. 3) overlaid thereon:



44. The similarities between the Infringing Product and the ornamental design of the D'155 patent and associated RoM products are unmistakable and striking and can only be the result of intentional copying as the design elements serve no functional purpose.

45. Defendant has infringed and continues to infringe the D'155 Patent through the aforesaid acts and will continue to do so unless enjoined by this Court.

46. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the Infringing Device which incorporates the patented design.

47. Defendant's past and continuing infringement with actual knowledge of and in conscious and reckless disregard of the D'155 Patent has been and continues to be knowing, willful, and deliberate under 35 U.S.C. §284 and at least for the reasons stated herein make this an exceptional case under 35 U.S.C. §285.

48. By reason of the aforesaid infringement, RoM has been and continues to be damaged and is entitled to recover damages adequate to compensate RoM for Defendant's infringement and is entitled to injunctive relief against Defendant to enjoin further acts of infringement.

49. RoM is also entitled to enhanced damages and reasonable attorney fees adequate to compensate for Defendant's willful infringement and other conduct.

50. RoM is entitled to recover damages adequate to compensate RoM for Defendant's infringement and is entitled to injunctive relief against Defendant to enjoin further acts of infringement.

DEMAND FOR JURY TRIAL

RoM demands a trial by jury of all matters to which it is entitled to trial by jury pursuant to Fed. R. Civ. P. §38 and otherwise so entitled.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff RoM prays for judgment against Defendant Armaid as follows and for the following relief:

A. That Defendant be held to have infringed the D'155 Patent in violation of U.S.C. §271;

B. That Defendant and any subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation therewith, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and/or inducing infringement of the patent-in-suit, and more specifically from directly or indirectly making, using, selling, importing or offering for sale, any products embodying the inventions of the patent-in-suit during the life of the claim of the patent-in-suit, without the express written authority of RoM;

C. That Defendant be directed to give a full accounting, including post-verdict accounting, to determine an award of damages adequate to compensate RoM for Defendant's infringement of the D'155 Patent that have occurred, together with pre-judgment and post-judgment interest and costs;

D. That Defendant's infringement be found to be willful and that all damages awarded be enhanced to three-fold in accordance with 35 U.S.C. §284 and/or other applicable state and federal law;

E. That this case be deemed exceptional and that RoM be awarded reasonable attorney's fees in accordance with 35 U.S.C. §285 and/or other applicable state and federal law;

F. That Plaintiff have such other and further relief as this Court deems just and proper under the circumstances.

Respectfully Submitted By,
Attorneys for Plaintiff
Range of Motion, LLC

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Dated: April 12, 2021

Table of Exhibits:

Exhibit 1 - U.S. D802,155 S
Exhibit 2 – Defendant's Website
Exhibit 3 – Cross Application, Full File Wrapper
Exhibit 4 – Cross Application, Assignment Status
Exhibit 5 – Plaintiff's Cease and Desist Letter