

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

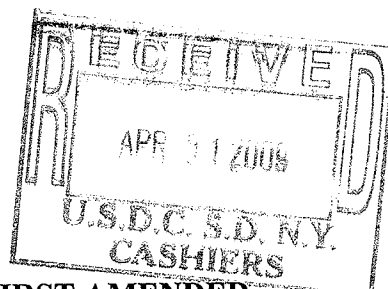
DR. STEVEN E. ROBBINS,

Plaintiff,

- against -

H.H. BROWN SHOE COMPANY, INC., and  
SÖFFT SHOE COMPANY, INC.

Defendants.



**FIRST AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT AND  
DEMAND FOR JURY  
TRIAL**

08-CV-6885 (WHP)

Plaintiff Dr. Steven E. Robbins (“Dr. Robbins”), by and through his undersigned counsel, Cohen & Gresser LLP, as and for his First Amended Complaint against Defendants H.H. Brown Shoe Company, Inc. (“HH Brown”) and Söfft Shoe Company, Inc. (“Söfft”), hereby alleges, upon knowledge with respect to himself and his own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE CASE**

1. This is a civil action for infringement of United States Patent No. 6,343,426 (“the ‘426 patent” or “the patent-in-suit”) brought pursuant to the United States patent laws, 35 U.S.C. § 271, *et seq.*

**PARTIES**

2. Dr. Robbins, a United States and Canadian citizen residing in Montreal, Quebec, Canada, is a medical doctor and the sole inventor and owner of the ‘426 patent.

3. Upon information and belief, HH Brown is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 124 W. Putnam Ave., Greenwich, CT 06830.

4. Upon information and belief, Söffit is a corporation organized and existing under the laws of the State of New Hampshire, with its principal place of business at 100 Brickstone Sq., Suite 502, Andover, MA 01810.

5. Upon information and belief, each Defendant directly or indirectly manufactures and/or supplies, imports in the United States, offers to sell and/or sells footwear to retailers throughout the United States, including retailers in this judicial district.

#### **JURISDICTION AND VENUE**

6. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a).

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

8. This Court has personal jurisdiction over Defendants. Upon information and belief, HH Brown and Söffit transact business and contract to supply goods within the State of New York and in this judicial district. They have also committed the tort of patent infringement within the State and in this judicial district. For instance, upon information and belief, Söffit ships, distributes, offers for sale, sells, and/or advertises its products, including products which infringe the '426 patent, in New York and in this judicial district directly and/or through distributors. Upon information and belief, HH

Brown is Söfft's affiliated company that at least actively promotes, markets, advertises and facilitates the retail of Söfft's products, including products which infringe the '426 patent, in New York and in this judicial district directly and/or through distributors. On information and belief, HH Brown also ships, distributes, offers for sale, sells, and advertises its own products, including products that may infringe the '426 patent, in New York and in this judicial district directly and/or through distributors.

## **FACTUAL BACKGROUND**

### **The '426 Patent**

9. The '426 patent, entitled "Resilient Sole for Use in Articles of Footwear to Enhance Balance and Stability," was duly and legally issued by the United States Patent and Trademark Office on February 5, 2002, after full and fair examination. A copy of the '426 patent is annexed hereto as Exhibit A.

10. Dr. Robbins is and always has been the sole owner of all rights, title, and interest in and to the '426 patent and possesses all rights of recovery under the '426 patent.

11. The '426 patent is directed to a sole for use in articles of footwear which improves the stability of the wearer while enhancing comfort. In particular, the patent claims a sole having a "resiliency index" as defined in the patent. The '426 patent is also directed to articles of footwear which include such a sole.

### **The Infringing Products**

12. On information and belief, Söfft manufactures, imports, offers for sale, sells, uses, designs, markets, advertises and/or develops, in the United States (and/or

manufactures outside the United States and directs into the United States), either directly, or through their affiliates, subsidiaries and/or distributors, articles of footwear and soles which infringe the '426 patent, including, at least, shoes sold under the following brand names: NURSE MATES QUANTUM and SOFTSPOTS LILLY.

13. On information and belief, HH Brown is Söfft's affiliated company that at least actively promotes, markets, advertises and facilitates the retail of articles of footwear and soles which infringe the '426 patent, including, at least, shoes sold under the following brand names: NURSE MATES QUANTUM and SOFTSPOTS LILLY, and may also manufacture, import, offer for sale, sell, use, design, market, advertise and/or develop, in the United States (and/or manufactures outside the United States and directs into the United States), either directly, or through their affiliates, subsidiaries and/or distributors, articles of footwear and soles which infringe the '426 patent.

14. Photographs of samples of exemplary infringing products are attached as Exhibit B.

#### **COUNT I - PATENT INFRINGEMENT**

15. The allegations of Paragraphs 1 through 12 above are incorporated by reference as if fully set forth herein.

16. Defendants have infringed directly and/or indirectly, contributorily, and/or by inducement, the '426 patent by making and/or using, offering to sell, selling and/or importing soles and footwear, including shoes sold under the brand names NURSE MATES QUANTUM and SOFTSPOTS LILLY.

17. Defendants' acts of infringement have caused and will continue to cause Dr. Robbins substantial injury for which Dr. Robbins is entitled to damages adequate to compensate him for such infringement pursuant to 35 U.S.C. § 284

18. HH Brown has been on actual notice of the '426 patent since June 2006 when Dr. Robbins' counsel sent HH Brown a copy of the '426 patent and notwithstanding such notice has continued to engage in such infringing activity.

19. On information and belief, Söfft has also been on actual notice of the '426 patent since June 2006 when Dr. Robbins' counsel sent HH Brown a copy of the '426 patent, since HH Brown shares some officers with Söfft. Notwithstanding such notice, Söfft has continued to engage in the infringing activity

20. Defendants' acts of infringement have been and continue to be willful, knowing and deliberate, rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

21. As a direct and proximate result of Defendants' acts of infringement, Dr. Robbins has been irreparably harmed and will continue to be irreparably harmed unless and until Defendant's infringing acts are enjoined and restrained by order of this Court.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands the following relief:

- (i) A judgment declaring that the Defendant HH Brown has infringed the '426 patent as alleged herein;


- (ii) A judgment declaring that the Defendant HH Brown has willfully infringed the '426 patent as alleged herein;
- (iii) A judgment declaring that the Defendant Söffft has infringed the '426 patent as alleged herein;
- (iv) A judgment declaring that the Defendant Söffft has willfully infringed the '426 patent as alleged herein;
- (v) A judgment and order awarding Plaintiff Dr. Robbins damages under 35 U.S.C. §284, including treble damages for willful infringement as provided by 35 U.S.C. §284, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- (vi) A judgment and order awarding Plaintiff Dr. Robbins pre-judgment and post-judgment interest on the damages awarded;
- (vii) A judgment and order declaring this to be an exceptional case and awarding Plaintiff the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285;
- (viii) A judgment and order that the Defendants, its agents, employees, representatives, successors and assigns, and those acting in privity or in concert therewith, be permanently enjoined from further infringement of the '426 patent; and
- (ix) Such other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as to all triable issues.

Dated: New York, New York  
March 31, 2009

**COHEN & GRESSER LLP**



---

Karen H. Bromberg  
kbromberg@cohengresser.com  
Alexandra Wald  
awald@cohengresser.com  
Damir Cefo  
dcefo@cohengresser.com  
100 Park Avenue, 23<sup>rd</sup> Floor  
New York, NY 10017  
(212) 957-7600

*Attorneys for Plaintiff  
Dr. Steven E. Robbins*