

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BEST BRANDS CONSUMER
PRODUCTS, INC. AND BEST BRANDS
SALES COMPANY, LLC,

Plaintiffs,

v.

KITCHINVENTIONS, LLC,

Defendant.

Civil Action No. 2:21-cv-20023

(JURY TRIAL DEMANDED)

SECOND AMENDED COMPLAINT

Plaintiffs Best Brands Consumer Products, Inc. and Best Brands Sales Company, LLC, (“Best Brands” or “Plaintiffs”), by their attorneys, hereby complain of Defendant Kitchinventions LLC, (“Kitchinventions” or “Defendant”) and allege as follows, upon actual knowledge with respect to itself and its own acts, upon information and belief as to all other matters:

INTRODUCTION

1. Best Brands brings this action seeking declaratory judgment that Best Brands’ Cuisinart Suction Spoon Rest does not infringe Defendant’s U.S. Patent No. D886,547 entitled Utensil Rest (“the ‘547 Patent”) (collectively, “Defendant’s Patent”). Best Brands also seeks declaratory judgment that Defendant’s Patent is invalid.

THE PARTIES

2. Best Brands is a corporation organized and existing under the laws of the State of New Jersey having a principal place of business at 2147 State Route 27, Suite 402 Edison, New Jersey 08817.

3. Kitchinventions is a corporation organized and existing under the laws of the state of Florida and has its principal offices at 11 East Riverside Drive, Unit B, Jupiter, FL 33469.

JURISDICTION AND VENUE

4. This is an action arising under the Patent Laws of the United States, 35 U.S.C. §§101 and 171 *et seq.* and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has jurisdiction over the federal claims of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. This Court has personal jurisdiction over Defendant and venue in this district is proper pursuant to 28 U.S.C. §1391(b) and (c) because Defendant has engaged in acts constituting doing business in the State of New Jersey, including in this judicial district. Defendant transacts and does business in this district, including selling and promoting products containing the patented design that Defendant asserts that Best Brands has infringed. In addition, Defendant has directed communications to, and engaged in communications with, Plaintiffs in New Jersey regarding this matter. In addition, on May 27, 2022, Defendant filed a counterclaim and third-party complaint in this matter, Dkt. 25, albeit, contrary to law (e.g., collateral estoppel) and to the Federal Rules of Civil Procedure, which constitutes a waiver of personal jurisdiction.

7. Venue is also proper under the patent venue statute, 28 U.S.C. §1400(b), because New Jersey is the district where Best Brands resides; and/or because New Jersey

is where Best Brands has been accused of committing acts of infringement and has a regular and established place of business.

FACTS

8. Best Brands is a company that sells consumer products.

9. Best Brands offers the Cuisinart Suction Spoon Rest product at issue in this litigation for sale to customers in the United States. An image of its Cuisinart Suction Spoon Rest product is attached hereto as Exhibit 1.

10. To date, Kitchinventions has sued Walmart on November 12, 2021 asserting that Best Brands' product infringes Defendant's Patent.

11. Likewise, Kitchinventions has sent a cease-and-desist letter to Best Brands on September 14, 2021 which alleged infringement of Defendant's Patent.

12. An actual case or controversy exists between Best Brands and Defendant. As noted, Defendant has sent a cease-and-desist letter including allegations that Best Brands product infringes Defendant's Patent, and demanding that Best Brands cease and desist from sales of the accused product.

13. Kitchinventions has also sued Best Brands' customer, Walmart, over the accused product, alleging that the accused product infringes, and Best Brands is at risk of being liable for indemnification.

14. As a result of the foregoing, an actual, present, and justiciable controversy has arisen between Best Brands and Kitchinventions regarding the Cuisinart Suction Spoon Rest product, and Best Brands has a reasonable apprehension that it will face an infringement suit by Defendant.

**PLAINTIFFS' NON-INFRINGEMENT OF
DEFENDANT'S PATENT**

15. Kitchinventions is listed as the assignee of the '547 Patent. A copy of the '547 Patent is attached as Exhibit 3.

16. To be an infringement of the '547 Patent in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the two designs must be substantially the same in that the purchaser would not be able to tell the difference between them.

17. Best Brands' product does not infringe the claim of the '547 Patent because the accused product is not substantially the same as the figures in the patent as properly construed (and/or the '547 Patent is invalid).

INVALIDITY OF DEFENDANT'S PATENT

18. The '547 Patent is invalid for failure to comply with one or more of the conditions for patentability set forth in the Patent Laws, United States Code Title 35, at least in Sections 102, 103 and 112.

19. The '547 Patent should be declared invalid due to the fact that, *inter alia*, it is anticipated by and/or obvious over the prior art under Sections 102 and 103 respectively and/or is invalid under various provisions of the Patent Act, including, but not limited to, indefiniteness and functionality, and upon information and belief, a statutory bar.

20. The '547 Patent should also be declared invalid and unenforceable because Kitchinventions failed to name one or more parties as an inventor, and such omission was willful and with deceptive intent.

DEFENDANT’S PATENT IS UNENFORCEABLE

21. The sole named inventor of the ‘547 patent is Derek Monk.

22. Discovery conducted to this point has shown that Joseph Michael Teets contributed or conceived the idea that a separate suction cup device could be attached to the Utensil Rest which is subject of the ‘547 patents.

23. A separate attached suction cup is a claimed element of the ‘547 patent.

24. Mr. Teets conceived this idea prior to the filing date of the ‘547 patent.

25. In August 2022, Mr. Monk attempted to get Mr. Teets to retroactively assign his contribution to a separate suction cup. No earlier assignment had been executed by the parties.

26. Discovery conducted to this point has also shown that Joaquin Prendes of Blue Ring Technologies contributed or conceived the shape of the handle rest design that is a claimed element of the ‘547 patent.

27. Mr. Monk intentionally withheld the contributions of Messrs. Teets and Prendes from the United States Patent Office (“the PTO”) during the prosecution of the ‘547 patent.

28. Mr. Monk’s actions were conducted with the specific intent to deceive the PTO.

29. The contributions by Messrs. Teets and Prendes were material to the the patentability of the claim of the ‘547 patent.

30. The PTO would not have issued the ‘547 patent had it known that it was filed with incorrect inventorship.

31. Furthermore, Mr. Monk disclosed the subject matter of the device he was working on more than a year before the priority date of at least the '547 patent.

32. For example, Mr. Monk disclosed the subject matter to Mr. Teets.

33. Such disclosure was without any written agreement of confidentiality.

34. Mr. Monk failed to inform the PTO of the disclosures conducted more than a year before filing.

35. Mr. Monk's actions were conducted with the specific intent to deceive the Patent Office.

36. The disclosure was material to the patentability of the '547 patent.

37. The PTO would not have issued the '547 patent had it known of Mr. Monk's disclosures and their timing.

38. Yet, furthermore, during the prosecution of related U.S. Patent No. 10,561,279 ("the '279 utility patent" or "the '279 patent" or "the utility patent", attached as Exhibit 2), Mr. Monk, via his counsel, disclosed and admitted to the Examiner of the utility patent that the structures that he was patenting were dictated by their function.

39. The structures that Mr. Monk patented in the '279 utility patent were also shown in the application which became the '547 design patent.

40. A structure which is dictated by its function, is legally functional.

41. Design patents cannot cover structures which are legally functional, they can only cover structures which are ornamental.

42. Yet, Mr. Monk and his counsel concealed the information regarding the functionality of his design from the Examiner of the '547 design patent.

43. Mr. Monk and his counsel concealed that information with specific intent to deceive the PTO, including, the Examiner of the ‘547 design patent.

44. That information was material to the patentability of the ‘547 design patent.

45. The PTO would not have issued the ‘547 patent had it known of the functionality of the structures set forth in Mr. Monk’s and his counsel’s admissions.

46. The ‘547 patent is unenforceable due to actions by Mr. Monk and/or his counsels before the PTO, including, but not necessarily limited to, the actions summarized above, which actions individually, and collectively, constitute inequitable conduct..

DEFENDANT’S FALSE ADVERTISING

47. Defendant has promoted and advertised the Spoon Buddy product through its marketing, promotional, and advertising material as providing wholesalers, retailers, and customers with an “FDA Approved” product.

48. By way of example, Exhibit 1 hereto, and Exhibit D (Dkt. 25-4 and Dkt. 33-4) to Kitchinventions’ Counterclaim and Third Party Complaint (Dkt. 25) and Kitchinventions’ Answer and Counterclaims (Dkt. 33), demonstrate that the Defendant’s advertising states that the Spoon Buddy product is “FDA Approved”.

49. Additional advertising by Defendant for its Spoon Buddy product falsely and misleadingly represent that the product and the finished material in it are approved by the FDA, by stating they are “FDA Approved”, with or without other modifying words and/or symbols. This includes Exhibit C (Dkt. 25-3 and Dkt. 33-3) to Kitchinventions’

Counterclaim and Third Party Complaint (Dkt. 25) and Kitchinventions' Answer and Counterclaims (Dkt. 33), which is an advertisement that states the product is "FDA Approved*" and "*FDA Approved TPE Material". This also includes Exhibit D (Dkt. 25-4 and Dkt. 33-4) to Kitchinventions' Counterclaim and Third Party Complaint (Dkt. 25) and Kitchinventions' Answer and Counterclaims (Dkt. 33), which is an advertisement that states "*FDA Approved TPE Material". This also includes Exhibit 4 hereto, which is an advertisement by Defendant that was sent with the Spoon Buddy product purchased from www.amazon.com on August 1, 2022, and which states "FDA Approved Material."

50. Upon information and belief, these same false and misleading advertisements were provided to potential wholesale and retail sellers of the Spoon Buddy product.

51. A search of the FDA website does not bring up any results of the Spoon Buddy product being FDA approved, which makes the advertising materially false and/or misleading.

52. Further, in Defendant's promotional video, which is featured on Amazon (at the link <https://www.amazon.com/Spoon-Buddy-Silicone-Attaches-Spatulas/dp/B07D1DCYQJ?th=1>), the "FDA Approved" claim is provided in conjunction with images of the product, as shown in the following screenshot:



53. The “FDA Approved” claim is false and/or misleading with respect to Defendant’s Spoon Buddy product.

54. The “FDA Approved” claim is also false and/or misleading with respect to the finished materials in Defendant’s product.

COUNT I

(Declaration of Non-Infringement of Defendant’s Patent)

55. Best Brands repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

56. Defendant has now counterclaimed that Best Brands’ Cuisinart Suction Spoon Rest product infringes the ‘547 Patent and has sent a cease-and-desist letter for same.

57. Defendant also brought a lawsuit in Florida (which was stayed), and now brought a third-party complaint against Walmart in New Jersey (Dkt. 25) for same.

58. As a result of the foregoing, and as further set forth above, an actual, present, and justiciable controversy has arisen between Best Brands and Kitchenventions regarding the Cuisinart Suction Spoon Rest product.

59. In addition, Best Brands has a reasonable apprehension that it will face an infringement suit by Defendant and/or of being liable for indemnification concerning the accused Cuisinart Suction Spoon Rest product.

60. Accordingly, Best Brands seeks declaratory judgment that its manufacture, use, offer for sale, sale and/or importation of the Cuisinart Suction Spoon Rest product does not infringe on Defendant's Patent, and that Best Brands does not otherwise violate any of Defendant's patent rights under federal law including, but not limited to, 35 U.S.C. §§ 101 and 171, *et seq.*

COUNT II

(Declaration of Invalidity of Defendant's Patent)

61. Best Brands repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

62. Best Brands seeks declaratory judgment that the '547 Patent is invalid, for at least these grounds, and for any and all other grounds of invalidity available under federal law, the Patent Act, including, but not limited to, 35 U.S.C. §§ 102, 103, 112, and 171.

63. Best Brands seeks declaratory judgment that the '547 Patent is invalid and/or unenforceable, for at least these grounds, and for any and all other grounds of invalidity and unenforceability available under federal law and the Patent Act.

64. Best Brands reserves the right to amend its allegations and/or this Complaint to add any further defenses once further discovery has been conducted.

COUNT III

(Declaration of Unenforceability of Defendant's Patent)

65. Best Brands repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint. As discussed above, the '547 patent is unenforceable due to actions by Mr. Monk and/or his counsel before the PTO, including, but not necessarily limited to, the actions summarized above, which actions individually, and collectively, constitute inequitable conduct.

COUNTS IV and V

**(False Advertising under the Lanham Act 15 U.S.C. § 1125 et seq.
and New Jersey's Common Law and N.J.S.A. 56:8-2)**

66. Best Brands repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

67. Best Brands and Defendant are direct competitors and Best Brands has been damaged by Defendant's false advertising, as alleged herein.

68. Through the "FDA Approved" claims on its packaging, and in its advertising, Defendant has knowingly and willfully made false statements, misleading statements, descriptions of fact, and/or misrepresentation of fact in connection with the promotion and advertising of their Spoon Buddy product, and in connection with the finished materials therein.

69. Those claims are literally false as to the Spoon Buddy product.

70. Those claims are also literally false as to the finished materials in the Spoon Buddy product.

71. Moreover, to the extent that Defendant may claim that any of its statements are literally true (which is not the case), Defendants' statements are still likely to mislead and confuse consumers. For example, as to the TPE materials, all approvals (if any), were limited to approvals regarding the raw materials. No materials were obtained regarding the finished, processed materials which are actually provided to, and used by, the consumer.

72. The necessary implication of Defendants' statements, on its packaging and in its advertising material is that the Spoon Buddy product itself is FDA Approved.

73. Likewise, the necessary implication of Defendants' statements, on its packaging and in its advertising material, is that the finished, processed, material of the Spoon Buddy, as provided to the public, is FDA Approved.

74. Defendant's false statements, misleading statements, descriptions of fact, and/or misrepresentation of fact are likely to deceive, and have in fact deceived, customers into believing that Defendant's products, and the finished, processed, materials therein, are FDA Approved, when in fact they are not.

75. Defendant's false statements, misleading statements, descriptions of fact, and/or misrepresentations of fact misrepresent core characteristics or qualities of Defendant's product in that they falsely represent that the FDA, a federal government agency, has tested the product, and the finished, processed, materials, and has approved them.

76. Defendant's statements indicated that the federal government has determined that the benefits of the product and finished materials outweigh any risks, or that they have no risks.

77. Such false statements, misleading statements, descriptions of fact, and/or misrepresentations of fact have actually deceived, or have a tendency to deceive customers who are, or were, interested in purchasing Plaintiffs' Cuisinart Suction Spoon Rest product.

78. Defendant's deceptive actions are material and likely to influence, and have influenced, the relevant customers' purchasing decisions.

79. Defendant's false statements, misleading statements, descriptions of fact, and/or misrepresentations of fact were, and still currently are, disseminated and made available throughout the United States through, at a minimum, Defendant's packaging, and Defendant's other marketing, advertising, and promotional materials.

80. They concern Defendant's Spoon Buddy product, and the finished material therein, which are advertised, promoted, offered for sale, and sold in interstate commerce.

81. Defendant has deliberately intended to induce, and has induced, customers to purchase Defendant's product instead of competing products, including Plaintiffs' Spoon Rest product, thereby unfairly diverting sales away from Plaintiffs.

82. Defendant's false statements, misleading statements, descriptions of fact, and/or misrepresentations of fact have caused, and are likely to cause, damage to Plaintiffs.

83. Defendants' acts have caused, and are likely to cause, lost sales of Plaintiffs' Spoon Rest product, and substantial injury to Plaintiffs' business and reputation.

84. Defendants acts have caused, and are likely to cause, damage as to Best Brands' good will with the public, since Defendant allegedly sells "FDA Approved" Products, but Best Brands does not.

85. The false statements mislead, and are likely to mislead, a shopper into believing that Defendant has acted to protect the public by seeking and obtaining government approval, but that Best Brands has not.

86. Upon information and belief, Defendant's foregoing conduct has been knowing, deliberate, intended to cause confusion, to cause mistake, and to deceive the purchasing public.

87. As a direct and proximate result of Defendant's foregoing conduct, Defendant has caused irreparable harm to Plaintiffs and, unless immediately restrained, Defendant will continue to cause substantial and irreplaceable injury to Plaintiffs' goodwill and reputation in an amount to be determined at trial.

88. Based on Defendant's wrongful conduct, Plaintiffs are entitled to injunctive relief, as well as monetary damages and other remedies as provided by the Lanham Act, including damages that Plaintiffs have sustained and will sustain as a result of Defendant's unlawful conduct as alleged herein, and all gains, profits, and advantages obtained by Defendant as a result thereof, enhanced damages, and Plaintiffs' attorneys' fees and costs.

89. In addition, Defendant's wrongful conduct is inequitable, and it equitably estops, limits, and otherwise prohibits Defendant from obtaining equitable and other relief in this action.

COUNT VI

(Declaration of Lack of Damages to Defendant)

90. Best Brands repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

91. Best Brands seeks declaratory judgment that Kitchinventions has no claim for monetary damages from Best Brands' alleged activities, because the patents asserted by Kitchinventions are invalid and are not infringed.

92. Furthermore, under the marking statute, 35 U.S.C. §287, to recover damages for infringement the patentee must adequately mark its product to give notice to others that same is patented.

93. Since Defendant's product (and/or packaging) is not marked with any patent numbers, Best Brands seeks a judgment that Defendant is not entitled to any monetary damages for any sales by Best Brands unless and until Best Brands was properly put on actual notice of Defendant's patent infringement claims.

94. Best Brands also seeks declaratory judgment that Kitchinventions has no claim for monetary damages from Best Brands' alleged activities, in view of Kitchinventions' unclean hands. This unclean hands, includes, but is not limited to, Kitchinventions' false advertising, and, inequitable conduct before the U.S. Patent and Trademark Office.

PRAYER FOR RELIEF

WHEREFORE, pursuant to the Patent Act, 35 U.S.C. §§ 101 and 171, *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Best Brands prays for relief as follows:

A. Judgment declaring that Best Brands and its affiliates and related companies and their customers and suppliers have the right to use, sell, offer for sale the Cuisinart Suction Spoon Rest, and that Best Brands' product does not infringe Defendant's patent rights, if any.

B. Judgment declaring that Kitchinventions' U.S. Design Patent No. D886,547 entitled "Utensil Rest" is invalid.

C. Judgment declaring that Kitchinventions' U.S. Design Patent No. D886,547 entitled "Utensil Rest" is unenforceable.

D. Judgment that Kitchinventions has committed false advertising under the Lanham Act 15 U.S.C. § 1125 *et seq.*, New Jersey's Common Law, and N.J.S.A. 56:8-2, and that Best Brands is entitled to monetary relief, and other remedies as provided by the Lanham Act, including damages that Plaintiffs have sustained and will sustain as a result of Defendant's unlawful conduct as alleged herein, and all gains, profits, and advantages obtained by Defendant as a result thereof, enhanced damages, and Plaintiffs' attorneys' fees and costs.

E. Judgment that Kitchinventions is not entitled to any damages because its product was not properly marked under 35 U.S.C. §287.

F. Judgment awarding Best Brands its costs and attorney's fees under 35

U.S.C § 285, and any and all other applicable law.

G. Judgment awarding such other and further relief as this Court may deem just and proper.

Dated: November 3, 2022

/s/ Lee A. Goldberg

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