

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JES GEAR, LLC and JL CREATIVE GROUP,
LLC d/b/a WARRIOR POET SUPPLY CO.,

Plaintiffs,

v.

ALFRED W. SALVITTI,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiffs JES Gear, LLC (“JES”) and JL Creative Group, LLC d/b/a Warrior Poet Supply Co. (“WPS”) (together, “Plaintiffs”), by and through counsel, for their Complaint for declaratory judgment of patent non-infringement and invalidity against Defendant Alfred W. Salvitti (“Salvitti” or “Defendant”), allege, on knowledge as to their own conduct, and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This is an action for declaratory relief seeking a declaration that a product known as the “WPS Fox Folder Knife” designed by Plaintiffs and sold by WPS does not infringe U.S. Design Patent No. D713,923 S (the “D’923 Patent”), asserted by Defendant.

2. Plaintiffs also seek a declaration that the D’923 Patent is invalid for failure to meet the conditions for patentability provided in 35 U.S.C. §§ 101 *et seq.*

PARTIES

3. WPS is a limited liability company organized under the laws of the state of Georgia with a principal place of business in Woodstock, Georgia.

4. JES is a limited liability company organized under the laws of the state of Wyoming with a principal place of business in Sumner, Washington.

5. Defendant Alfred Salvitti is an individual residing in Glen Riddle, Pennsylvania.

JURISDICTION AND VENUE

6. This is an action for declaratory relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a question of actual controversy.

7. This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1338 (action arising under an Act of Congress relating to patents) and 1331 (federal question).

8. This Court has both general and specific personal jurisdiction over Defendant by virtue of his residence in and regular and systematic business contacts with this judicial district. Defendant has purposefully availed itself of the privilege of acting in this judicial district, thus invoking the benefits and protections of its laws. Defendant has also filed prior lawsuits asserting the D'923 Patent in this judicial district.

9. Venue is proper in this District under 28 U.S.C. 1391(b)-(c) because Defendant resides in this judicial district and/or a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Additionally, Defendant and his counsel, while in the judicial district, sent a demand letter to WPS threatening to take legal action for infringement.

10. WPS has standing to bring this action based upon, at least, a letter sent to WPS on October 28, 2022 (the "Cease and Desist Letter"), titled "Infringement of U.S. Patent No. D713,923 S" by an attorney purporting to represent Defendant. The letter accuses the "WPS

Fox Folder Knife” of infringing the D’923 Patent and, thus, creates an actual case or controversy between WPS and Defendant.

11. JES has standing to bring this action because it imports, earns profits from, and collaborated on the design of the “WPS Fox Folder Knife,” the product accused of infringing the D’923 Patent in the letter described in Paragraph 9; therefore, an actual case or controversy exists between JES and Defendant.

FACTUAL BACKGROUND

12. WPS is a company founded by a military veteran and former Army Ranger that together with its affiliates develops, markets, and sells Warrior Poet Society® branded tactical and survival gear, knives, camping equipment, clothing, and weapons safety and training courses.

13. In or about 2020, WPS and JES collaborated on the design and production of the WPS Fox Folder Knife, a high-performance tactical knife that provides optimal strength and ergonomic handling but can also fold into a closed position for convenient pocket storage.

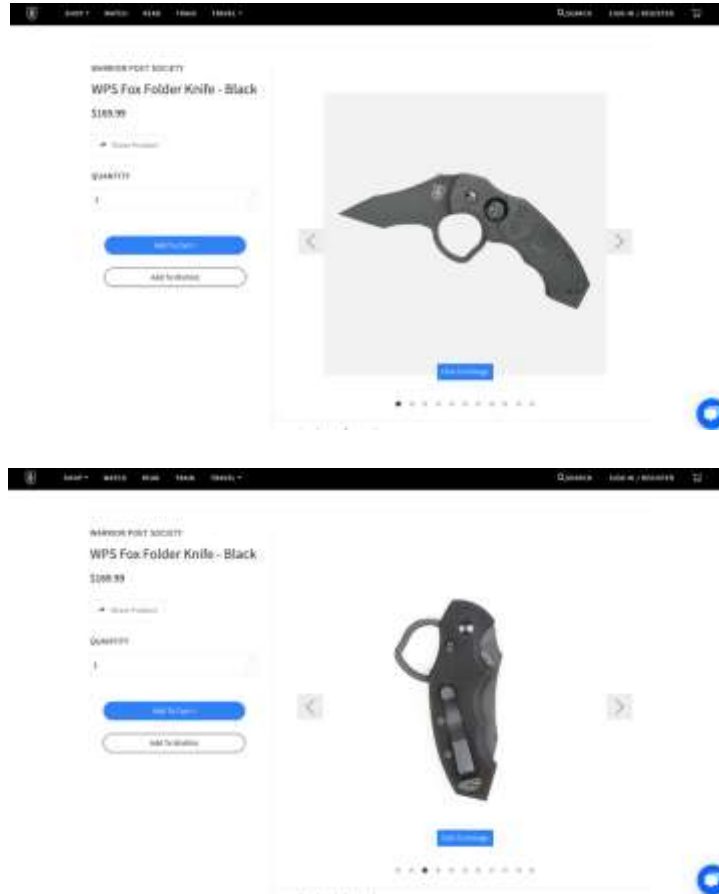
14. Moreover, the size and compact construction of the WPS Fox Folder makes it legal in certain states, like California, where fixed blades or longer blades might not otherwise be legal.

15. Finally, the fact that the knife can fold into a closed position is a key feature of its design, allowing it to be carried in the pocket for everyday use and for defensive situations.

16. In or about 2021, JES contracted with an Italian manufacturer to manufacture the WPS Fox Folder Knife and purchased shipments of the knife from the manufacturer for marketing and sale by WPS.

17. In or about 2021, WPS began selling the WPS Fox Folder Knife through its website, www.warriorpoetsupplyco.com.

18. WPS markets the product on its website in both its open and closed positions:



19. Moreover, WPS repeatedly promotes the WPS Fox Folder Knife’s folding capabilities to its prospective customers. Indeed, this capability is right there in the name: the product is called a “Folder.”

20. Upon information and belief, Salvitti and his alleged co-inventor, Nico Salvitti, filed an application for the D’923 Patent in 2013 and the D’923 Patent was issued in 2014.

21. The D’923 Patent claims the ornamental design for a pistol grip knife, as shown and described in the patent’s 12 figures.

22. Importantly, the D’923 Patent depicts a fixed blade, not a folding blade.

23. In the Cease and Desist Letter, Salvitti alleges that the WPS Fox Folder Knife infringes the D'923 Patent, a copy of which Salvitti attached to his letter. A copy of the Cease and Desist Letter and its exhibits are attached hereto as Exhibit 1.

24. The Cease and Desist Letter states that WPS must immediately and permanently cease sales and advertisements of each of the WPS Fox Folder Knives on its website, as well as immediately turn over or destroy any and all U.S. inventory of WPS Fox Folder Knives.

25. The Cease and Desist Letter further states that WPS must identify its suppliers of the WPS Fox Folder Knife and provide "full contact information" for those suppliers.

26. The Cease and Desist Letter states that if WPS does not agree to Salvitti's demands and provide written assurance that it will comply with them, Salvitti would take legal action asserting its allegation of infringement.

27. Salvitti has filed at least one federal action in recent years, in this Court, asserting infringement of the D'923 Patent, *Alfred Salvitti et al. v. Scott Lascelles*, No. 2:19-cv-00696-ER. Salvitti's infringement claims in that action were ultimately dismissed with prejudice.

28. The WPS Fox Folder Knife does not infringe the D'923 Patent.

29. An ordinary observer would not be confused into thinking that the design of WPS Fox Folder Knife and the design depicted in the D'923 Patent are substantially similar.

30. The WPS Fox Folder Knife does not have a resemblance to the design depicted in the D'923 Patent such that it would deceive an ordinary observer, inducing him to purchase one supposing it to be the other.

31. Indeed, the design of WPS Fox Folder Knife and the design depicted in the D'923 Patent are plainly dissimilar.

32. Plaintiffs intends to continue producing and selling the WPS Fox Folder Knife, which Plaintiffs believe in good faith does not infringe the D'923 Patent.

33. Plaintiffs have initiated this action in furtherance of their intent to produce, import, sell and to continue to produce, import, and sell the WPS Fox Folder Knife in the United States.

34. By virtue of the foregoing, a substantial controversy exists between the parties that is of sufficient immediacy and concreteness to warrant declaratory relief.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment of Design Patent Non-Infringement)

35. Plaintiffs incorporate each paragraph above as if fully set forth here.

36. This claim arises from an actual and justiciable controversy between the parties regarding the WPS Fox Folder Knife based, in part, on Salvitti's Cease and Desist Letter and the representations therein, its self-imposed deadline that Salvitti would file an infringement suit if WPS did not agree to Salvitti's demands, and Plaintiffs' unequivocal assertion that they did not infringe and are not infringing the D'923 Patent.

37. A declaratory judgment would resolve all aspects of the controversy in a single proceeding.

38. A declaratory judgment would serve a useful purpose in clarifying the legal relations at issue.

39. Plaintiffs did not and do not infringe the D'923 Patent, directly or indirectly, either literally or by the doctrine of equivalents.

40. This judicial declaration is necessary and appropriate at this time so that Plaintiffs may ascertain their rights and duties with respect to the design of the WPS Fox Folder Knife.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Invalidity of the D'923 Patent)

41. Plaintiffs incorporate each paragraph above as if fully set forth here.

42. The D'923 Patent is invalid for failure to meet the conditions for patentability provided in 35 U.S.C. §§ 101 et seq., including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112, and nonstatutory common law doctrines.

43. Plaintiffs expressly reserve the right to assert additional grounds of invalidity and/or unenforceability after having the opportunity to conduct discovery and after the Court has construed the claims of the D'923 Patent.

44. An actual controversy exists between Plaintiffs and Defendant regarding the alleged validity of the D'923 Patent, which controversy is ripe for resolution.

45. The Court should grant Plaintiffs a declaratory judgment that the D'923 Patent is invalid for failing to comply with the requirements of 35 U.S.C. §§ 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JL Creative Group, LLC d/b/a Warrior Poet Supply Co. and JES Gear, LLC pray for the following relief:

1. That proper process issue and be served upon Salvitti;
2. That Salvitti be required to answer;
3. That the Court declare that Plaintiffs' WPS Fox Folder Knife does not infringe the D'923 Patent;
4. That the Court declare that the D'923 Patent is invalid and/or unenforceable;
5. That Salvitti be ordered to pay Plaintiffs' costs and reasonable attorneys' fees, plus pre- and post-judgment interest, as provided or allowed by law; and

6. That the Court grant Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: December 6, 2022

/s/ John J. Powell

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