

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BROOKSTONE COMPANY, INC.,

Plaintiff,

v.

J.C. PENNEY COMPANY, INC.,
THE BONTON STORES, INC.,
THE BON-TON DEPARTMENT STORES,
INC.,

Defendants.

Civil Action No.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Brookstone Company, Inc. ("Brookstone") for its complaint against Defendants, J.C. Penney Company, Inc. ("JCPenney"), The BonTon Stores, Inc. ("BonTon Stores") and The Bon-Ton Department Stores, Inc. ("Bon-Ton Department Stores") (BonTon Stores and Bon-Ton Department Stores referred to collectively as "BonTon") (JCPenney and BonTon referred to collectively the "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This case concerns the Defendants' infringement of United States Patent No. 5,983,783 (the "783 Patent") issued on November 16, 1999, entitled "Electronic Chef's Fork," a true and correct copy of which is attached hereto as Exhibit A, and United States Patent No. 6,065,391 (the "391 Patent") issued on May 23, 2000, entitled "Electronic Chef's Fork," a true and correct copy of which is attached hereto as Exhibit B.

THE PARTIES

2. Brookstone is a New Hampshire corporation, with its principal place of business located at One Innovation Way, Merrimack, New Hampshire.

3. On information and belief, JCPenney is a Delaware corporation, with a principal place of business located at 6501 Legacy Drive, Plano, Texas.

4. On information and belief, BonTon Stores is a Pennsylvania corporation, with a principal place of business located at 2801 East Market Street, York, Pennsylvania.

5. On information and belief, Bon-Ton Department Stores is a Pennsylvania corporation, with a principal place of business located at 2801 East Market Street, York, Pennsylvania.

JURISDICTION AND VENUE

6. This civil action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over the claims presented herein pursuant to 28 U.S.C. § 1338(a).

7. JCPenney has at least ten (10) retail stores located in New Hampshire. On information and belief, each of these stores offers for sale and/or has sold the SmartGifts™ Premium BBQ Tool Set including a Digital Temperature Fork (referred to herein as the “SmartGifts Set” and “Digital Fork,” respectively). In addition, JCPenney operates an interactive nationally accessible website (www.JCPenney.com) that permits residents of New Hampshire to submit on-line orders for merchandise, including the SmartGifts Set, that may be shipped to purchasers in New Hampshire.

8. JCPenney is a foreign corporation transacting business within the State of New Hampshire, and/or is causing tortious injury by committing all or part of the tortious acts or

omissions described herein within the State of New Hampshire, and/or is causing tortious injury by committing the tortious acts or omissions described herein outside the State of New Hampshire while regularly conducting or soliciting business and/or deriving substantial revenue from goods used or consumed or services rendered within the State of New Hampshire. Therefore, this Court has personal jurisdiction over JCPenney under New Hampshire's long-arm statute. N.H. Rev. Stat. Ann. § 510:4.

9. JCPenney, pursuant to 28 U.S.C. § 1391(c), is deemed to reside in the District of New Hampshire because it is subject to personal jurisdiction in the District of New Hampshire. In addition, JCPenney has committed acts of infringement and has at least one regular and established place of business in this District. Thus, venue is proper in this District pursuant to 28 U.S.C. § 1400(b).

10. BonTon has at least one (1) retail store located in New Hampshire. On information and belief, each of these stores offers for sale and/or has sold the JLR Smart BBQ Fork (referred to herein as the "JLR Fork"). In addition, BonTon operates an interactive nationally accessible website (www.bonton.com) that permits residents of New Hampshire to submit on-line orders for merchandise, including the JLR Fork, that may be shipped to purchasers in New Hampshire.

11. BonTon is a foreign corporation transacting business within the State of New Hampshire, and/or is causing tortious injury by committing all or part of the tortious acts or omissions described herein within the State of New Hampshire, and/or is causing tortious injury by committing the tortious acts or omissions described herein outside the State of New Hampshire while regularly conducting or soliciting business and/or deriving substantial revenue from goods used or consumed or services rendered within the State of New Hampshire.

Therefore, this Court has personal jurisdiction over BonTon under New Hampshire's long-arm statute. N.H. Rev. Stat. Ann. § 510:4.

12. BonTon, pursuant to 28 U.S.C. § 1391(c), is deemed to reside in the District of New Hampshire because it is subject to personal jurisdiction in the District of New Hampshire. In addition, BonTon has committed acts of infringement and has at least one regular and established place of business in this District. Thus, venue is proper in this District pursuant to 28 U.S.C. § 1400(b).

GENERAL ALLEGATIONS

13. Brookstone is a nationwide specialty retailer offering an assortment of consumer products that are functional in purpose, distinctive in quality and design and not widely available from other retailers. Brookstone has a long history of developing and bringing to market unique, proprietary branded products, which embodies the inventions claimed in each of the '783 and '391 Patents, including at least Brookstone's Always Perfect Chef's Forks currently being sold by Brookstone.

14. JCPenney has sold the Digital Fork, and/or offered the Digital Fork for sale. Brookstone has lost sales of Brookstone products, including but not limited to the Brookstone Always Perfect Chef's Fork, that embody the claimed inventions of each of the patents described below due to such sales by JCPenney.

15. BonTon has sold the JLR Fork, and/or offered the JLR Fork for sale. Brookstone has lost sales of Brookstone products, including but not limited to the Brookstone Always Perfect Chef's Fork, that embody the claimed inventions of each of the patents described below due to such sales by BonTon.

FIRST CLAIM FOR RELIEF FOR INFRINGEMENT OF
U.S. PATENT NO. 5,983,783

16. United States Patent No. 5,983,783 (the “783 Patent”) issued on November 16, 1999, and is entitled "Electronic Chef’s Fork." Brookstone is the owner by assignment of the '783 Patent.

17. Upon information and belief, each of JCPenney and BonTon has been and is now infringing one or more claims of the '783 Patent by [1] offering to sell or selling the patented invention(s), [2] by actively inducing others to use, offer to sell, or sell the patented invention(s), or [3] by contributing to the import, use, sale, or offer for sale the patented invention(s) in the United States.

18. More particularly, without limitation, each of JCPenney and BonTon is now infringing one or more claims of the '783 Patent by making, having made, importing, using, distributing, offering to sell, or selling electronic grill forks, including the SmartGifts Set, including the Digital Temperature Fork, and the JLR Fork, respectively, each of which embody the patented invention(s) of the '783 Patent.

19. By the letter attached as Exhibit C, Brookstone gave JCPenney actual notice of the existence of the '783 Patent. Despite such notice, JCPenney has and will likely continue to willfully engage in acts of infringement without regard to the '783 Patent, and will continue to do so unless otherwise enjoined by this Court.

20. By the letter attached as Exhibit D, Brookstone gave BonTon actual notice of the existence of the '783 Patent. Despite such notice, BonTon has and will likely continue to willfully engage in acts of infringement without regard to the '783 Patent, and will continue to do so unless otherwise enjoined by this Court.

21. Brookstone has been damaged by the infringing activities of the Defendants and will be irreparably harmed unless those infringing activities are permanently enjoined by this Court. Brookstone does not have an adequate remedy at law.

SECOND CLAIM FOR RELIEF FOR INFRINGEMENT OF
U.S. PATENT NO. 6,065,391

22. United States Patent No. 6,065,391 (the "391 Patent") issued on May 23, 2000, and is entitled "Electronic Chef's Fork." Brookstone is the owner by assignment of the '391 Patent.

23. Upon information and belief, each of JCPenney and BonTon has been and is now infringing one or more claims of the '391 Patent by [1] offering to sell or selling the patented invention(s), [2] by actively inducing others to use, offer to sell, or sell the patented invention(s), or [3] by contributing to the import, use, sale, or offer for sale the patented invention(s) in the United States.

24. More particularly, without limitation, each of JCPenney and BonTon is now infringing one or more claims of the '391 Patent by making, having made, importing, using, distributing, offering to sell, or selling electronic grill forks, including the SmartGift Set, including the Digital Temperature Fork, and the JLR Fork, respectively, each of which embody the patented invention(s) of the '391 Patent.

25. By the letter attached as Exhibit C, Brookstone gave JCPenney actual notice of the existence of the '391 Patent. Despite such notice, JCPenney has and will likely continue to willfully engage in acts of infringement without regard to the '391 Patent, and will continue to do so unless otherwise enjoined by this Court.

26. By the letter attached as Exhibit D, Brookstone gave BonTon actual notice of the existence of the '391 Patent. Despite such notice, BonTon has and will likely continue to

willfully engage in acts of infringement without regard to the '391 Patent, and will continue to do so unless otherwise enjoined by this Court.

27. Brookstone has been damaged by the infringing activities of the Defendants and will be irreparably harmed unless those infringing activities are permanently enjoined by this Court. Brookstone does not have an adequate remedy at law.

WHEREFORE, Brookstone requests judgment as follows:

- (a) That Defendants have infringed one or more claims of the '783 and '391 Patents, and that their infringement has been willful;
- (b) That Brookstone has been irreparably harmed by the infringing activities of the Defendants;
- (c) That the Defendants, their respective officers, agents, servants, employees and those persons in active concert or participation with any of them, as well as all successors or assignees of the interests or assets related to the infringing electronic grill forks, be permanently enjoined from further infringement of the '783 and '391 Patents;
- (d) That an accounting be had for the damages caused to Brookstone by the infringing activities of the Defendants;
- (e) That Brookstone be awarded damages adequate to compensate for the Defendants' infringement, which damages shall include lost profits but in no event shall be less than a reasonable royalty for the use made of the inventions of the '783 and '391 Patents by the Defendants, including pre- and post-judgment interest, and costs, including expenses;

- (f) That, once actual damages are assessed, damages so ascertained be trebled under 35 U.S.C. § 284 in view of the willful and deliberate nature of the infringement, and that such damages be awarded to Brookstone with interest;
- (g) That this be declared an exceptional case under 35 U.S.C. § 285 and that Brookstone be awarded its attorneys' fees; and
- (h) That Brookstone be awarded such further necessary or proper relief as this Court may deem just.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Brookstone hereby demands a trial by jury of all issues so triable.

Respectfully Submitted,

BROOKSTONE COMPANY, INC.

By its attorneys

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