

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

A.V. DIAMONDS, INC.,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. _____
	§	
vs.	§	
	§	
GOLD N’ DIAMONDS, INC.,	§	
	§	
Defendant.	§	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, A.V. Diamonds, Inc., by and through undersigned counsel, for its Complaint for Declaratory Judgment against Gold N’ Diamonds, Inc., states as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for non-infringement, invalidity, and unenforceability of United States Design Patent No. D598804 (the “Patent”) attached hereto as Exhibit “A” and non-infringement of United States Trademark Registration No. 3100652 (the “Trademark”) attached hereto as Exhibit “B”, as well as for declaratory judgment that A.V. Diamonds, Inc. has not unfairly competed with Gold N’ Diamonds, Inc. under either Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) or under any statutory or common law of any state in the United States of America, has not damaged Gold N’ Diamonds, Inc. in any way, and for such other relief as the Court deems just and proper.

2. Plaintiff A.V. Diamonds, Inc. (“AV” or “Plaintiff”) is a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 7500 Bellaire Blvd., Suite 333, in Houston, Texas and is doing business in this District.

3. Defendant Gold ‘N Diamonds, Inc., (“GND” or “Defendant”), upon information and belief, is a company organized and existing under the laws of the State of Georgia and has a principal place of business at 250 Spring Street Northwest, Suite 6E 320-323, Atlanta, Georgia 30303 and may be served with process through either its agent for service of process and/or President and/or CEO, Mr. Amin K. Jiwani, at the foregoing address, or through its CFO, Mr. Sultan Jinani, also at the foregoing address, or through its Secretary, Mr. Sameer Jivani, also at the foregoing address. The telephone number for GND is 888-577-8117.

4. As alleged herein, Defendant has engaged in various acts in and directed to the State of Texas.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202, the Lanham Act, 15 U.S.C. §1125(a), and the Patent Laws of the United States, 35 U.S.C. § 1, et seq. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. GND touts itself, on its website, to be “the home of the finest Diamond Jewelry” and, upon information and belief, is the owner of all rights in and to the Patent and the Trademark.

7. AV and GND are competitors in the manufacturing and/or sale of various types of jewelry, including, but not limited to diamond jewelry.

8. GND has made statements and representations threatening to assert the Patent and Trademark against AV and has affirmatively stated that several of the products in AV's Fiero Collection of jewelry "infringe GND's rights in [the Patent]". *See* Exhibit "C". Moreover, GND has expressed its readiness to sue AV for what GND purports to be the wrongful use by AV of "GND trademarks in [AV's] advertisement and communications to third parties" and has threatened AV to "not underestimate [GND's] resolve." *Id.* In addition, GND has taken the position that AV's "unauthorized use of the GND trademarks violates GND's trade identity rights and constitutes infringement under §43(a) of the Lanham (Trademark) Act, 15 U.S.C. §1125(a), as well as under applicable state law" *Id.*

9. This Court has personal jurisdiction over GND. GND has conducted business in Texas, has directed business to Texas, and has engaged in various acts in and directed to Texas. Moreover, GND has singled out AV, a Texas company, as an infringer of both the Patent and the Trademark, through correspondence sent to Texas.

COUNT I
Declaration of Non-infringement of the Patent

10. AV repeats and realleges the allegations in the foregoing paragraphs as though fully set forth herein.

11. Despite GND's allegation that AV's product numbers 50048-50049, 46066-46067, 45863-45866, 48146-48147, 48151-48152, 44101-44102, and 44103-44104 infringe the Patent, AV has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the Patent.

12. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

13. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the Patent.

COUNT II
Declaration of Invalidity of the Patent

14. AV repeats and realleges the allegations in the foregoing paragraphs as though fully set forth herein.

15. The Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C §§ 100 *et seq.*, 101, 102,103, 112 and 132.

16. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

17. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the Patent.

COUNT III
Declaration of Inequitable Conduct in the Prosecution of the Patent

18. AV repeats and realleges the allegations in the foregoing paragraphs as though fully set forth herein.

19. On information and belief, one or more individuals subject to the duty of candor under 37 C.F.R. § 1.56 (“Applicants”) engaged in inequitable conduct by withholding or

misstating material information with intent to deceive the United States Patent and Trademark Office (“USPTO”) in connection with the prosecution of the Patent, rendering the Patent unenforceable.

20. On information and belief, during the prosecution of the Patent, Applicants were aware of prior art that they knew was material to patentability, including prior public disclosures material to patentability that they deliberately failed to properly disclose to the USPTO with intent to deceive.

21. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the Patent.

COUNT IV
Declaration of Noninfringement of the Trademark

23. AV repeats and realleges the allegations in the foregoing paragraphs as though fully set forth herein.

24. Despite GND’s allegations that AV has infringed the Trademark, AV has not infringed and does not infringe the Trademark.

25. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

26. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the Trademark.

COUNT V

**Declaration that AV has not Violated Section 43(a) of the Lanham Act
Nor the Statutory or Common Law of Any State**

27. AV repeats and realleges the allegations in the foregoing paragraphs as though fully set forth herein.

28. Despite GND's allegations that AV's "unauthorized use of the GND trademarks violates GND's trade identity rights and constitutes infringement under §43(a) of the Lanham (Trademark) Act, 15 U.S.C. §1125(a), as well as under applicable state law" AV has not violated §43(a) of the Lanham Act, 15 U.S.C. §1125(a) or any statutory or common law of any state in the United States of America and has not damaged GND in any way.

29. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

30. A judicial declaration is necessary and appropriate so that AV may ascertain its rights based on the allegations made by GND relating to AV's alleged trademark infringement and/or unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff A.V. Diamonds, Inc. respectfully requests that judgment be entered in its favor and prays that the Court grant the following relief:

1. A declaration that AV has not infringed, either directly or indirectly, any valid and enforceable claim of the Patent;

2. A declaration that the claim of the Patent is invalid;
3. A declaration that the Patent is unenforceable;
4. A declaration that AV has not infringed the Trademark;
5. A declaration that AV has not violated either Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) or any statutory or common law of any state in the United States of America;
6. An Order declaring that AV is the prevailing party and that this is an exceptional case, and awarding AV costs, expenses, disbursements and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;
7. Attorneys fees, costs and interest according to applicable law; and
8. Such other and further relief as this Court may deem just and proper.

DATED: September 3, 2010

Respectfully submitted,

The Azem Firm

/s/ Samer Al-Azem

Samer Al-Azem

SBOT 00793240

2808 Virginia Street

Houston, Texas 77098

(713) 808-9697 office

(713) 893-6942 fax

s.alazem@azemlaw.com