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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>BACK TO BASICS PRODUCTS, INC., a Utah Corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>VILLAWARE MANUFACTURING COMPANY, an Ohio Corporation,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p style="text-align: right;">2:03CV-0224 TC</p> <p>Civil No. _____</p> <p>Judge _____</p>
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Plaintiff Back To Basics Products, Inc. ("Basics"), through counsel, hereby complains of Defendant VillaWare Manufacturing Company ("VillaWare"), and alleges as follows:

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PARTIES, JURISDICTION, AND VENUE

1. Basics is a Utah corporation with its principal place of business at 11644 South 700 East, Draper, Utah 84020. Basics has been and continues to be actively engaged in the sale of beverage mixers, smoothie makers, blenders and smoothie mixes under various product lines. Basics's business concentrates on the sale of smoothie makers and related mixes.

2. On information and belief, Defendant VillaWare Manufacturing Company is an Ohio corporation with its principal place of business at 3615 Superior Avenue #44, Cleveland, Ohio 44114.

3. This is an action for patent infringement arising under the patent laws of the United States, and more specifically, under Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1338.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 6,527,433)

4. Basics incorporates by reference paragraphs 1 through 3 above, and alleges:

5. On March 4, 2003, United States Patent Number 6,527,433 (the "433 patent") issued in the name of inventor Thomas E. Daniels, Jr. ("Daniels") for an invention.

6. United States Patent Application No. 10/012,239, which was originally filed November 13, 2001, was published on June 27, 2002 (the "Application"), which is the Application that became the '433 patent.

7. Daniels granted a license to Basics to be the sole and exclusive licensee of all rights under the Application and any patent which thereafter issued as a result of the Application, which includes the '433 patent. Basics is thus entitled to bring this action.

8. By filing and service of this action, Basics gives actual notice to VillaWare of the '433 patent.

9. VillaWare manufactures, sells, offers to sell in the United States, and/or imports into the United States, without authority or license from Basics, one or more beverage mixers or smoothie makers that infringe one or more claims of the '433 patent, including the "Classic Smoothie Maker" and/or model 5350 that infringes one or more claims in the '433 patent.

10. VillaWare manufactures, sells, offers to sell in the United States, and/or imports into the United States, without authority or license from Basics, the "Smoothee Blend N Serve" and/or model 5780 that infringes one or more claims of the '433 patent.

11. VillaWare has actively and knowingly induced, and continues to actively induce, infringement of the '433 patent through, inter alia, the advertising, promotion and sales of its Classic Smoothie Maker and Smoothee Blend N Serve smoothie makers which directly infringe the '433 patent.

12. VillaWare's activities, if continued, constitute deliberate and willful infringement of the '433 patent.

13. The acts of infringement of VillaWare have caused damages to Basics in an amount that cannot be determined without an accounting. Based on VillaWare's actions, Basics is entitled to such an accounting for damages which shall not be less than a reasonable royalty pursuant to 35 U.S.C. § 284. On information and belief, Basics is further entitled to treble the amount of damages found or assessed for infringement of the '433 patent pursuant to 35 U.S.C. § 284.

14. Further, the acts of infringement of the '433 patent by VillaWare have caused Basics to suffer irreparable harm, which is not fully compensable by money damages. On information and belief, VillaWare will continue to infringe the '433 patent unless it is enjoined by this Court pursuant to applicable law including 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Basics respectfully prays for the following relief against VillaWare as follows:

A. For judgment against VillaWare in an amount of damages to be proved at trial for infringement of the '433 patent, plus interest thereon at the legal rate, pursuant to applicable law including 35 U.S.C. §284;

B. For a preliminary and permanent injunction enjoining VillaWare, their officers, agents, servants, employers, and attorneys, and all other persons in active concert or participation with VillaWare from further infringement of the '433 patent pursuant to applicable law including 35 U.S.C. § 283;

C. For an order requiring VillaWare to deliver up for destruction all smoothie makers, together with instructions and packaging for the use of such smoothie makers which infringe the '433 patent;

D. For an award to Basics of treble the amount of damages found or assessed for infringement of the '433 patent pursuant to 35 U.S.C. § 284 in light of the willful and deliberate nature of defendants' infringement;

E. That this be declared an exceptional case, and that Basics be awarded its attorney fees under applicable law including 35 U.S.C. § 285;

F. That this Court order an accounting of damages to Basics arising from VillaWare's acts of infringement, including profits made by VillaWare and profits lost by Basics as a result of VillaWare's infringing activities;

G. That this Court award Basics damages adequate to compensate it for VillaWare's infringement of the '433 patent together with pre- and post-judgment interest.

H. That this Court order VillaWare to pay Basics's costs and expenses in bringing and prosecuting this action.

I. That this Court grant Basics such other and further relief the Court may deem just and proper.

DATED this 4th day of March, 2003.



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