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

EVERYTHING FOR LOVE, INC.,

Plaintiff,

vs.

DWAYNE LACEY,

Defendant.

COMPLAINT

Civil No.

Judge

2:01CV-993C

1. Plaintiff, Everything For Love, Inc. ("EFL"), is a corporation incorporated under the laws of the State of Nevada, and has its principal place of business in the State of California.

2. Defendant, Dwayne Lacey, is an individual citizen of the United Kingdom, residing in the Country of Australia.

3. Jurisdiction of this Court arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, under the laws of the United States of America concerning actions relating to patents, 28 U.S.C. § 1338(a), and under federal question jurisdiction 28 U.S.C. § 1331. Jurisdiction for the non-federal question claims arise under 28 U.S.C. § 1337.

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4. Venue is proper under 28 U.S.C. § 1391(d)

5. On October 30, 2001, U.S. Patent No. 6,309,365 B1 entitled *Head Massaging Device* was issued to Defendant Lacey. Such patent shall hereafter be cited the "365 Patent."

6. EFL made and offered for sale, both before and since, the issuance of the 365 Patent, a head massager device advertised on EFL's website and through other distribution channels. Plaintiff's device is known as and will be referred to herein as the "Tingler."

7. Defendant Lacey, through his agents and attorneys, has charged Plaintiff with infringement of the 365 Patent by reason of the manufacturing and offering for sale and selling of the Tingler, by letter dated November 20, 2001, a copy of which is attached hereto as Exhibit A.

8. There is a substantial and continuing justiciable controversy between EFL and Defendant as to Defendant's right to threaten or maintain suit for infringement of said patent, and as to the validity and scope thereof, and as to whether any of EFL's products infringe any valid claim thereof.

9. EFL, by and through its attorneys, has informed Defendant Lacey that the 365 Patent is invalid under 35 U.S.C. § 102(d) in a letter dated November 21, 2001, attached hereto as Exhibit B.

10. Notwithstanding such notice, Defendant continues to assert to EFL's customers that any sale of EFL's Tingler device is an infringement of the 365 Patent. These ongoing threats to EFL and its customers made by Defendant by or through his agents are made in bad faith, knowing that the 365 Patent is invalid under United States law.

11. On or about January 12, 1998, Defendant filed application for an Australian Design patent on an article entitled "Non electrical head massage device" (the "Australian Application.").

12. Australian Design Patent No. AU 134633 S issued on the device depicted in the Australian Application on or about August 12, 1998 (the "Australian Patent.").

13. A color photograph submitted by Lacey, or his agents, with the Australian Application depicts a device constructed of copper. A color copy of this photograph is attached hereto as Exhibit C.

14. The device depicted in the photograph alleged in Paragraph 12 above was, in fact, constructed of copper and copper wire.

15. The device depicted in the photograph alleged in Paragraph 12 above had, in fact, pliable fingers.

16. The device depicted in the photograph alleged in Paragraph 12 above had, in fact, electrically conductive fingers.

17. Defendant, in prosecuting his United States Patent Application, failed to disclose that the Australian Patent was obtained on a device comprised of copper and copper wire with pliable, electrically conductive fingers.

18. The 365 Patent is invalid, unenforceable, and void for one or more of the following reasons:

- a. EFL does not currently infringe any claim of said patent;

- b. More than one year prior to the filing of the original application which matured into the 365 Patent, the alleged invention was described in printed publications in this or foreign countries, or was in public use, or on sale in this Country, and the 365 Patent is therefore invalid under 35 U.S.C. § 102(b);
- c. More than one year prior to filing the application which matured into the 365 Patent, Defendant Lacey was issued Australian Patent No. 134633 S for the same invention, and the 365 Patent is therefore invalid under 35 U.S.C. § 102(d); and
- d. Defendant's inequitable conduct before the United States Patent Office.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

- 19. EFL repeats and realleges Paragraphs 1 through 18 as though fully stated herein.
- 20. Pursuant to 28 U.S.C. §§ 2201 and 2202, Plaintiff is entitled to a declaration that the 65 Patent is invalid, unenforceable and void in law; and/or that the 365 Patent is not infringed by EFL because of the making, selling or using of any apparatus made or sold or used by Plaintiff.

SECOND CLAIM FOR RELIEF

(Trade Secret Misappropriation)

21. EFL repeats and realleges Paragraphs 1 through 20 as though fully stated herein.

22. Defendant Lacey, either individually or by and through his agents, attorneys or employees, has informed numerous EFL's customers and EFL's manufacturer that the manufacture or sale of the Tingler violates the 365 Patent.

23. Defendant and his attorneys made these communications using EFL's proprietary customer list and other proprietary information belonging to EFL.

24. EFL has taken reasonable care to protect the confidential nature of its customer list and other contact information, and such information is not known or readily ascertainable by others. Such information derives value from not being publicly known.

25. Defendant and his attorneys used such information under circumstances when they knew or should have known they were not authorized to use such information, and knowing that it was provided by a person who owed a duty to EFL to maintain its secrecy.

26. Defendant has misappropriated EFL's trade secrets.

27. EFL has been damaged by Defendant's misappropriation in an amount to be proved at trial.

28. Alternatively, EFL is entitled to a reasonable royalty for the use of such information, in an amount to be proved at trial.

29. Such misappropriation was willful and malicious and made in bad faith, and EFL is entitled to exemplary damages and its attorneys' fees.

THIRD CLAIM FOR RELIEF

(Interference With Existing and Prospective Economic Relations)

30. EFL repeats and realleges Paragraphs 1 through 29 above as though fully stated herein.

31. The above alleged communications by Defendant to EFL's customers and others have interfered with EFL's existing and prospective contractual and other economic relations with these customers and EFL's manufacturer.

32. Such communications are wrongful, because they are not made in good faith, and are made knowing that the 365 Patent is invalid.

33. Moreover, in making such communications, Defendant, through his attorneys, have used EFL's trade secret information as alleged above. Such use is a wrongful means of interference.

34. As a result of such communications, EFL's contractual and other relations with its customers and manufacturer have been disrupted, and EFL has been damaged thereby.

35. The actions of Defendant Lacey and his agents, attorneys and/or employees have been willful, and EFL is entitled to punitive damages.

FOURTH CLAIM FOR RELIEF

(Lanham Claim - Trade Disparagement)

36. EFL repeats and realleges paragraphs 1 through 35 above as though fully set forth herein.

37. Defendant, or his agents, have disseminated false and misleading statements and information regarding EFL's Tingler device, mischaracterizing the nature, characteristics and qualities of EFL's Tingler device and have done so in the course of promoting competing goods.

38. Such statements are likely to cause confusion and mistake, and are likely to deceive potential purchasers of head massaging devices.

39. Specifically, EFL's customers have informed EFL that Defendant's agents or attorneys have claimed that EFL's Tingler device infringes United States of America's patent rights owned by Defendant.

40. As a result of these false statements made by Defendant, his agents and/or attorneys, EFL has been damaged in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff EFL demands as follows:

1. Entry of Judgment stating that: a) Defendant Lacey is without right or authority to threaten or to maintain suit against Plaintiff or its customers for alleged infringement of the 365 Patent; b) that said 365 Patent is invalid, unenforceable, and void in law; and c) that said 365

Pate it is not infringed by Plaintiff because of the making, selling, or using of any apparatus made, or sold, or used by Plaintiff EFL;

2. Entry of a preliminary and permanent injunction enjoining Defendant Lacey, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice thereof, from initiating infringement litigation and from threatening Plaintiff or any of its customers, dealers, manufacturers, agents, servants, or employees, or any prospective or present sellers, dealers, manufacturers, or users of Plaintiff's devices or apparatus, with infringement litigation or charging any of them, either verbally or in writing, with infringement of the 365 Patent because of the manufacture, use, or selling, or offering for sale of the Tingler apparatus made or sold by Plaintiff;

3. Entry of Judgment on EFL's Second, Third and Fourth Claims for Relief in an amount sufficient to compensate EFL for its damages, as may be proven at trial;

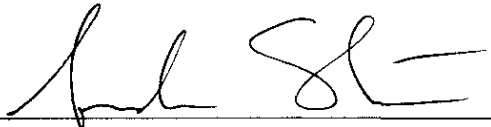
4. Entry of an award of punitive or exemplary damages sufficient to punish Defendant and to deter future misconduct;

5. Entry of Judgment for EFL's costs and reasonable attorneys' fees as may be allowed by law; and

6. Such other and further relief as the Court may deem appropriate.

Dated this 13th day of December, 2001.

JONES, WALDO, HOLBROOK & McDONOUGH

By: 

Timothy C. Houpt
Andrew H. Stone
Attorneys for Plaintiff

Exhibits/
Attachments
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Please see the
case file.