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Attorneys for Plaintiff

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

GROUND ZERO DESIGN
CORPORATION, a Utah Corporation,

Plaintiff,

v.

HOIST FITNESS SYSTEMS, INC., a
California Corporation, and RANDALL T.
WEBBER, an individual,

Defendants.

Civil Action No. _____

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**COMPLAINT INCLUDING DEMAND
FOR JURY TRIAL**

1

Plaintiff Ground Zero Design Corporation (“GROUND ZERO”) complains and alleges against Defendants as follows:

PARTIES

1. Plaintiff GROUND ZERO is a Utah corporation having principal places of business at 1500 South 1000 West, Logan, Utah, 84321-8206 and 2845 Janitell Road, Colorado Springs, CO 80906.

2. On information and belief, defendant Hoist Fitness Systems, Inc. (“HOIST”) is a California Corporation, having a principal place of business at 9990 Empire St, Suite 130, San Diego, CA 92126.

3. On information and belief, defendant Randall T. Webber (“Mr. Webber”) is a resident of the United States, having a principal residence at 11162 Morning Creek Dr. South, San Diego, CA 92128.

4. On information and belief, defendant Mr. Webber is an employee and Officer of HOIST.

5. On information and belief, defendant Mr. Webber is the named inventor and owner of the patent at issue in this case. On information and belief, defendant HOIST has an interest in the patent at issue in this case.

6. Defendants HOIST and Mr. Webber are sometimes collectively referred to hereinafter as “Defendants.”

7. GROUND ZERO and HOIST are direct competitors in the market for fitness equipment.

JURISDICTION AND VENUE

8. This is a Declaratory Judgment action brought by GROUND ZERO pursuant to 28 U.S.C. §§ 2201 and 2202 seeking a declaration that United States Patent No. 5,800,321 (“’321 patent”) entitled “Exercise Apparatus with Adjustable Lever Arm” issued to Mr. Webber is not infringed by GROUND ZERO and is invalid. Defendants have raised a reasonable apprehension of the filing of a lawsuit against GROUND ZERO, resulting in the establishment of a case or controversy between the parties relating to the ‘321 patent as fully set forth below. Accordingly, this action arises under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*, and subject matter is conferred upon this Court by 28 U.S.C. § 1331. The ‘321 patent is attached hereto as Exhibit A.

9. On information and belief, Defendants have contracted to and/or have actually supplied goods and/or services within the State of Utah, including the distribution of exercise devices sold in the State of Utah under the tradename “Hoist Fitness Systems.” Defendants are, therefore, subject to the jurisdiction of this Court pursuant to Utah Code Ann. § 78-27-24.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

BACKGROUND

11. GROUND ZERO manufactures and distributes strength training equipment, including the “Free Motion[®]” line of strength training equipment, to customers in the United States.

12. On March 16, 2001, Defendants, by and through their counsel Kathleen A. Palsulka of BROWN, MARTIN, HALLER & McCLAIN, LLP, sent a letter to GROUND ZERO (attached hereto as Exhibit B), expressly charging GROUND ZERO with infringement of the

'321 patent and suggesting that GROUND ZERO's alleged infringement was willful, exposing GROUND ZERO to liability for enhanced damages and HOIST's attorney's fees:

It has come to our attention that your company is currently offering for sale and selling Cable Cross and Lift Machines that infringe the '321 patent. Specifically, claims 1, 2, 3, and 4 appear to be infringed.

Please be aware that patent infringement is a very serious matter. Willful infringement allows that patent holder in many cases to obtain not only increased damages but also attorney's fees.

13. The March 16, 2001 letter to GROUND ZERO from Defendants' counsel also demanded that GROUND ZERO "immediately cease and desist from further manufacture and/or importation, distribution, and sale off the Cable Cross and Lift Machines" Defendants have raised a reasonable apprehension of the filing of a lawsuit against GROUND ZERO, resulting in the establishment of a case or controversy between the parties relating to the '321 patent.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement)

14. GROUND ZERO realleges and incorporates herein, as if set forth in full, all of the preceding allegations of this Complaint into its First Claim for Relief.

15. The '321 patent issued on September 1, 1998 to Mr. Webber. This patent is directed to an Exercise Apparatus with Adjustable Lever Arm.

16. On information and belief, Mr. Webber, in association with HOIST, claims to hold all right, title and interest in the '321 patent, include the right to suit for infringement of the '321 patent.

17. Defendants have raised a reasonable apprehension of the filing of a lawsuit against GROUND ZERO, resulting in the establishment of a case or controversy between the parties relating to the '321 patent.

18. GROUND ZERO's manufacture, sale, offer for sale and use of its "Free Motion[®]" line of strength training equipment, including the Cable Cross and Lift Machines, do not infringe any claim of the '321 patent.

WHEREFORE, GROUND ZERO seeks judgment as set forth hereinafter.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Patent Invalidity)

19. GROUND ZERO realleges and incorporates herein, as if set forth in full, all of the preceding allegations of this Complaint into its Second Claim for Relief.

20. The '321 patent is invalid pursuant to 35 U.S.C. §§ 102, 103 and/or 112.

WHEREFORE, GROUND ZERO seeks judgment as set forth hereinafter.

PRAYER FOR RELIEF

WHEREFORE, plaintiff GROUND ZERO seeks judgment against Defendants as follows:

1. For a preliminary and permanent injunction enjoining Defendants, their officers, servants, employees and attorneys, and those in active concert or participation with them from asserting that GROUND ZERO infringes the '321 patent;
2. For a declaration that GROUND ZERO does not infringe any claim of the '321 patent;
3. For a declaration that the '321 patent is invalid;
4. That Defendants be ordered to pay to all costs and attorneys' fees incurred by GROUND ZERO in connection with this action, including costs and fees pursuant to 35 U.S.C. § 285;
5. For prejudgment interest on all amounts awarded; and

6. For such other and further relief as the Court in its discretion deems appropriate.

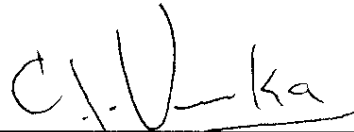
DEMAND FOR JURY TRIAL

GROUND ZERO hereby demands a trial by jury in this action on all issues that may, by law, be properly tried to a jury.

DATED this 3rd day of August, 2001.

WORKMAN, NYDEGGER & SEELEY

By



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David R. Wright
C.J. Veverka

Brad H. Bearnson
General Counsel
Ground Zero Design Corporation

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Exhibits/
Attachments
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Please see the
case file.