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Stander, Inc.

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

STANDER, INC., a Utah corporation,

Plaintiff,

v.

AVENUE INNOVATIONS INC., a Canadian
corporation,

Defendant.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
AND INVALIDITY OF
U.S. PATENT NO. 6,340,189**

Case No.

Plaintiff Stander, Inc. (“Stander”) hereby complains against defendant Avenue
Innovations Inc. (“AII”) and for its causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Stander is a Utah corporation with its principal place of business in Logan,
Utah. Stander is engaged in the business of developing and manufacturing innovative mobility
solutions for the bed, bath, couch, and automobile. Stander manufactures and sells a product
known as the METRO CAR HANDLE™ and METRO CAR HANDLE PLUS™ (collectively,

the “METRO CAR HANDLE™ Products”) that are designed to assist individuals in entering and exiting automobiles.

2. Defendant AII is a Canadian corporation with its principal place of business in Sydney, British Columbia.
3. AII has conducted business in Utah.
4. This Court has personal jurisdiction over AII.
5. This Court has jurisdiction over the subject matter of this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court also has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), and under Title 35 of the United States Code, 35 U.S.C. §§ 101 *et seq.*
6. Venue in this district is proper under 28 U.S.C. §§ 1391.

GENERAL ALLEGATIONS

7. U.S. Patent Application Serial No. 09/466,252 titled “Universal Device for Facilitating Movement Into and Out of a Seat” issued as U.S. Patent No. 6,340,189 (the “’189 Patent”) on January 22, 2002. A copy of the ’189 Patent is attached hereto as Exhibit A.
8. The United States Patent & Trademark Office (“USPTO”) assignment records indicate that AII is the current owner of the ’189 Patent.
9. AII markets and sells a product for assisting senior citizens, elderly, and disabled persons in getting in and out of their automobile. This product is known as the HANDYBAR™.
10. On or about February 17, 2009, Ian Stewart, the President of AII, sent an email to Brandon Birch, the Chief Operating Officer of Stander, on behalf of AII. The subject line of this email was “handybar knock off” (the “handybar knock off email”). In the handybar knock off

email, Mr. Stewart accused Stander of infringing its intellectual property rights. In the handybar knock off email, Mr. Stewart also stated, “I will be serving you with legal desist letters and a suite [sic] to follow.”

11. Also on or about February 17, 2009, Ian Stewart sent another email to one of Stander customers, Patterson Medical (the “Patterson Medical email”). The subject line of the Patterson Medical email was “handybar knock off your item number 566868.” Brandon Birch was copied on the Patterson Medical email.

12. Item number 566868 for Patterson Medical corresponds to the Stander METRO CAR HANDLE PLUS™ product.

13. In the Patterson Medical email, Mr. Stewart stated that Stander’s item number 566868 “is a clear infringement” of the ’189 Patent.

14. Also on or about February 17, 2009, Ian Stewart called Stander and asked to speak with Brandon Birch. Although Mr. Birch was unavailable at the time, during the course of this conversation with one of Stander’s employees, Mr. Stewart accused Stander of “ripping [him] off.” Mr. Stewart went on to allege that Stander and/or one or more of its employees are “criminally liable.” Mr. Stewart also threatened to “make sure my lawyers get all over him [(Mr. Birch?).]”

15. On or about February 18, 2009, Ian Stewart called Stander again and spoke with Brandon Birch and Jan Miller, Stander’s owner. During this telephone conversation, Mr. Stewart repeated his infringement allegations and his intention to file a lawsuit against Stander.

16. On or about February 18, 2009, Ian Stewart sent another email to Brandon Birch at Stander under the subject line “handybar press release” (the “handybar press release email”).

Stander's customer, Patterson Medical, was copied on the handybar press release email. In the handybar press release email, Mr. Stewart repeated his infringement allegations and also alleged that Stander was guilty of not only infringement, but false advertising and "corrupt business methods" as well. No indication was given as to what statements made in any advertising materials might give rise to a claim for false advertising, nor was any reasoning or evidence provided in support of the false advertising allegations.

17. On or about February 18, 2009, Ian Stewart sent yet another email to Stander's customer, Patterson Medical, under the subject line "handybar knock off" (the "second handybar knock off email"). In the second handybar knock off email, Mr. Stewart alleges that the Stander product that Patterson Medical is advertising and selling "directly infringes our patents." The second handybar knock off email also claims that these advertisements are "misleading and can be considered false advertising." The second handybar knock off email demands that Stander's product be removed from the Patterson Medical website "immediately to avoid costly action." The second handybar knock off email also threatens that, "If you [(Patterson Medical)] choose to stay with Stander, we will take appropriate action." The second handybar knock off email goes on to state that, if Patterson Medical chooses to ignore Mr. Stewart's email, "we will know the position of Sammons Preston [(a Patterson Medical company)] as regards to offshore knock offs and illegal purchases." The second handybar knock off email ends with Mr. Stewart reiterating that he "will take full legal action against all infringement." Once again, no indication was given as to what statements made in any advertising materials might give rise to a claim for false advertising, nor was any reasoning or evidence provided in support of the false advertising allegations.

FIRST CLAIM FOR RELIEF
Declaratory Relief of Non-Infringement – U.S. Patent No. 6,340,189

18. Stander hereby incorporates the allegations in paragraphs 1 through 17 above as though fully set forth herein.

19. Stander currently produces and sells the METRO CAR HANDLE PLUS™ product that AII has specifically identified and alleged to infringe the '189 Patent.

20. Stander also currently produces and sells the METRO CAR HANDLE™ product.

21. Based on the acts, conduct, and statements of AII, Stander has formed a reasonable apprehension and belief that AII intends to and will sue Stander for alleged infringement of the '189 Patent in the immediate future based upon Stander's sales of one or both of the METRO CAR HANDLE™ Products.

22. Stander alleges that its METRO CAR HANDLE™ Products do not infringe any valid claim of the '189 Patent, either directly or contributorily, and further that it does not make, use, sell, or offer for sale in the United States any other product that infringes any valid claim of the '189 Patent, either directly or contributorily, and that it has not induced others to infringe the '189 Patent.

23. By reason of the foregoing, an actual controversy exists between Stander and AII as to whether any products made, used, sold, or offered for sale by Stander infringe the '189 Patent, or whether any other conduct of Stander constitutes such infringement.

24. Stander requests a judicial determination of the foregoing controversy and a declaration by this Court that Stander has not, and does not, infringe the '189 Patent.

SECOND CLAIM FOR RELIEF
Declaratory Relief of Invalidity – U.S. Patent No. 6,340,189

25. Stander hereby incorporates the allegations in paragraphs 1 through 24 above as though fully set forth herein.

26. AII's acts, conduct, and statements imply that AII believes that the '189 Patent is valid and enforceable.

27. On information and belief, Stander alleges that the '189 Patent is invalid for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including without limitation Sections 102, 103, and 112 thereof.

28. By reason of the foregoing, an actual controversy exists between Stander and AII as to whether the claims of the '189 Patent are valid.

29. Stander requests a judicial determination of the foregoing controversy and a declaration by this Court that the claims of the '189 Patent are invalid.

PRAYER FOR RELIEF

Wherefore, Plaintiff Stander prays for a final judgment against Defendant AII and respectfully requests that this Court enter an Order providing:

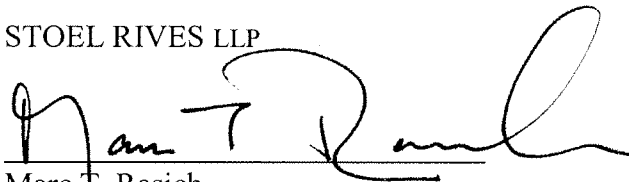
- A. That Stander does not infringe, and has not infringed, any claim of the '189 Patent;
- B. That the '189 Patent is invalid;
- C. That this case is exceptional and awarding Stander reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- D. An award of costs incurred in connection with this suit;

E. A permanent injunction enjoining AII, its assignees, licensees, officers, agents, servants, employees, attorneys, and all persons and entities acting in concert with any of them, from making any claim to any person or entity that any of Stander's products infringe any claim of the '189 Patent.

F. That Stander be granted such other and further relief as this Court may deem just and proper.

Dated: February 18, 2009

STOEL RIVES LLP

A handwritten signature in black ink, appearing to read "Marc T. Rasich", written over a horizontal line.

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