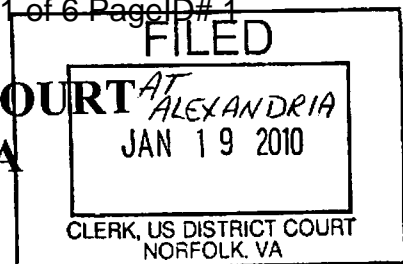


**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

NORFOLK DIVISION



Erik B. Cherdak
149 Thurgood Street
Gaithersburg, Maryland 20878

Plaintiff, Pro Se,

v.

The Walt Disney Company
500 South Buena Vista Street
Burbank, California 91521

Defendant.

Case No. 2:10cv37
(RGD(FBS))

COMPLAINT FOR
PATENT INFRINGEMENT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Erik B. Cherdak¹ (hereinafter "Plaintiff" or "Cherdak"), *Pro Se*, and in and for his Complaint against The Walt Disney Company (hereinafter "DISNEY"), and states as follows:

THE PARTIES

1. Plaintiff is an individual who resides in Gaithersburg, Maryland at the address listed in the Caption on Page 1 of this Complaint.
2. Defendant DISNEY is a Delaware Corporation and has a principal place of business at the address listed in the Caption on Page 1 of this Complaint.

JURISDICTION AND VENUE

3. This is an action for Patent Infringement under the Laws of the United States of America and, in particular, under Title 35 United States Code (Patents – 35 USC

¹ Although Plaintiff Cherdak is not licensed to practice law in Virginia, he is a registered patent attorney before the U.S. Patent and Trademark Office.

§ 1, *et seq.*). Accordingly, Jurisdiction and Venue are properly based under Sections 1338(a), 1391(b) and (c), and/or 1400(b) of Title 28 of the United States Code.

FACTS

4. At all times relevant herein, Plaintiff has been and is the named inventor of U.S. Patent Nos. 5,343,445 (the '445 patent) and 5,452,269 (the '269 patent) (hereinafter collectively referred to the "Cherdak patents," which were duly and legally issued by the U.S. Patent and Trademark Office ("USPTO") on August 30, 1994 and September 19, 1995, respectively. The Cherdak patents have successfully gone through additional expert review before the USPTO during reexamination proceedings related to the same (USPTO Proceeding Control Nos. 90/008,269, and 90/008,246, respectively). Those reexamination proceedings resulted, *inter alia*, in the confirmation of claims without amendment; many of said claims form the basis of the instant lawsuit. Both of the Cherdak patents are entitled "Athletic Shoe with Timing Device." The Cherdak patents and their corresponding Reexamination Certificates are attached hereto at EXHIBITS 1-4, respectively.
5. Defendant DISNEY sells infringing lighted athletic shoes through its own DISNEY STORE® retails stores and through its own website addressed at www.disneystore.com. Defendant owns and operates at least one of its DISNEY STORE retail stores in this judicial district of Virginia and, in particular, at its McLean, Virginia location at Tysons Corner Center, 1961 Chain Bridge Road, McLean, VA 22102. Defendant operates said www.disneystore.com website and regularly solicits business from citizens in this judicial district of Virginia and is open for business 24/7, 365 days per year.

6. Defendant DISNEY is presently and has in the past engaged in the design, importation, distribution, sale, and offering for sale of what are commonly referred to as “light up shoes,” “light up athletic shoes,” “athletic shoes,” and/or “lighted shoes,” “lighted athletic shoes,” “lighted sneakers,” etc. (hereinafter “shoes,” “lighted shoes,” “lighted shoe products”). At all times relevant for this Complaint, the Defendant has engaged in the infringement of and/or induced the infringement of and/or committed contributory infringement of the Cherdak patents throughout the United States, including, but not limited to, in this judicial district of Virginia, USA.
7. ***Exemplary Infringing shoes sold by Defendant include but may not be limited to:*** The MICKEY and the KUNG FU CHAMPION. Both shoes include lighting modules marked with U.S. Patent Nos. 5,789,716, 6,949,713, 6,525,487, 6,764,193, 6,789,913. On information and belief Defendant has also sold other exemplary infringing shoes known as the LIGHT-UP LIGHTNING MCQUEEN SNEAKERS FOR BOYS, and the DISNEY LIGHT-UP MICKEY MOUSE SNEAKERS FOR TODDLERS.
8. ***The infringing shoes mentioned in this COMPLAINT are merely exemplary infringing shoes and Defendant does sell, offers for sale, distributes and makes other shoes now on store shelves (and which have been sold in the past) at least in this judicial district of Virginia (USA) and/or throughout the United States.*** Accordingly, the particular shoe models identified in paragraph number 7 are merely exemplary and do not constitute a full and complete identification of all infringing shoes which are contemplated by this Complaint for Patent Infringement – due discovery in this case will reveal all infringing shoes used,

made, imported, offered for sale, and/or sold by the Defendant individually and/or collectively with other parties.

9. **DEFENDANT DISNEY IS HEREBY ADVISED THAT THE PLAINTIFF, THE INSTANT LAWSUIT AND THIS COMPLAINT DO NOT SEEK REMEDIES IN CONNECTION WITH ANY ACTS OF PATENT INFRINGEMENT BY DEFENDANT RELATED TO LIGHTED SHOES WHICH ARE MANUFACTURED AND/OR SOURCED TO (SUPPLIED TO) DEFENDANT FROM ANY OF THE FOLLOWING PARTIES INCLUDING:**

COLLECTIVE BRANDS, INC. (DBA PAYLESS, INC.), BBC INTERNATIONAL, INC., STRIDE-RITE CORPORATION ESO ORIGINALS, INC., VIDA SHOES INTERNATIONAL, INC., CHAMELEON, INC., TARGET STORES, INC. (AKA TARGET BRANDS, INC.), SKECHERS USA, INC.

COUNT I – Patent Infringement

Paragraphs 1 through 9 are hereby incorporated by reference as though completely set forth herein.

10. Given the validity and corresponding enforceability of the Cherdak patents (U.S. Patent Nos. 5,343,445 and 5,452,269) against past, present, and future infringing acts and other activities prohibited under the U.S. Patent Act (35 USC § 1, *et seq.*), Plaintiff Cherdak, *inter alia*, possesses the right to pursue claims against the Defendant's past, present, and future design, use, manufacture, importation, sale, offer for sale, and distribution of infringing shoes under 35 USC § 271(a), (b), and (c).
11. On information and belief Defendant has infringed, contributed to the infringement of, and/or induced the infringement of the Cherdak patents in

violation of 35 USC § 271(a), (b), and (c) by its design, use, manufacture, importation, distribution, sale, and offer for sale of shoes including, **but not limited to**, the shoes identified in paragraph 6 hereof.

12. On information and belief, Defendant has infringed the Cherdak patents in violation of 35 USC § 271(b) by actively inducing distributors, customers, and/or other retailers to infringe the Cherdak patents.
13. On information and belief, Defendant DISNEY has made and continues to make (and/or has had made on its behalf) infringing light up shoes and has and continues market the same throughout the U.S. and, in particular, in this judicial district of Virginia, USA for infringing purposes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cherdak prays for judgment and relief against the Defendant as follows:

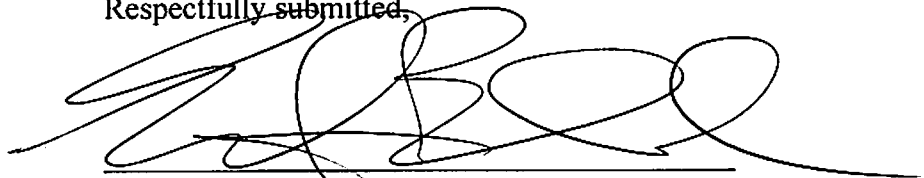
- A. For a judgment that the '445 and '269 patents are valid and infringed by Defendant including, but not limited to, its subsidiaries, predecessors-in-interest and business units however and wherever formed;
- B. That permanent injunctions be issued against continued infringement of the '445 and '269 patents by Defendant and its parents, subsidiaries, officers, directors, employees, affiliates, representatives and agents, and all those acting in concert with or through Defendant, directly or indirectly, including, but not limited to, distributors, customers, and other retailers;
- C. That an accounting be had for damages caused to Plaintiff Cherdak by Defendant's acts in violation of the U.S. Patent Act (35 USC § 1, *et seq.*) together with pre-judgment and post-judgment interest;

- D. That any damages awarded in accordance with any prayer for relief be enhanced and, in particular, trebled in accordance with the U.S. Patent Act (35 USC § 1, *et seq.*) for Defendant's acts which are found to be subjectively willful acts of patent infringement; and
- E. Such other and further relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

The Plaintiff hereby demands a TRIAL BY JURY on all issues so triable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Erik B. Cherdak', written over a horizontal line.

Erik B. Cherdak, Plaintiff *Pro Se*
149 Thurgood Street
Gaithersburg, Maryland 20878
(202) 330-1994
Fax 1.240.235.7128
Email: efunds@yahoo.com

January 11, 2010