

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

CARSON OPTICAL, INC. and
LEADING EXTREME OPTIMIST
INDUSTRIES, LTD.

Plaintiffs,

v.

OFFICE DEPOT, INC. and
DAYMON WORLDWIDE, INC.

Defendants.

Civil Action No.:

FEBRUARY 21, 2008

COMPLAINT

The plaintiffs, Carson Optical, Inc. and Leading Extreme Optimist Industries, Ltd., hereby file their complaint against the defendants, Office Depot, Inc. and Daymon Worldwide, Inc., as follows:

PARTIES

1. The plaintiff, Carson Optical, Inc. ("Carson") is, and at all relevant times has been, a corporation organized and existing under the laws of the State of New York, and maintains its principal place of business in Hauppague, New York.

2. Carson markets and sells optical products throughout the country, including within this Judicial District.

3. The plaintiff, Leading Extreme Optimist Industries, Ltd. ("Leading"), is a manufacturer of optical products located in Hong Kong.

4. The defendant, Office Depot, Inc. ("Office Depot"), is a corporation organized and existing under the laws of the State of Delaware, and, upon information and belief, maintains its principal place of business in Delray Beach, Florida.

5. Office Depot is registered with the Secretary of State for the State of Connecticut to transact business in this jurisdiction, and has been so registered since September 24, 1992.

6. Office Depot transacts business in this State, maintains at least five business locations in this State, and upon information and belief, has engaged in infringing activity in this State.

7. The defendant, Daymon Worldwide, Inc. ("Daymon"), is a corporation organized and existing under the laws of the State of Delaware, and maintains a principal place of business in Stamford, Connecticut.

JURISDICTION AND VENUE

8. This is an action for violation of the Patent Laws of the United States of America, 35 U.S.C. § 271, et al; for trademark and tradedress

infringement in violation of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a); and for violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b(a), et seq.

9. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1338(a), 1338(b) and 1367(a) and 15 U.S.C. § 1121. Venue is proper within this judicial district pursuant to 28 U.S.C. §§1391(b), 1391(c), and 1400(b).

THE PLAINTIFFS' INTELLECTUAL PROPERTY RIGHTS

10. On September 7, 2004, the United States Patent and Trademark Office issued U.S. Patent No. D495,726 S ("the '726 Patent"). A copy of the '726 Patent is attached hereto as Exhibit A.

11. Since September 7, 2004, Leading has been the owner and Carson has been the exclusive licensee of the '726 Patent.

12. The exclusive right to market and sell products claimed by the '726 Patent is a valuable business asset of Carson.

13. Carson's commercial embodiment of the '726 Patent is a product that bears the trademark RIMFREE. An exemplar of Carson's RimFree™ product is attached hereto as Exhibit B.

14. Additionally, in or around September 1998, Carson adopted and began using the trademark SUREGRIP to market and sell a magnifying lens. An

exemplar of Carson's SureGrip™ product is attached as Exhibit C. The ornamental design and overall appearance of the SureGrip™ product is inherently distinctive and/or has acquired secondary meaning in the relevant marketplace and is not functional.

15. Since September 1998, Carson has continuously and extensively marketed, promoted and sold magnifying lens bearing the SUREGRIP mark throughout the United States.

16. As a result, Carson's SureGrip™ products have become a marketing success. Carson's trademark is distinctive and/or has acquired secondary meaning in the relevant marketplace.

17. In or about 1996, Carson also adopted a certain ornamental design and overall appearance for a magnifying lens.

18. Since 1996, Carson has marketed this magnifying lens with the trademark MAGNIVIEW. An exemplar of Carson's MagniView™ product is attached as Exhibit D.

19. From 1996 to the present, Carson has extensively marketed, promoted and sold the MagniView™ product in the United States.

20. The MagniView™ product line has been, upon information and belief, the best selling magnifier series in the United States, and an undisputed commercial success.

21. The ornamental design and overall appearance of the MagniView™ product is inherently distinctive and/or has acquired secondary meaning in the relevant marketplace and is not functional.

THE INFRINGING AND DECEPTIVE ACTS OF THE DEFENDANTS

22. In 2004, 2005 and 2006, Carson representatives had a number of meetings with representatives of Office Depot and Daymon, during which Carson provided product proposals and presentations to Office Depot and Daymon for the "Office Depot Private Label Magnifier Program." The meetings and presentations took place on November 8, 2004, December 13, 2005, March 29, 2006 and May 22, 2006.

23. As a result, Carson introduced to Office Depot and Daymon a number of its optical products, including the RimFree™ product, SureGrip™ product, and MagniView™ product.

24. Carson provided samples of each product and advised Office Depot and Daymon of Carson's rights in these products.

25. Office Depot, thereafter, refused to purchase any products from Carson.

26. Instead, upon information and belief, Daymon secured a Chinese manufacturer to copy and reproduce Carson's products for Office Depot, and did so without Carson's authorization.

27. Upon information and belief, Daymon provided the samples of Carson's products to the manufacturer – who then used Carson's products to make molds and copy Carson's products.

28. Upon information and belief, Daymon received commissions from Office Depot as a result of using Carson's products to secure the foreign manufacturer.

29. After securing this manufacturing source, Office Depot began importing, offering for sale and selling products that infringe Carson and Leading's intellectual property rights.

30. More particularly, Office Depot has imported, offered for sale and sold a "rimless" magnifier that is a copy of Carson's RimFree™ product and infringes the '726 Patent. An exemplar of this infringing product is attached as Exhibit E.

31. Office Depot has also imported, offered for sale and sold a "suregrip" magnifier that is a copy of Carson's SureGrip™ product and infringes Carson's trademark and tradedress rights. An exemplar of this infringing product is attached as Exhibit F.

32. Office Depot has additionally imported, offered for sale and sold a "round" magnifier that is a copy of Carson's MagniView™ product and infringes

on Carson's trademark rights. An exemplar of this infringing product is attached as Exhibit G.

FIRST COUNT—INFRINGEMENT OF '726 PATENT

1-32. Paragraphs 1 through 32 are hereby incorporated by reference as if fully set forth herein.

33. By its import, marketing, offering for sale and sale of a "rimless" magnifier, Office Depot has infringed and continues to infringe the '726 Patent in violation of 35 U.S.C. § 271(a).

34. Office Depot's infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson and Leading.

35. Carson, in particular, has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

36. Carson and Leading have been and will continue to suffer irreparable harm, unless Office Depot is enjoined by this Court.

37. This is an exceptional case, entitling the plaintiffs to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

SECOND COUNT—INFRINGEMENT OF '726 PATENT

1-37. Paragraphs 1 through 37 are hereby incorporated by reference as if fully set forth herein.

38. Daymon, by its actions, has actively induced Office Depot's infringement of the '726 Patent in violation of 35 U.S.C. § 271(b).

39. Daymon's infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson and Leading.

40. Carson, in particular, has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

41. Daymon actively induced infringement of the '726 Patent to secure commission payments on Office Depot's infringing sales.

42. This is an exceptional case, entitling the plaintiffs to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

THIRD COUNT—TRADEMARK INFRINGEMENT

1-42. Paragraphs 1 through 42 are hereby incorporated by reference as if fully set forth herein.

43. Office Depot adopted and uses the mark "suregrip" to market and sell a magnifying lens in the United States, and has done so with knowledge of Carson's trademark SUREGRIP.

44. Office Depot uses the mark "suregrip" to market and sell a magnifying lens in the United States that is a copy of Carson's SureGrip™ product.

45. Office Depot's acts constitute false representation as to the source of its product and/or a false designation of their origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. Office Depot's acts were designed to and are likely to cause confusion, mistake and/or deception as to its affiliation, connection or association with another, and/or as to the origin, sponsorship or approval of its product by another.

47. Office Depot's actions trade on, misappropriate and wrongfully reap the goodwill that has attached to Carson's trademark.

48. The acts and conduct of Office Depot constitute willful and deliberate infringement of Carson's trademark.

49. As a result of Office Depot's infringement, Carson has suffered damages, including, *inter alia*, a diversion of trade, lost profits, and diminishment of goodwill.

50. The aforesaid conduct of Office Depot has caused irreparable injury to the business and goodwill of Carson and will continue to cause irreparable harm to Carson unless enjoined by this Court.

FOURTH COUNT—TRADE DRESS INFRINGEMENT

1-50. Paragraphs 1 through 50 are hereby incorporated by reference as if fully set forth herein.

51. Office Depot has copied the ornamental design and overall appearance of Carson's MagniView™ product and SureGrip™ product.

52. The ornamental design and overall appearance of Carson's MagniView™ product and SureGrip™ product is not functional.

53. Office Depot's copying of the ornamental design and overall appearance of Carson's products was intended to cause, and is likely to cause confusion, mistake, or deception as to the affiliation, connection or association of the products with Carson, or as to the origin, sponsorship, or approval of the products by Carson, and constitutes a false or misleading representation as to the source or sponsorship of the products or a false designation of origin, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

54. Office Depot's actions purposefully trade on, misappropriate and wrongfully reap the benefits of the goodwill and reputation that have attached to Carson's trademark rights in the MagniView™ product and SureGrip™ product.

55. The acts and conduct of Office Depot constitute willful and deliberate infringement of Carson's trademark rights.

56. As a result of Office Depot's infringing conduct, Carson has suffered damages, including, *inter alia*, a diversion of trade, lost profits, and diminishment of goodwill.

57. The aforesaid conduct of Office Depot has caused irreparable injury to the business and goodwill of Carson and will continue to cause irreparable harm to Carson unless enjoined by this Court.

FIFTH COUNT—UNFAIR AND DECEPTIVE TRADE PRACTICES

1-57. Paragraphs 1 through 57 are hereby incorporated by reference as if fully set forth herein.

58. Office Depot and Daymon are persons within the meaning of Connecticut General Statutes § 42-110a(3).

59. The actions of Office Depot and Daymon, alone and/or in combination, constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade and commerce in violation of Connecticut's Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b(a), et seq.

60. As a result of the unfair or deceptive acts or practices of Office Depot and Daymon, Carson and Leading have suffered an ascertainable loss and are entitled to the recovery of consequential and punitive damages and an award of attorneys' fees, pursuant to § 42-110g of the Connecticut General Statutes.

61. Office Depot and Daymons' unfair and deceptive actions and practices have caused and will continue to cause irreparable harm to Carson and Leading, unless enjoined.

62. Carson and Leading have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Carson and Leading pray for the following:

1. An Order enjoining the defendants from importing, marketing, distributing, offering for sale and selling any products that infringe the '726 Patent, including, but not limited to, the "rimless" magnifier.
2. An Order enjoining the defendants from importing, marketing, distributing, offering for sale and selling any products that infringe Carson's SUREGRIP trademark, including, but not limited to, the "suregrip" magnifier.
3. An Order enjoining the defendants from importing, marketing, distributing, offering for sale and selling any products that infringe Carson's tradedress rights, including, but not limited to, the "suregrip" magnifier and the "round" magnifier.
4. An Order impounding and/or destroying all infringing products.
5. An award of money damages pursuant to 35 U.S.C. § 284, 35 U.S.C. § 289, 15 U.S.C. § 1117, and Conn. Gen. Stat. § 42-110g.
6. Multiple damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.
7. Punitive damages pursuant to Conn. Gen. Stat. § 42-110g, for its unfair trade practices.
8. An award of attorneys' fees and costs pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117, and Conn. Gen. Stat. § 42-110g.
9. Prejudgment Interest.
10. Such other relief as this Court deems just and proper.

JURY DEMAND

Carson and Leading hereby request a trial by jury of any issue so triable as of right pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

THE PLAINTIFFS,

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