

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

<hr/>)	
Nifty Home Products, Inc.)	
Plaintiff,)	
v.)	Civil Action No.
Christmas Tree Shops, Inc.,)	
Defendant.)	
<hr/>)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Nifty Home Products, Inc. (“Nifty”), for its Complaint against Defendant Christmas Tree Shops, Inc. states and alleges as follows:

PARTIES

1. Plaintiff Nifty is a Minnesota corporation with its principal place of business in Madison Lake, MN. Nifty designs and sells a variety of kitchen accessories.
2. Defendant Christmas Tree Shops, Inc. (“CTS”), on information and belief, is a Massachusetts corporation having its principal place of business located at 261 White’s Path, South Yarmouth, MA 02664.

JURISDICTION AND VENUE

3. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281-285. This Court has jurisdiction over the subject matter by virtue of 28 U.S.C. §§ 1331 and 1338(a) and (b).
4. This Court has personal jurisdiction over Defendant CTS, as CTS’s corporate headquarters are located in Yarmouth Port, Massachusetts, its distribution center for all of its

stores are located in Middleboro, Massachusetts and CTS has engaged in acts of patent infringement in the United States and in the District of Massachusetts. Venue is proper under 28 U.S.C. §§ 1391(b) and 1400(a) as Defendant CTS has committed acts of infringement in this district.

PATENTS-IN-SUIT

5. On or about January 6, 1992, Frank Tiemann filed an application for a design patent on a turkey lifter. On or about November 23, 1993, the United States Patent and Trademark Office duly granted U.S. Patent No. D341,523 (“the ‘523 Patent”) on a “Foodstuff Cooking and Lifting Tool” to Mr. Tiemann. A copy of the ‘523 Patent is attached as Exhibit A to this Complaint.

6. On or about April 1, 1997, Frank Tiemann filed an application for a utility patent on a Multi-Layer Baking and Cooling Rack. On or about July 7, 1998, the United States Patent and Trademark Office duly granted U.S. Patent No. 5,775,209 (“the ‘209 Patent”). A copy of the ‘209 Patent is attached as Exhibit B to this Complaint.

7. On June 20, 1997, Frank Tiemann filed an application of a design patent on his Multi-Layer Baking and Cooling Rack. On or about May 28, 2002, the United States Patent and Trademark Office duly granted U.S. Patent No. D457,753 (“the ‘753 patent”). A copy of the ‘753 Patent is attached as Exhibit C to this Complaint.

8. In 1993, Mr. Tiemann changed the name of his company to T&L Turkey Lifter, Inc. to T&L Nifty Products, Inc. Subsequently Mr. Tiemann changed the name of T&L Nifty Products, Inc. to Nifty Home Products, Inc.

BACKGROUND

9. Nifty has been selling the patented turkey lifter directly to consumers and wholesale to a variety of retailers since 1992. The patented turkey lifter has been marked with the '523 Patent number

10. In the fall of 2007, Mr. Tiemann became aware that CTS was offering for a sale a turkey lifter which infringes the '523 Patent. Upon information and belief, CTS has been offering for sale and selling the infringing turkey lifter since November 4, 2007. Included as Exhibit D to this Complaint is a photograph of the accused lifter in its shrink-wrap packaging showing its product label.

11. In addition to selling its patented turkey lifter, Nifty has sold a number of kitchen accessories directly to consumers and to wholesalers. Included in its portfolio of patented products is The Nifty Oven Companion. The Nifty Oven Companion has been marked with both the '753 and '209 patent numbers.

12. Subsequently, Mr. Tiemann also became aware that CTS was offering for sale and selling a 3 Tier Oven Rack which infringes both the '209 and '753 patent. Included as Exhibit E to this Complaint is a photograph of the accused 3-Tier Oven Rack sold by CTS.

COUNT I: INFRINGEMENT OF THE '523 PATENT

13. The allegations of Paragraphs 1-12 of this Complaint are re-alleged and incorporated herein by reference.

14. CTS has infringed and continues to infringe the '523 Patent by offering to sell and selling in the United States, and importing into the United States, without authorization, turkey lifters that are substantially the same as the design illustrated and described in Plaintiff's '523 Patent. The resemblance between the patented Nifty lifter and CTS's unauthorized turkey lifter

is such as to permit an ordinary observer to purchase the unauthorized turkey lifter supposing it to be the Nifty lifter.

15. CTS's actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

16. CTS's infringement of the '523 Patent has been willful and deliberate, and undertaken despite knowledge of the '523 Patent.

COUNT II: INFRINGEMENT OF THE '753 PATENT

17. The allegations of Paragraphs 1-16 of this Complaint are re-alleged and incorporated herein by reference.

18. CTS has infringed and continues to infringe the '753 Patent by offering to sell and selling in the United States, and importing into the United States, without authorization, 3-Tier Oven Racks that are substantially the same as the design illustrated and described in Plaintiff's '753 Patent. The resemblance between the patented Nifty lifter and CTS's unauthorized 3-Tier Oven Rack is such as to permit an ordinary observer to purchase the unauthorized 3-Tier Oven Rack supposing it to be the Nifty lifter.

19. CTS's actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

20. CTS's infringement of the '753 Patent has been willful and deliberate, and undertaken despite knowledge of the '753 Patent.

COUNT III: INFRINGEMENT OF THE '209 PATENT

21. The allegations of Paragraphs 1-20 of this Complaint are re-alleged and incorporated herein by reference.

22. CTS has infringed and continues to infringe the '209 Patent by offering to sell and selling in the United States, and importing into the United States, without authorization, 3-Tier Oven racks that infringe at least one claim of Plaintiff's '209 Patent.

23. CTS's actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

24. CTS's infringement of the '209 Patent has been willful and deliberate, and undertaken despite knowledge of the '209 Patent.

WHEREFORE, Plaintiff Nifty prays for judgment as follows:

- (a) in favor of Nifty and against CTS on all Counts of the Complaint;
- (b) preliminarily and permanently enjoining and restraining CTS, its officers, directors, agents, servants, employees, attorneys and all others acting under or through them, from directly infringing or inducing others to infringe United States Patent No. D341,523, U.S. Patent No. D457,753 and U.S. Patent No. 5,775,209;
- (c) awarding Nifty damages under Title 35 U.S.C. §§ 284 and 289, including CTS's profits and treble damages for willful infringement;
- (d) awarding Nifty reasonable attorneys' fees, costs, expenses and interest pursuant to 35 U.S.C. § 285 and any other applicable law; and
- (e) awarding Nifty such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Date: April 8, 2008

/s/ Kevin Gannon

Kevin Gannon
CESARI and MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210
(617) 951-2500

-and-

Peter G. Nikolai (Petition for *Pro Hac Vice* Pending)
James T. Nikolai (Petition for *Pro Hac Vice* Pending)
NIKOLAI & MERSEREAU, P.A.
900 Second Avenue South, Suite 820
Minneapolis, MN 55402
Telephone: (612) 339-7461
Facsimile: (612) 349-6556

**ATTORNEYS FOR PLAINTIFF
NIFTY HOME PRODUCTS, INC.**