

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

MAUI JIM, INC., an Illinois Corporation,

Plaintiff,

vs.

TOMMY BAHAMA GROUP, INC., a
Delaware Corporation;

AND

ALTAIR EYEWEAR, INC., a California
Corporation

Defendants.

No.

**MAUI JIM'S COMPLAINT FOR PATENT
INFRINGEMENT OF U.S. DES. PAT.
NOS. D481,059 AND D539,828,
AND DEMAND FOR JURY TRIAL**

EQUITABLE RELIEF SOUGHT

MAUI JIM'S COMPLAINT AND JURY DEMAND

Plaintiff Maui Jim, Inc. files this Complaint and Jury Demand against Defendants Tommy Bahama Group, Inc. and Altair Eyewear, Inc. upon personal knowledge as to its own actions and upon information and belief as to all other matters.

PARTIES

1. Plaintiff Maui Jim, Inc. ("Maui Jim") is an Illinois Corporation with its principal place of business located in Peoria, Illinois.
2. Defendant Tommy Bahama Group, Inc. ("Tommy Bahama") is a Delaware corporation with a principal place of business at 428 Westlake Avenue North, Suite 388, Seattle, Washington 98109.

3. Defendant Altair Eyewear, Inc. (“Altair”) is a California corporation with a principal place of business at 10875 International Drive, Rancho Cordova, California 95670.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Based upon 28 U.S.C. § 1391, venue is proper in this district because Tommy Bahama and Altair are subject to personal jurisdiction in this district.

6. This Court has personal jurisdiction over Tommy Bahama and Altair because, *inter alia*, Tommy Bahama and Altair have each – as set forth more fully herein – conducted business in this District and have taken other actions that result in jurisdiction over them being proper in this District.

FACTUAL BACKGROUND

A. U.S. Pat. No. D481,059 and the Ho’okipa Sunglasses Design

7. On August 14, 2002, Walter Hester and Jennifer Egbert filed for patent protection on a new and unique design for sunglasses. Mr. Hester and Ms. Egbert assigned all rights in the design to Maui Jim, Inc.

8. The United States Patent and Trademark Office evaluated Mr. Hester's and Ms. Egbert's new eyewear design and, after considering many prior eyewear designs, determined that Mr. Hester's and Ms. Egbert's design was new and original. Accordingly, the United States Patent Office awarded United States Design Patent No. D481,059 (the '059 Patent) on October 21, 2003 to Maui Jim, Inc. A copy of the '059 Patent is attached as Exhibit 1.

9. By assignment from Mr. Hester and Ms. Egbert, Maui Jim owns all rights and title to the '059 patent, including full rights in and to the claims and causes of action in this suit.

10. Maui Jim markets Mr. Hester and Ms. Egbert's design in its popular MJ Sport® line of sunglasses under the name Ho'okipa.

11. Maui Jim has promoted the unique design of the Ho'okipa sunglasses in retail outlets, and in print and electronic media. The Ho'okipa sunglasses have enjoyed great commercial success.

B. U.S. Pat. No. D539,828 and the Makaha Sunglasses Design

12. On November 10, 2004, Walter Hester filed for patent protection on another new and unique design for sunglasses, and he assigned all rights in the design to Maui Jim, Inc.

13. The United States Patent and Trademark Office evaluated Mr. Hester's new eyewear design and, after considering many prior eyewear designs, awarded United States Design Patent No. D539,828 (the '828 Patent) on April 3, 2007 to Maui Jim, Inc. A copy of the '828 Patent is attached as Exhibit 2.

14. By assignment from Mr. Hester, Maui Jim owns all rights and title to the '828 patent, including full rights in and to the claims and causes of action in this suit.

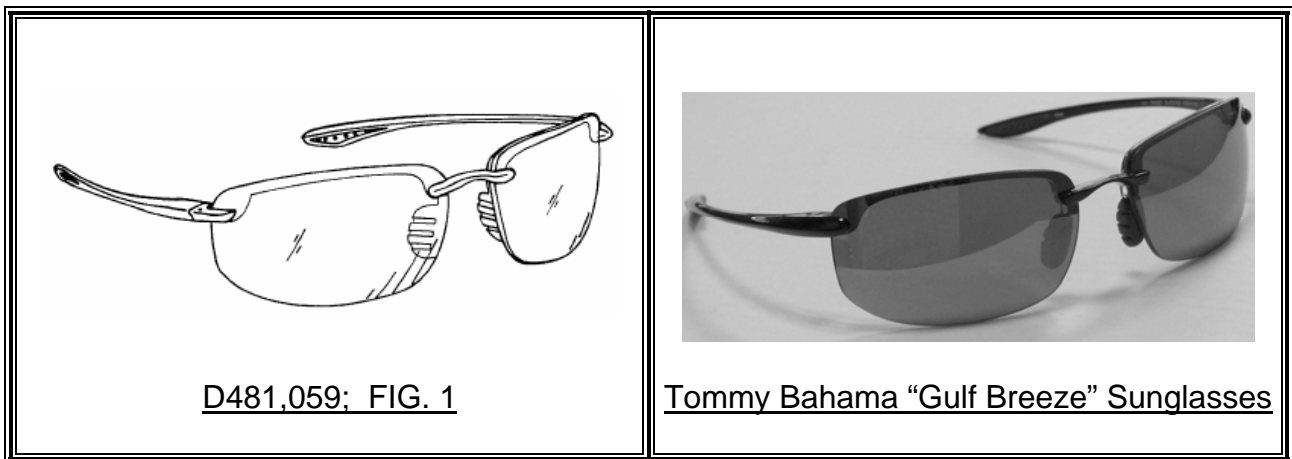
15. Maui Jim markets the design claimed in the '828 patent in its popular MJ Sport® line of sunglasses under the name Makaha.

16. Maui Jim has promoted the unique design of the Makaha sunglasses in retail outlets, and in print and electronic media since 2004, and the sunglasses design has been commercially successful.

FIRST CLAIM FOR RELIEF –

DEFENDANTS' INFRINGEMENT OF U.S. DES. PAT. NO. D481,059

17. Defendants Tommy Bahama and Altair have been and are infringing the '059 patent. In so doing, Tommy Bahama and Altair are capitalizing on the success of the Maui Jim Ho'okipa sunglasses by making, selling, offering for sale and/or importing into the United States – and specifically the Central District of Illinois – sunglasses under the name “Gulf Breeze” (model no. TB95S) that are virtually identical to the novel design claimed in the '059 patent. Figure 1 of the '059 patent is shown below next to a photograph of the infringing Gulf Breeze sunglasses, and Exhibit 3 shows all views of the patented design and the infringing sunglasses.



18. Maui Jim's Ho'okipa sunglasses are marked under the '059 patent in accordance with 35 U.S.C. § 287(a).

19. Tommy Bahama and Altair have willfully infringed the '059 patent, and will continue to willfully infringe the patent until they cease all of their infringing acts, thus warranting an assessment of increased damages and attorneys fees pursuant to 35 U.S.C. §§ 284 and 285.

20. Maui Jim has been damaged by the infringement of Tommy Bahama and Altair and will continue to suffer irreparable injury to its property rights and its reputation for unique sunglasses designs unless the Court enjoins Tommy Bahama and Altair from continuing their wrongful conduct of infringing the '059 patent.

21. Pursuant to 35 U.S.C. §§ 283, Maui Jim requests that the Court enjoin Tommy Bahama and Altair from continuing to infringe the '059 patent.

22. Pursuant to 35 U.S.C. §§ 271, 281, and 284, Maui Jim seeks an award of damages for infringement of the '059 patent in an amount to be determined by the trier of fact.

23. Pursuant to 35 U.S.C. §§ 289, Maui Jim seeks an award of statutory damages for infringement of the '059 patent.

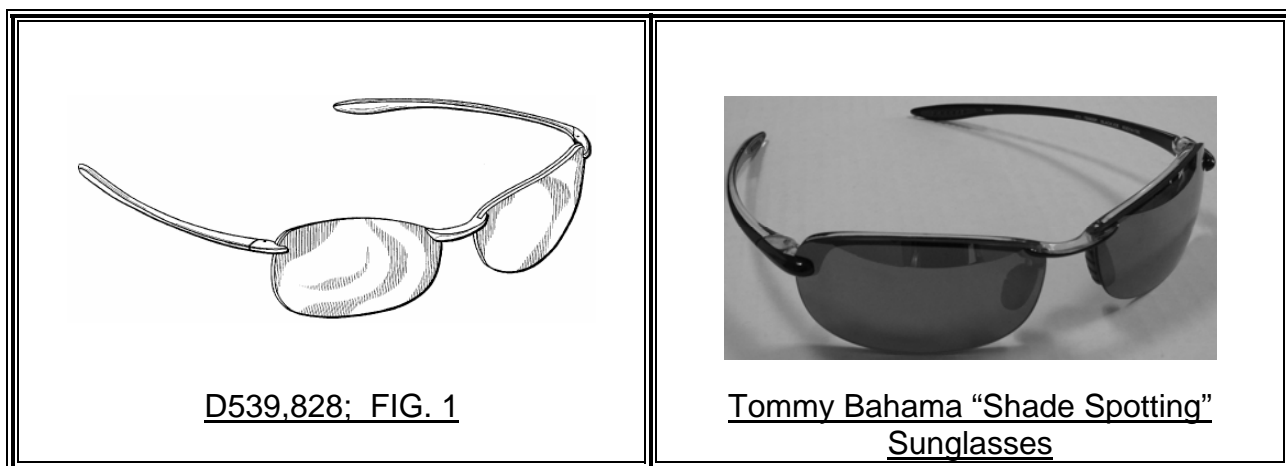
24. Pursuant to 35 U.S.C. §§ 285, and in light of the fact that the Gulf Breeze sunglasses are an exact copy of a patented design of the '059 patent, the court should find this case to be exceptional.

SECOND CLAIM FOR RELIEF –

DEFENDANTS' INFRINGEMENT OF U.S. DES. PAT. NO. D539,828

25. Defendants Tommy Bahama and Altair have been and are infringing the '828 patent. In so doing, Tommy Bahama and Altair are capitalizing on the success of the Maui Jim Makaha sunglasses by making, selling, offering for sale and/or importing into the United States – and specifically the Central District of Illinois – sunglasses under the name “Shade Spotting” (model no. TB96S) that are virtually identical to the novel design claimed in the '828 patent. Figure 1 of the '828 patent is shown below

next to a photograph of the infringing Shade Spotting sunglasses, and Exhibit 4 shows all views of the patented design and the infringing sunglasses.



26. Concurrent with the filing of this action, Tommy Bahama and Altair have been notified that Maui Jim's design embodied in its Makaha sunglasses is protected under the '828 patent, in accordance with 35 U.S.C. § 287(a).

27. Tommy Bahama and Altair have willfully infringed the '828 patent, and will continue to willfully infringe the patent until they cease all of their infringing acts, thus warranting an assessment of increased damages and attorneys fees pursuant to 35 U.S.C. §§ 284 and 285.

28. Maui Jim has been damaged by the infringement of Tommy Bahama and Altair and will continue to suffer irreparable injury to its property rights and its reputation for unique sunglasses designs unless the Court enjoins Tommy Bahama and Altair from continuing their wrongful conduct of infringing the '828 patent.

29. Pursuant to 35 U.S.C. §§ 283, Maui Jim requests that the Court enjoin Tommy Bahama and Altair from continuing to infringe the '828 patent.

30. Pursuant to 35 U.S.C. §§ 271, 281, and 284, Maui Jim seeks an award of damages for infringement of the '828 patent in an amount to be determined by the trier of fact.

31. Pursuant to 35 U.S.C. §§ 289, Maui Jim seeks an award of statutory damages for infringement of the '828 patent.

32. Pursuant to 35 U.S.C. §§ 285, and in light of the fact that the Shade Spotting sunglasses are an exact copy of a patented design of the '828 patent, the court should find this case to be exceptional.

PRAYER FOR RELIEF

Maui Jim respectfully requests that the Court enter judgment against Tommy Bahama and Altair, and award Maui Jim the following relief:

- a. Declaration that the '059 patent is valid, enforceable, and infringed by Tommy Bahama and Altair;
- b. Declaration that the '828 patent is valid, enforceable, and infringed by Tommy Bahama and Altair;
- c. Temporary and permanent injunctive relief enjoining Tommy Bahama and Altair, their respective officers, directors, employees, agents, attorneys, successors, and assigns, and all persons acting on their behalf, in privity or concert with them, or within their control from making, using, selling, offering to sell, importing, or otherwise infringing the '059 and '828 patents;
- d. Damages for infringement of Maui Jim's '059 patent, including at least statutory damages under 35 U.S.C. § 289;

- e. Damages for infringement of Maui Jim's '828 patent, including at least statutory damages under 35 U.S.C. § 289;
- f. Declare that this case is exceptional and award increased damages and attorneys fees under 35 U.S.C. §§ 284 and 285;
- g. Prejudgment and post-judgment interest at the highest rates authorized by law;
- h. Costs of court; and
- i. All other appropriate relief that this Court may deem just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 and CDIL-LR 38.1, Maui Jim demands a jury trial.

Dated: June 14, 2007

By: /s/Trevor K. Copeland
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