

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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BATHCREST, INC.)
5195 West 4700 South)
Salt Lake City, Utah 84118,)

Plaintiff,)

vs.)

SAFEWAY SAFETY STEP, INC.)
6468 Springdale Road)
Cincinnati, Ohio 45247)

Defendant.)

Case No. **1107 CV 327**

Judge: **SPIEGEL, J.**

EH

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Bathcrest, Inc. ("Bathcrest"), complains against the Defendant Safeway Safety Step, Inc. ("Safeway") as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code.

THE PARTIES

2. Bathcrest is a Utah corporation having its principal place of business at 5195 West 4700 South, Salt Lake City, Utah 84118.

3. Upon information and belief, Safeway is an Ohio corporation having a place of business at 6468 Springdale Road, Cincinnati, Ohio 45247. Upon information and

belief, Safeway is, among other activities, engaged in the manufacture, importation, offer for sale and/or sale of bathtub walk-through insert products, including products referred to as The Safeway Step. Upon further information and belief, Safeway sells and offers for sale bathtub walk-through insert products, either directly or through a distribution network, and has substantial and continuous contacts with this judicial district, and conducts systematic business in this judicial district.

JURISDICTION AND VENUE

4. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a). Further, in an earlier associated lawsuit, styled Bathcrest, Inc. v. Safeway Safety Step, Inc., Case No. 2:04-cv-01023, once pending before the United States District Court for the District of Utah, Central Division, Safeway represented, asserted, and conceded that jurisdiction is proper in this judicial district.

5. Venue in this Court is based upon 28 U.S.C. §§ 1391(b)-(c), and 1400(b). Further, in an earlier associated lawsuit, styled Bathcrest, Inc. v. Safeway Safety Step, Inc., Case No. 2:04-cv-01023, once pending before the United States District Court for the District of Utah, Central Division, Safeway represented, asserted, and conceded that venue is proper in this judicial district.

BACKGROUND FACTS

6. Bathcrest is a leading manufacturer of bathtub walk-through inserts. Bathcrest's innovative equipment is offered for sale, and is sold, to customers throughout the United States. Bathcrest provides customers with a wide variety of options for their needs.

7. The technology used by Bathcrest in its bathtub walk-through inserts, among other things, is disclosed and claimed in United States Letters Patent No. 6,061,846, entitled "Bathtub Walk-Through Insert" (hereinafter "the '846 patent"), which was duly and legally issued on May 16, 2000, to Craig Peterson. A copy of the '846 patent is attached hereto as Exhibit 1.

8. Bathcrest is the owner by assignment of the '846 patent.

9. On information and belief, Safeway has manufactured and sold, and is currently manufacturing and offering for sale, and is currently offering for sale the installation of, bathtub walk-through inserts.

Count I - Infringement of U.S. Letters Patent No. 6,061,846

10. The allegations of paragraphs 1-9 are incorporated herein by reference as though fully set forth herein.

11. On information and belief, Safeway has infringed and continues to infringe, and induce and/or contribute to the infringement of (collectively, "acts of infringement"), one or more claims of the '846 patent by its manufacture, use, offer for sale, sale and/or importation into the United States, and installation of walk-through bathtub inserts.

12. On information and belief, the acts of infringement complained of herein are being carried out willfully and with full knowledge by Safeway of the '846 patent.

13. As a result of Safeway's actions, Bathcrest has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to Bathcrest, including loss of sales and profits, which Bathcrest would have made but for the acts of infringement by Safeway, unless Safeway is enjoined by this Court.

WHEREFORE, Bathcrest prays for relief against Safeway as follows:

- A. That a judgment be entered that Safeway has infringed, induced the infringement of, or contributed to the infringement of, United States Letters Patent No. 6,061,846;
- B. That Safeway, its agents, sales representatives, servants and employees, associates, attorneys, parents, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action and thereafter permanently, from infringing United States Letter Patent No. 6,061,846;
- C. That a judgment be entered that Safeway be required to pay over to Bathcrest all damages sustained by Bathcrest due to such acts of infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;
- D. That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Bathcrest to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded;
- E. That Bathcrest be awarded its costs and prejudgment interest on all damages; and
- F. That Bathcrest be awarded such other and further relief as the Court deems just and proper.

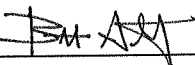
JURY DEMAND

Plaintiff Bathcrest, Inc. hereby demands and requests trial by jury of all issues raised that are triable by jury.

Respectfully submitted,

BATHCREST, INC.

Dated: April 24, 2007



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