

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ANCHOR SPORTS I, INC.,

Plaintiff,

v.

SCHUTT SPORTS, INC. and
EAST TEXAS SPORTS CENTER, INC.,

Defendants.

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CIVIL ACTION NO. 2:07-cv-246

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Anchor Sports I, Inc. (“Anchor Sports”) hereby files this Complaint against Defendants Schutt Sports, Inc. (“Schutt”) and East Texas Sports Center, Inc. (“ETSC”) and would show the Court as follows:

PARTIES

1. Plaintiff Anchor Sports, Inc. is a corporate organization organized and existing under the laws of the State of Texas with its principal place of business located at 801 East Campbell Road, Suite 638, Richardson, TX 75801.

2. Defendant Schutt Sports, Inc. is a corporate organization organized and existing under the laws of the State of Illinois with its principal place of business located in Litchfield, IL. Defendant Schutt may be served through its registered agent Andy Scharf, 606 North State Street, Litchfield, IL 62056.

3. Defendant East Texas Sports Center, Inc. is a corporate organization organized and existing under the laws of the State of Texas with its principal place of business located at 310 N. Washington, Marshall, TX 75670.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over Defendants because they do, or have done, business in this State.

5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338, granting the United States district courts exclusive original jurisdiction of any civil action arising under any Act of Congress relating to patents.

6. Venue is proper in the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C. 1391(b)(1) because the Defendants are corporations subject to the personal jurisdiction of this Court, and thus deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c). Venue is also proper pursuant to 28 U.S.C. § 1400(b), 1391(b)(2), and 1391(b)(3) because this is a patent case, Defendant ETSC resides in this district, a substantial part of the events or omissions giving rise to the claim occurred here and there is no district in which the action may otherwise be brought.

FACTS GIVING RISE TO THE CAUSE OF ACTION

7. On March 6, 1995, James H. Anglea filed a patent application for a “Base Anchor Indicator and Plug.” The United States Patent and Trademark Office issued United States Letters Patent No. 6,142,882 (the “882 Patent”) on November 7, 2000. A copy of this patent is attached as Exhibit A to this Complaint.

8. Anchor Sprots is the assignee of all rights to the '882 Patent.

9. The base plugs manufactured by Anchor Sports are devices used to plug an opening into and locate a receptacle in an anchor to a base employed on a playing field, such as a baseball or softball field. The plug is used to prevent dirt and debris from entering the anchor

receptacle and mark the location of the anchor during field maintenance operations, which usually necessitate removing the base from the anchor.

10. Schutt is currently engaged in the business of manufacturing and supplying athletic products and accessories to sporting goods dealers throughout the United States via internet and catalogue orders.

11. ETSC is a sporting goods dealer engaged in the business of selling athletic products and accessories to the general public through its retail location in Marshall, Texas.

12. Plaintiff contends that certain base plugs manufactured and sold by Schutt ("Accused Device"), at least some of which have been sold under the name "Heavy Duty Indicator Plug," infringe at least claims 1-2, 5, 10, and 14-15 of the '882 Patent. A photograph of the Accused Device is attached hereto as Exhibit B. Plaintiff contends that Schutt infringes the stated claims literally and/or under the doctrine equivalents.

13. Plaintiff contends that some or all of the base plugs sold by ETSC are supplied by Schutt, including the Accused Device, and infringe the stated claims of the '882 Patent. Plaintiff contends that ETSC infringes literally and/or under the doctrine of equivalents.

14. In April 2007, ETSC ordered from Schutt a box set of three baseball bases, which included three base anchors as part of the box set. Each of the base anchors included in the box set infringe the '882 Patent. Schutt shipped the box set of bases and infringing base anchors by ground delivery on or about April 26, 2007. ETSC subsequently received the box set and resold the package to a customer on or about May 3, 2007. The customer appeared at the ETSC store, purchased the box set of bases and infringing base plugs by credit card at the store, which is in this District, and took possession of the box set of bases and infringing plugs at the location of the store in this District.

15. In April or May 2007, ETSC ordered from Schutt a set of three base plugs, which infringe the claims of the '882 Patent. Schutt shipped the set of three infringing base plugs by UPS next day air to ETSC on May 2, 2007. ETSC received the set of three base plugs, which infringe the claims of the '882 Patent, on May 3, 2007 and resold the package to a customer the same day. The customer appeared at the ETSC store located in this District, purchased the infringing base plugs by credit card at the store and took possession of the infringing base plugs in this District.

16. Plaintiff sells base plugs that incorporate the invention claimed in the '882 Patent. Each sale includes a notice in large print that the device is patented. Consequently, defendants were on notice of the '882 Patent due to the patent marking provisions of 35 U.S.C. § 287(a).

17. Plaintiff sent additional notice to Schutt on December 22, 2004. Defendant Schutt replied that it would not agree to stop infringing, nor pay a royalty, because the royalty was deemed to be "too expensive." Schutt knowingly continued to infringe thereafter. See Exhibit C attached hereto.

**COUNT ONE:
ANCHOR SPORTS' PATENT INFRINGEMENT
CLAIM AGAINST DEFENDANTS**

18. Defendants have infringed at least claims 1-2, 5, 10, and 14-15 of the '882 Patent literally and/or under the doctrine of equivalents in violation of 35 U.S.C. § 271(a) by making, using, leasing, offering to sell and/or selling Accused Devices. Defendants actions also constitute contributory infringement and inducement. 35 U.S.C. § 271(b) and (c).

19. Defendants' infringement has been, and continues to be, on-going, and willful under 35 U.S.C. § 284. Defendants had notice of infringement through the patent marking

provisions of 35 U.S.C. § 287(a) and through a letter to Schutt on December 22, 2004. Schutt continued to make and sell the infringing base plugs with knowledge of the infringement. Schutt did not want to pay a royalty because, in Schutt's words, the royalty was "too expensive."

20. Plaintiff Anchor Sports is being damaged and irreparably harmed by such infringement.

21. Defendants will continue their infringement if not enjoined by this Court.

22. Plaintiff Anchor Sports has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment:

- A. Declaring that Defendants have infringed the '882 Patent in violation of 35 U.S.C. § 271(a) for direct infringement and under the doctrine of equivalents; defendants are further in violation of 35 U.S.C. § 271(b) for inducement, and 35 U.S.C. § 271(c) for contributory infringement;
- B. Declaring that Defendants have willfully infringed the '882 patent under 35 U.S.C. § 284 and trebling the damages found or assessed as a result of such infringement of said patent;
- C. Granting a permanent injunction under 35 U.S.C. § 283 enjoining the Defendants, and their agents, employees, servants, and all those acting in concert therewith, from further acts of infringement of the '882 Patent;
- D. Impounding all of Defendants' infringing devices including, without limitation, each and every infringing device that Defendants maintain in the United States;
- E. Removing and/or recalling from shelves, distribution, and circulation all catalogues containing the infringing devices;

- F. Ordering an accounting and an award of damages under 35 U.S.C. § 284, together with prejudgment interest and costs as fixed by the Court;
- G. Awarding to Plaintiff its costs and counsel fees incurred herein pursuant to Section 285 of the Patent Act, 35 U.S.C. § 285, or reasonable attorney's fees and costs as otherwise permitted by law;
- H. Awarding prejudgment and post-judgment interest at the maximum legal rate; and
- I. Any other further relief which this Court deems proper.

Respectfully submitted,

By: /s/ Stephen A. Kennedy

STEPHEN A. KENNEDY
State Bar No. 11300425

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