

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

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DATE: 1/3/06

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Bradford Novelty Co., Inc.,
Plaintiff

v.

Tai Ning Tang,
Defendant

Civil Action No. _____

05-12614WGY
Referred to MJ JG Dein

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, as its complaint, alleges the following:

1. Plaintiff, Bradford Novelty Co., Inc., is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 37 South Maple Street, Bellingham, Massachusetts 02019-1600.
2. On information and belief, defendant, Tai Ning Tang, is an individual residing in the State of Hawaii, and has an address of 581 Kamoku Street, #3506, Honolulu, Hawaii 96826.
3. This is an action for declaratory judgment pursuant to Title 28, United States Code §2201(a) for the purpose of declaring that an actual controversy exists within the Court's jurisdiction, and to declare the rights and other legal relations of the plaintiff.
4. This Court has jurisdiction over the subject matter of this claim under the provisions of Title 28, United States Code §§1338(a) and (b), because this action arises under an Act of

Congress relating to patents, Title 35, United States Code, and includes a substantial and related claim of unfair competition.

5. There exists an actual and justiciable controversy within this judicial district. The controversy is real and immediate. The controversy consists of an explicit threat by the defendant, which creates a reasonable apprehension on the part of the plaintiff, that the defendant will continue to harass plaintiff's customers with threats of suit, and will file patent infringement suits against plaintiff's customers, as well as against plaintiff, based on invalid patents. This reasonable apprehension on the part of plaintiff is based upon letters from the defendant's attorney claiming that plaintiff and plaintiff's customers have infringed the defendant's patents. The defendant's attorney's letters have clearly indicated that defendant intends to file patent infringement suits against plaintiff's customers, and against plaintiff, unless plaintiff's customers and plaintiff immediately cease their allegedly infringing activities and make payments to defendant. Plaintiff's currently existing reasonable apprehension of defendant's continued harassment of, and threat of an infringement suit against, plaintiff's customers, and of plaintiff, establishes an actual controversy of such immediacy and reality as to warrant this claim for declaratory relief.

6. On information and belief, defendant is the owner of U.S. Patent No. 6,907,169 dated June 14, 2005, and U.S. Patent No. 6,741,042 dated May 25, 2004.

7. Plaintiff designed and contracted for the manufacture of Christmas Fiber Optic Wreaths and Christmas Fiber Optic Trees, which plaintiff sold to retailers, including Lowe's and Sears.

8. Recently, defendant's attorney sent letters to plaintiff and to plaintiff's customers, including Lowe's and Sears, accusing each of them of patent infringement, and demanding that plaintiff and its customers cease their infringing activities. In addition, defendant's attorney has demanded that plaintiff account to defendant. Defendant's attorney has stated that this offer expires on December 31, 2005. Plaintiff's customer Lowe's has referred the threats from defendant's attorney to the plaintiff and has requested protection from defendant's threat of a lawsuit.

9. Defendant's patents are both invalid because they do not comply with the requirements of Title 35, United States Code.

10. Defendant's actions in harassing and threatening to sue plaintiff's customers Lowe's and Sears, and in threatening to sue plaintiff, especially during the crucially important Christmas selling season, have injured plaintiff's reputation and business to a serious and irreparable extent, and are continuing. Defendant's actions will not stop unless enjoined by this Court, and plaintiff has no adequate remedy at law.

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT ENTER A DECLARATORY JUDGMENT:

1. That defendant's U.S. Patent Nos. 6,907,168 and 6,741,042 are invalid because they do not comply with the requirements of Title 35, United States Code.

2. Alternatively, that plaintiff's accused Christmas Fiber Optic Wreath and Christmas Fiber Optic Tree do not infringe defendant's U.S. Patent Nos. 6,907,168 or 6,741,042.

3. That defendant shall be and is preliminarily and permanently enjoined from filing a patent infringement suit against plaintiff or against plaintiff's direct or indirect customers concerning plaintiff's accused Christmas Fiber Optic Wreath or Christmas Fiber Optic Tree.

4. That plaintiff be awarded such other and further relief as the Court deems just or equitable in the circumstances.



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