

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

FEB 25 2004

LAWRENCE K. BAERMAN, CLERK  
ALBANY

HOLLYWOOD TANNING  
SYSTEMS, INC.

Civil Action No.

Plaintiff,

DEMAND FOR JURY TRIAL

v.

04-CV-0199

A.H. TANNERY, INC.,  
CELSIUS FRANCHISING, INC.,  
TAN SOURCE SUPPLY INC., and  
KIR LATHAM FARMS, LP, doing  
business as CELSIUS TAN,

GLS DRH

Defendants.

**COMPLAINT**

Hollywood Tanning Systems, Inc. ("HTS") by way of Complaint states the following against A.H. Tannery, Inc., Celsius Franchising, Inc., Tan Source Supply Inc., and KIR Latham Farms LP, doing business as Celsius Tanning (collectively, "Defendants"):

**JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a). This Court has personal jurisdiction because, on information and belief, Defendant has committed infringing activities in this state. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), 1391(c), and/or 1400(b).

### **THE PARTIES**

2. Plaintiff HTS is a New Jersey corporation with its principal place of business located at CSC Plaza, Suite 400, 1120 Route 73 South, Mount Laurel, New Jersey 08054.
3. A.H. Tannery, Inc. is a Missouri corporation having its principal place of business located at 12142A State Line Road, Leawood, Kansas 66209 ("AHT").
4. Defendant Celsius Franchising, Inc. is a Nevada corporation having its principal place of business located at 12142A State Line Road, Leawood, Kansas 66209 ("Celsius Franchise").
5. Defendant Tan Source Supply Inc. is a Nevada corporation having its principal place of business at 12142A State Line Road, Leawood, Kansas 66209 ("Tan Source").
6. Defendant KIR Latham Farms LP, doing business as Celsius Tan, is a New York limited corporation having its principal place of business located at 576 Troy Schenectady Road, Latham, NY 12110 ("Celsius Tan").

### **THE PATENT**

7. On April 29, 2003, the U.S. Patent and Trademark Office issued U.S. Patent No. 6,554,208 B1 to inventor Ralph Venuto, Sr. for an invention entitled "Tanning Booth Having Automated Spray" ("the '208 patent"). A true and correct copy of the '208 patent is attached hereto as Exhibit A.
8. Plaintiff HTS is now, and has continuously been, the holder of all right, title and interest in and to the '208 patent.

9. On September 9, 1997, the U.S. Patent and Trademark Office issued U.S. Patent No. 5,664,593 to inventor Edward T. McClain for an invention entitled "Apparatus for Applying Suntanning Lotion Mist" ("the McClain patent"). A true and correct copy of the McClain patent is attached hereto as Exhibit B.

10. The Plaintiff is the exclusive licensee of the McClain patent, with full rights to sue for infringement.

### **THE INFRINGEMENT**

11. AHT, Celsius Franchise and Tan Source manufacture, use, sell and/or offer to sell spray booths under the trade name SunShower Tan UV-Free Spray Tan System ("the Celsius spray booth").

12. By making, using, selling, and/or offering to sell the Celsius spray booth, AHT, Celsius Franchise and Tan Source have directly and contributorily infringed, and has induced others to infringe, one or more claims of the '208 patent

13. AHT, Celsius Franchise and Tan Source have offered to sell or sold the Celsius spray booth to Celsius Tanning.

14. By using the Celsius spray booth, Celsius Tanning has directly and contributorily infringed, and has induced others to infringe, one or more claims of the '208 patent.

15. Defendants' infringement of the '208 patent will continue unless enjoined by this Court.

16. Plaintiff has been damaged by Defendants' infringing activities and will be irreparably injured by Defendants' continued infringement unless Defendant is enjoined by this Court.

17. Upon information and belief, Defendants' infringement of the '208 patent has been and is willful.

18. As a direct and proximate consequence of Defendants' acts and practices, Plaintiff has been, and is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. §284.

19. By reason of its acts and practices, Defendants have also caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiff for which there is no adequate remedy at law, and for which Plaintiff is entitled to injunctive relief under 35 U.S.C. §283.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays that judgment be entered in their favor that:

- A. U.S. Patent No. 6,554,208 B1 was duly and legally issued, is valid and is enforceable;
- B. Defendants have infringed and are infringing the '208 patent;
- C. Defendants' infringement of the '208 patent has been and is willful;
- D. Defendants be preliminarily and permanently enjoined, and those acting in active concert or participation with it, from engaging in any further acts of infringement of any one or more claims of the '208 patent.
- E. Defendants account to Plaintiff for damages adequate to compensate for Defendants' infringement of the '208 patent and that such damages be awarded to Plaintiff, including pre-judgment and post-judgment interest;
- F. Plaintiff's damages be trebled as a result of Defendants' willful infringement of the '208 patent.

G. This case be adjudged an exceptional case within the meaning of 35 U.S.C. §285 and that the Court award Plaintiff its costs, expenses and attorneys' fees incurred in this action; and

H. Plaintiff be awarded such further and additional relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on their claims for patent infringement.

Dated: February 24 2004

By: 

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