

JUDGE CASTEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

04 CV 05545

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COBY ELECTRONICS CORPORATION,

: Civil Action No.

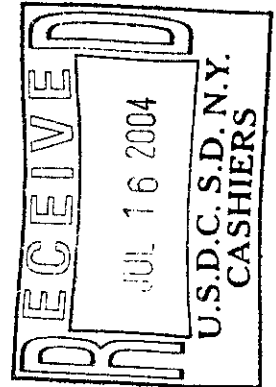
Plaintiff,

: **COMPLAINT AND**
: **DEMAND FOR JURY TRIAL**

v.

THE ESTÉE LAUDER COMPANIES INC.,
ESTÉE LAUDER INC., ARAMIS INC.
and C'EST P'ZAZZZ INDUSTRIES,

Defendants.
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Plaintiff Coby Electronics Corporation ("Plaintiff" or "Coby"), by its counsel
Brown Raysman Millstein Felder & Steiner LLP, as and for its Complaint, alleges as follows:

NATURE OF THE ACTION

1. This is a claim for patent infringement in violation of 35 U.S.C. § 271; trade dress infringement, false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); dilution and injury to business reputation in violation of New York Gen. Bus. L. § 360-1; and unfair competition in violation of the common law.

2. Plaintiff seeks injunctive relief and damages arising from Defendants' unauthorized distribution of a radio which, upon information and belief, infringes a design patent owned by Coby and violates other Coby rights relating to a radio developed and sold by Coby.

THE PARTIES

3. Plaintiff Coby is a New York corporation with its principal place of business at 56-65 Rust Street, Maspeth, New York 11378.

4. Coby is a provider of high-quality consumer electronics products such as radios, cassette players, MP3, CD, and DVD players, televisions, and other products.

5. Upon information and belief, Defendant The Estée Lauder Companies Inc. (“Estée Lauder Companies”) is a corporation formed under the laws of the State of Delaware with its principal place of business at 767 Fifth Avenue, New York, New York, 10153.

6. Upon information and belief, Defendant Estée Lauder Inc. (“Estée Lauder”) is a corporation formed under the laws of the State of Delaware with its principal place of business at 767 Fifth Avenue, New York, New York, 10153.

7. Upon information and belief, Defendant Aramis Inc. (“Aramis”) is a corporation formed under the laws of the State of Delaware with offices at 767 Fifth Avenue, New York, New York, 10153.

8. Estée Lauder Companies, Estée Lauder and Aramis (collectively, the “Estée Lauder Entities”) are manufacturers and providers of a variety of cosmetic products, including perfume, skin care, make up, and other products.

9. Upon information and belief, Defendant C’est P’zazzz Industries (“P’zazzz”) has a principal place of business at 407 East 9th Street, Los Angeles, California, 90015.

JURISDICTION AND VENUE

10. This Court has exclusive jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 (Lanham Act), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (patent, trademark and copyright), and 28 U.S.C. § 1367 (supplemental jurisdiction).

11. Venue properly lies within this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

12. This Court has personal jurisdiction over each of the Defendants because, upon information and belief: (i) the Estée Lauder Entities are located in this District, and (ii) P’zazzz has engaged in acts complained of either within the State of New York, or outside of the State of New York, which it expected, or reasonably should have expected, would have consequences within the State of New York and this District, and derives substantial revenue from interstate commerce.

FACTUAL BACKGROUND

13. On February 19, 2002, United States Design Patent No. D 453,752 S entitled "Portable Radio" (the "'752 Patent") was duly and legally issued to Coby. A true and correct copy of the '752 Patent is attached to this Complaint as Exhibit A.

14. Coby owns all rights, title and interest in and to the '752 Patent through an assignment from Johan Lee, the inventor identified in the '752 Patent.

15. The '752 Patent, and the claim set forth therein, incorporates elements of a portable radio that Coby began marketing and selling to the public in 2001. That radio is referred to as the CX-7 model (hereinafter, the "Coby Radio").

16. The Coby Radio is a lightweight, personal, portable AM/FM radio which the listener wears around his or her neck on an incorporated strap and listens to through a pair of specially-designed "ear-bud"-style earphones. The Coby Radio is approximately 3¼ inches by 2 inches by ½ inch in size. It has a rounded, stylized body, and an incorporated neck strap. On the front of the unit, there is a tuning dial and power indicator, and the terms "DBBS" and "Dynamic Bass Boost System". On the top of the Coby Radio is a tuning dial, and on the side there is a power/volume dial, an AM/FM selector, and DBBS switch. A photograph of the Coby Radio is attached to this Complaint as Exhibit B.

17. The design and configuration of the Coby Radio employs a number of distinctive elements that, when taken together, constitute a trade dress recognizable by the trade and consuming public. These design elements and other nonfunctional visual elements comprise the distinctive Coby Radio trade dress (the "Coby Trade Dress").

18. The Coby Radio retails for approximately \$10. To date, Coby has sold more than 4 million Coby Radios, more than half of which were sold in 2003. Demand for the Coby Radio is continuing to increase.

19. Upon information and belief, the Defendants have been, and are, importing into, using, offering for sale and/or selling a radio that copies the distinctive look of the Coby Radio and infringes the '752 Patent (the "Defendants' Radio").

20. Upon information and belief, the Defendants' appropriation of the Coby Radio was done willfully and evidences a deliberate effort to mislead the public, to pass off its product as being affiliated with, or sponsored by, Coby, or as being equivalent to Coby products, and to unlawfully benefit from Coby's good will and reputation.

21. Defendants' Radio is so highly similar to the Coby Radio and the Coby Trade Dress that the total image and visual impression created by the Defendants' Radio is likely to cause confusion, mistake or deception in the minds of the trade and the consuming public. Defendants' sale and distribution of the Defendants' Radio is likely to confuse consumers as to the source, origin or affiliation of Defendants' Radio, is likely to mislead the public as to the composition, nature and qualities of Defendants' Radio, and is likely to dilute the distinctive quality of the Coby Trade Dress.

22. The design of Defendants' Radio is substantially the same as the radio design as claimed in the '752 Patent, such that in the eye of an ordinary observer, the ornamental features of the Defendants' Radio, so closely resemble the ornamental features of the radio design as claimed in the '752 Patent that an ordinary observer, giving such attention as a purchaser usually gives, would be deceived and induced to purchase the Defendants' Radio believing it to be the radio of the '752 Patent.

23. While the Defendants' Radio appears to be virtually identical to the Coby Radio, upon closer examination, it appears to be of a lesser quality, a fact which is evident only after the Defendants' Radio is removed from its packaging.

COUNT I

Patent Infringement

(35 U.S.C. § 271)

24. Coby repeats and realleges each of the allegations contained in paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. Upon information and belief, the Defendants have directly infringed, contributorily infringed, and/or induced infringement of, and continue to so infringe, the '752

Patent by importing into, or making, using, offering for sale, or selling in this judicial district and elsewhere in the United States the Defendant's Radio.

26. The Defendants' acts of patent infringement were carried out without the permission, license, or consent of Coby.

27. Plaintiff began marking the Coby Radio packaging with the '752 Patent number in 2002, thereby providing Defendant with constructive notice of the '752 Patent in accordance with 35 U.S.C. § 287.

28. Upon information and belief, Defendants willfully and wantonly infringed the '752 Patent in disregard of Coby's rights thereunder, despite being put on notice of such infringement, making this an exceptional case pursuant to 35 U.S.C. § 285.

29. As a result of the infringement of the '752 Patent by the Defendants, Coby has been damaged in an amount not yet fully ascertainable and therefore to be proven at trial.

30. Defendants' infringement has caused and will continue to cause Coby irreparable harm. Unless the Court enjoins the Defendants from selling and offering to sell the Defendants' Radio, Coby will continue to be irreparably harmed.

31. Coby is entitled to preliminary and permanent injunctive relief prohibiting Defendants from engaging in further acts of patent infringement. Unless Defendants are enjoined and restrained by the Court, they will continue to engage in wrongful acts and the damage to Coby, which is irreparable, will increase. Coby does not have an adequate remedy at law.

COUNT II

Trade Dress Infringement, False Designation of Origin and Unfair Competition

(15 U.S.C. § 1125(a))

32. Coby repeats and realleges each of the allegations contained in paragraphs 1 through 23 of this Complaint as though fully set forth herein.

33. The Coby Radio has a unique and distinctive "look" or appearance.

34. Coby has extensively advertised and promoted the Coby Radio.

35. As a result of the substantial advertising, promotion and sales of the Coby Radio, the trade and consuming public have come to associate the Coby Radio as originating with Coby. In view of this association, the distinctive appearance of the Coby Radio is of inestimable value to Coby.

36. Since January, 2001, Plaintiff has sold its distinctive Coby Radio, including the Coby Trade Dress. During that time, Plaintiff has engaged in extensive advertising and promotion of its Coby Radio. Upon information and belief, the unique, arbitrary and nonfunctional features of Plaintiff's Coby Trade Dress, coupled with Plaintiff's sales and advertising efforts, have caused the Coby Trade Dress to take on "secondary meaning" in the minds of consumers and as a result, they now associate the Coby Trade Dress and the Coby Radio with Coby as the source of origin thereof.

37. Defendants are infringing upon Plaintiff's rights in and to its proprietary Coby Trade Dress by their unauthorized importing, offering for sale, selling, advertising and distributing of the Defendants' Radio, the non-functional design of which is confusingly similar to that of Plaintiff's distinctive Coby Trade Dress. Side-by-side photographs of Defendants' Radio and the Coby Radio are attached hereto as Exhibit C.

38. Defendants' activities are likely to cause confusion, mistake, or deception in the minds of consumers as to the source or origin of the radios offered, advertised, distributed, and sold by Defendants. Among other things, consumers are likely to believe that the Defendants' Radios originated with Coby or that Coby and the Defendants are affiliated or have common sponsorship.

39. Defendants' actions have harmed Coby's reputation, diverted sales from Coby and have damaged Coby's good will.

40. Defendants have willfully sold and sell their infringing radio as their own, thereby unfairly competing with and damaging Coby. The sale of the pirated Defendants' Radio is an unjustified misappropriation, by Defendants, of Coby's resources, including Coby's labor and investments.

41. The acts of Defendants described above constitute trade dress infringement, false designation of origin, and unfair competition under 15 U.S.C. § 1125(a), with consequent damage to Coby and the business and goodwill symbolized by the Coby Trade Dress.

42. Coby is entitled to preliminary and permanent injunctive relief prohibiting Defendants from engaging in the acts further acts of unfair competition, false advertising, false designation of origin and false representation. Unless Defendants are enjoined and restrained by the Court, they will continue to engage in wrongful acts and the damage to Coby, which is irreparable, will increase. Coby has no adequate remedy at law.

43. Coby is also entitled to recover any damages proven to have been caused by reason of Defendants' willful acts of false advertising, unfair competition, false designation of origin and false representation.

COUNT III

Dilution And Injury To Plaintiff's Reputation In Violation Of New York Gen. Bus. L. § 360-1

44. Coby restates and realleges paragraphs 1 through 23 and 32-43 above as if fully set forth herein.

45. Defendant's conduct is without the permission, consent or authorization of Coby and is blurring and tarnishing the reputation of Coby's unique, publicly recognized, distinctive and famous trade dress, thereby diminishing its value.

46. Upon information and belief, the aforementioned activity is part of a deliberate scheme intended to dilute and injure Coby's good will and reputation and was undertaken in bad faith and in total disregard of the resultant damage and injury to Coby.

47. By reason of the foregoing, Defendants have engaged in and are continuing to engage in acts that are injuring the business reputation and diluting and blurring the distinctive quality of the Coby Radio in violation of New York Gen. Bus. Law § 360-1.

48. By reason of the foregoing, Coby is now and will continue to suffer irreparable injury, including injury to its reputation and dilution and blurring of the distinctive quality of the Coby Radio, for which Coby has no adequate remedy at law.

49. Coby is entitled to preliminary and permanent injunctive relief prohibiting Defendants from engaging in further acts of unfair competition, false advertising, false designation of origin and false representation. Unless Defendants are enjoined and restrained by the Court, they will continue to engage in wrongful acts and the damage to Coby, which is irreparable, will increase. Coby has no adequate remedy at law.

50. Coby is also entitled to recover any damages proven to have been caused by reason of Defendants' willful acts of false advertising, unfair competition, false designation of origin and false representation.

COUNT IV

Unfair Competition in Violation of Common Law

51. Coby restates and realleges paragraphs 1 through 23 and 32-50 above as if fully set forth herein.

52. Defendants' conduct is without the permission, consent or authorization of Coby.

53. Defendants have created and continue to create confusion among the public and a likelihood of injury to Coby's public image and reputation and a dilution of the distinctive quality of the Coby Radio.

54. Upon information and belief, the aforementioned activity is part of a deliberate plan or scheme intended to appropriate and trade upon the good will and reputation of Coby and was undertaken in total disregard of the resultant damage and injury to Coby.

55. By reason of the foregoing, Defendant has engaged and is continuing to engage in acts of unfair competition in violation of the common law.

56. By reason of the foregoing, Coby is now and will continue to suffer irreparable injury, including injury to its reputation and dilution of the Coby Radio, for which Coby has no adequate remedy at law.

57. On account of the activities of Defendants, Coby has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Coby respectfully requests that the Court award Coby the following relief:

1. A judgment that Defendants have infringed, induced others to infringe, and/or committed acts of contributory infringement pursuant to 35 U.S.C. § 271 with respect to the '752 Patent;
2. A judgment that Defendants' patent infringement is, and continues to be, willful and deliberate;
3. A judgment awarding Coby an accounting for recovery of damages adequate to fully compensate Coby for infringement by the Defendants of the '752 Patent;
4. A judgment requiring the Defendants, jointly and severally, to pay Coby for all damages caused to Coby by reason of the Defendants' patent infringement, pursuant to 35 U.S.C. § 284, including treble damages pursuant to 35 U.S.C. § 284;
5. A judgment that Defendants' unauthorized conduct has violated and continues to violate the Trademark Act of the United States and constitute trade dress infringement, unfair competition and the sale of goods bearing a false designation of origin under 15 U.S.C. § 1125(a);
6. A judgment that Defendants' actions in violation of 15 U.S.C. § 1125(a) are, and continue to be, willful and deliberate;
7. A judgment awarding Coby an accounting for recovery of damages adequate to fully compensate Coby for Defendants' violation of 15 U.S.C. § 1125(a);

8. A judgment requiring the Defendants, jointly and severally, to pay Coby for all damages caused to Coby by reason of the Defendants' violation of 15 U.S.C. § 1125(a), including treble damages pursuant to 15 U.S.C. § 1114 et seq;

9. A judgment that the aforementioned acts of Defendants were and are in violation of New York Gen. Bus. Law § 360-1 and constitute common law unfair competition and requiring Defendants, jointly and severally, to pay Coby for all damages to Coby arising therefrom or in connection therewith;

10. An order preliminarily and permanently enjoining Defendants, and Defendants' officers, directors, agents, servants, employees, representatives, related companies, successors, assigns and all others in active concert or participation with them from:

(a) Engaging in, or directing, or being involved in any way with creating, manufacturing, importing, advertising or selling the Defendants' Radio and any other product that infringes the '752 Patent and/or is confusingly similar to the Coby Radio;

(b) Engaging in any further acts of false designation of origin or unfair competition with regard to the Coby Radio, or any products, services, trademarks or trade names affiliated in any way with Coby;

(c) Violating, whether directly, contributorily or vicariously, any of Coby's trademark or trade dress rights in the Coby Radio, the Coby Trade Dress, or any of Coby's trademarks or trade dress;

(d) Doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead consumers into the belief that products sold, offered for sale, distributed or transmitted by any of the Defendants are authorized, sponsored, licensed, endorsed, promoted or condoned by Coby; and/or

(e) Destroying, altering or removing beyond the territorial limits of this judicial district any evidence, including without limitation, any of Defendants' Radios, and any

records in any form bearing upon or relating to Defendants' Radios, this Complaint or the subject matter hereof without the prior written consent of Coby;

11. An order that Defendants not destroy, and deliver immediately to Coby, all materials -- whether printed or electronic -- bearing Coby's trademarks or the Coby Trade Dress, in accordance with 15 U.S.C. § 1118, including but not limited to, all Defendants' Radios in Defendants' possession, custody or control;

12. A judgment requiring the Defendants, jointly and severally, to pay Coby's costs, expenses and reasonable attorneys' fees and disbursements;

13. A judgment awarding Coby prejudgment interest on the award of damages granted by the Court; and

14. An award to Coby of such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 16, 2004

BROWN RAYSMAN MILLSTEIN
FELDER & STEINER LLP

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DEMAND FOR JURY TRIAL

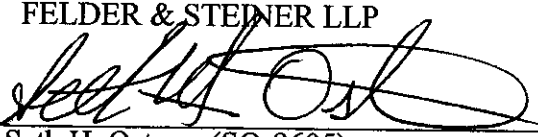
Plaintiff Coby Electronics Corporation hereby demands a trial by jury.

Respectfully submitted,

Dated: New York, New York
July 16, 2004

BROWN RAYSMAN MILLSTEIN
FELDER & STEINER LLP

By:


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