

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

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RONALD WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT MICH.

KNAPE & VOGT MANUFACTURING COMPANY,
a Michigan Corporation,

Plaintiff,

v.

VERA FLORY,
an Individual,

Defendant.

Case No.: 1:03 CV 0196

Hon.: Robert Holmes Bell
Chief, U.S. District Judge

Timothy E. Eagle (P38183)
VARNUM, RIDDERING, SCHMIDT
& HOWLETT LLP
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COMPLAINT FOR DECLARATORY RELIEF

Knapé & Vogt Manufacturing Company ("KV"), by and through its attorneys, Varnum, Riddering, Schmidt & Howlett LLP, hereby states as its complaint for declaratory relief against Vera Flory, the following:

1. KV is a Michigan corporation having its principal place of business at 2700 Oak Industrial Dr., Grand Rapids, Michigan. KV manufactures furniture/cabinetry hardware and related products.

2. Vera Flory ("Ms. Flory") is an individual who, upon information and belief, resides at 104 Yost Road, West Alexandria, Ohio 45381. On August 9, 1994, the United States Patent & Trademark Office ("PTO") issued a patent to Ms. Flory entitled "CANISTER" (Patent No. 5,335,804) (hereafter the "'804 Patent"). A copy of the '804 Patent is attached hereto as Exhibit A.

3. Ms. Flory, subsequent to issuance of the '804 Patent, engaged in a series of telephone and e-mail communications with KV at KV's Grand Rapids, Michigan headquarters. In addition, KV personnel visited Ms. Flory in Ohio. Those contacts were intentionally and knowingly undertaken by Ms. Flory for the purpose of potentially pursuing a business transaction with KV.

4. During the course of its discussions with Ms Flory, KV determined that it was not interested in a business transaction with Ms. Flory, and communicated that fact to her.

5. Ms. Flory subsequently engaged in an e-mail campaign the purpose of which was, upon information and belief, to wrongfully coerce KV into reversing its decision to not pursue a business transaction with her.

6. The text of an e-mail communication from Ms. Flory to one of KV's customers is attached as Exhibit B.

7. Upon information and belief, Ms. Flory sent numerous e-mail communications to KV's customers.

8. KV has been harmed, and will continue to be harmed, by Ms. Flory's e-mail campaign. Customer(s) of KV have indicated plan(s) to cease purchasing KV's product due to Ms. Flory's e-mail campaign.

9. In addition to the Friday, January 3, 2003 e-mail to Ken Ellingson of Improvements Catalogue, a division of Hanover Direct, a copy of the text of which is attached as Exhibit B, upon information and belief, Ms. Flory made similar communications to Catalog City/Altura International on January 21, 2003. The products mentioned in Ms. Flory's message are Knape & Vogt products and, further, the "parent company in Michigan," to which her communication refers, is Knape & Vogt.

10. Prior to January, 2003, Ms. Flory had been advised of Knape & Vogt's non-infringement position.

11. Ms. Flory's above-described communications constitute disparagement of Knape & Vogt's goods, services, and business by false representations of fact by falsely alleging infringement in violation of Ohio Revised Code 4165.02(A)(10). Likewise, Ms. Flory's conduct violates Michigan Compiled Laws Annotated 445.903(f).

12. Ms. Flory's communications alleging infringement are incorrect and false, and, upon information and belief, are made with a knowledge of such incorrectness and falsity. Ms. Flory's statements go beyond any good faith belief of the nature and scope of her alleged patent rights given that she had previously been placed on notice that her allegations of infringement were incorrect.

13. Ms. Flory knows or should know that her patent is not infringed by the KV products, yet she has represented the contrary to the marketplace.

14. Ms. Flory's conduct constitutes a bad faith representation of infringement.

15. The acts or omissions of Ms. Flory in the State of Michigan, as described above, constitute a substantial part of the events giving rise to the claims asserted in this Complaint by KV. Ms. Flory is subject to personal jurisdiction in this State and in this District.

16. Jurisdiction is proper in this Court pursuant to 35 U.S.C. §1, et seq., and 28 U.S.C. §§ 1331, 1338, 1367 and 2201-2202. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 1400(b).

17. There is a justiciable controversy between plaintiff and defendant concerning the scope of defendant's '804 Patent and plaintiff's liability for alleged infringement thereof.

18. Plaintiff denies infringement of defendant's patent.

19. Ms. Flory will continue to harass KV and KV's business activities by false claims of infringement unless KV is declared not to infringe the '804 Patent.

20. The products manufactured by KV do not infringe the '804 Patent, either literally or by the doctrine of equivalents.

WHEREFORE, KV prays for the entry of a judgment:

(A) Declaring that any products made, used, and/or sold by KV have not infringed and do not presently infringe the '804 Patent;

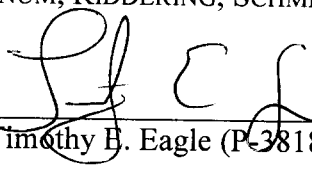
(B) Issuing a permanent injunction enjoining Ms. Flory and all those in active concert with her from disseminating allegations that KV's current product infringes the '804 patent; and

(C) Granting such other or additional relief the Court deems just and equitable.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

By:


Timothy B. Eagle (P-38183)

Dated: March 2, 2003

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