

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADVANCE WATCH COMPANY, LTD.,
a Michigan corporation,

Plaintiff,

vs.

SALTON, INC.,
an Illinois corporation,

Defendant.

02-70398

NANCY G. EDMUNDS
HONORABLE

CIVIL ACTION NO. _____

MAGISTRATE JUDGE KOMIVES

U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT

02 JAN 31 3:55

FILED

MARK A. CANTOR (P32661)
SETH E. RODACK (P55738)
BROOKS & KUSHMAN P.C.
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075
Tel: (248) 358-3400
Fax: (248) 358-3351

Attorneys for Plaintiff

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Advance Watch Company, Ltd. alleges against defendant, Salton, Inc.

the following:

BK
LAW OFFICES
BROOKS & KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

I. THE PARTIES

1. Plaintiff, Advance Watch Company, Ltd. ("Advance"), is a Michigan corporation having a principal place of business at 25800 Sherwood, Warren, Michigan 48091, and regularly conducts business in this jurisdiction.

2. On information and belief, defendant, Salton, Inc. ("Salton") is an Illinois corporation with a principal place of business in Lake Forest, Illinois.

II. JURISDICTION

3. This action is for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 for the purposes of resolving an actual controversy between the parties and declaring that the design of certain alarm clocks sold by plaintiff Advance do not violate any of Salton's alleged design patent rights, alleged trade dress rights, or any other alleged rights in certain alarm clocks sold by Salton under the Westclox brand name.

4. Jurisdiction for the claims pleaded herein is conferred by the court by way of subject matter jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a) and (b) because this action arises under the patent laws and the unfair competition laws of the United States.

5. Jurisdiction is proper in this District as Salton's contacts with this District are sufficient to subject it to personal jurisdiction here. Jurisdiction is also proper in this District because a substantial part of the events giving rise to the claims occurred in this



LAW OFFICES
BROOKS & KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

judicial district. In addition, Salton's allegations of trademark and trade dress infringement arise from Advance's business activities in this District.

III. FACTUAL BACKGROUND

6. Advance reaffirms and realleges the allegations contained in the above paragraphs 1-5.

7. Advance is a manufacturer and seller of numerous products including watches and clocks. Advance markets and distributes its goods within this judicial District and in interstate commerce.

8. On information and belief, Salton is a manufacturer and seller of a broad range of small electrical kitchen appliances, personal and beauty care appliances, and wall and alarm clocks.

9. On December 7, 2001, an attorney representing Salton, James A. Klenk of the Sonnenschein Nath & Rosenthal firm in Chicago, sent a letter to Advance stating that Salton intends to "take all necessary steps to protect Salton from further injury caused by Advance's apparently willful violation of its rights" due to (i) Advance's alleged infringement of U.S. Design Patent No. D437,238 ("the '238 patent"), attached as Exhibit A, and (ii) Advance's alleged violation of Salton's alleged product, alleged design, and alleged packaging rights in the Monarch line of digital alarm clocks sold by Salton under the Westclox brand name.

10. On December 11, 2001, Mark A. Cantor of Brooks & Kushman P.C., intellectual property counsel for Advance, sent a letter to Mr. Klenk on behalf of Advance



LAW OFFICES
BROOKS & KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

indicating that he would respond to Mr. Klenk's December 7, 2001 letter after ordering the prosecution history of the asserted '238 patent and studying the matter.

11. On December 17, 2001, Mr. Klenk responded to Mr. Cantor and stated that the matter of his December 7, 2001 letter is not just a matter of patent protection, but also that Advance has allegedly copied Salton's alleged Westclox Monarch alarm clock trade dress. Mr. Klenk's letter demanded that Advance "immediately cease and desist all infringing activity."

12. During the week of December 17, 2001, Mr. Cantor and Mr. Klenk discussed the matter of Mr. Klenk's December 7, 2001 letter. And, on December 28, 2001, Mr. Klenk wrote Mr. Cantor a follow-up letter reiterating his request made during the telephone conversation between Messrs. Klenk and Cantor for certain information concerning sales, inventory on-hand, and the like.

13. On January 2, 2002, Mr. Cantor sent Mr. Klenk a letter summarizing (i) the unit sales of Advance's allegedly infringing products to date and (ii) the amount of allegedly infringing units remaining in Advance's inventory.

14. By reason of the above, an actual controversy has arisen and exists between the parties as to whether Advance's alarm clock model no. 4039 product infringes the '238 patent and whether Advance's alarm clock model no. 4039 product violates Salton's alleged rights in the Westclox Monarch alarm clock's alleged trade dress.



LAW OFFICES

BROOKS & KUSHMAN P.C.

1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

**IV. COUNT I - DECLARATORY JUDGMENT
THAT ADVANCE DOES NOT
INFRINGE THE '238 PATENT**

15. Advance reaffirms and realleges the allegations contained in the above paragraphs 1-14.

16. Salton is the assignee-of-record of the '238 patent. On August 27, 2001, the assignment of the '238 patent from GTC Properties, Inc. to Salton was recorded in the United States Patent and Trademark Office at Reel/Frame 012090/0926.

17. On information and belief, the claim of the '238 patent is not infringed by Advance by the making, using, offering to sell, or selling of any product.



LAW OFFICES

BROOKS & KUSHMAN P.C.

1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

—
(248) 358-4400

**V. DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE WESTCLOX MONARCH TRADE DRESS**

18. Advance reaffirms and realleges the allegations contained in the above paragraphs 1-17.

19. On information and belief, Salton has no rights in the alleged trade dress of the Westclox Monarch alarm clock.

20. On information and belief, no Advance product infringes any alleged rights in the alleged trade dress of the Westclox Monarch alarm clock that Salton claims to have.

21. On information and belief, the alleged trade dress of the Westclox Monarch alarm clock is not arbitrary.

22. On information and belief, the alleged trade dress of the Westclox Monarch alarm clock is functional.

23. On information and belief, the alleged trade dress of the Westclox Monarch alarm clock is not distinctive.

24. On information and belief, the alleged trade dress of the Westclox Monarch alarm clock has not acquired secondary meaning.



LAW OFFICES

BROOKS & KUSHMAN P.C.

1600 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

VI. DEMAND FOR RELIEF

WHEREFORE, Advance respectfully requests this court enter:

A. A declaratory judgment that Advance's alarm clock design does not infringe the '238 patent.

B. A declaratory judgment that Salton has no trade dress rights in the alleged trade dress of the Westclox alarm clock.

C. A declaratory judgment that Advance's clock design does not infringe any alleged rights that Salton may have in the alleged trade dress of the Salton Westclox Monarch alarm clock design.

D. A declaratory judgment that the alleged trade dress of the Westclox Monarch alarm clock is not arbitrary.

E. A declaratory judgment that the alleged trade dress of the Westclox Monarch alarm clock is functional.

F. A declaratory judgment that the alleged trade dress of the Westclox Monarch alarm clock is not distinctive.

G. A declaratory judgment that the alleged trade dress of the Westclox alarm clock has not acquired secondary meaning.

H. An order awarding Advance its reasonable attorney's fees, prejudgment interest, and costs of this Civil Action.



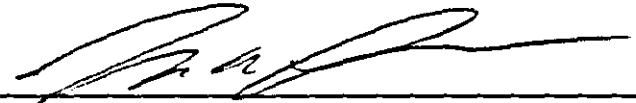
LAW OFFICES
BROOKS & KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

I. Such other and further relief which the court deems proper.

Respectfully submitted,

BROOKS & KUSHMAN P.C.

By: 

MARK A. CANTOR (P32661)

SETH E. RODACK (P55738)

1000 Town Center

Twenty-Second Floor

Southfield, Michigan 48075

Tel: (248) 358-3400

Fax: (248) 358-3351

Attorneys for Plaintiffs

Dated: January 31, 2002



LAW OFFICES

BROOKS & KUSHMAN P.C.

1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

(248) 358-4400

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED