



CV 02-2331 #1

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CV02 2331R

K-2 CORPORATION,

Plamttiff,

v

NATIONAL SPORTING GOODS
CORPORATION ,

Defendant

Civil Action No

COMPLAINT FOR PATENT
INFRINGEMENT AND BREACH OF
SETTLEMENT AGREEMENT

JURY DEMAND

Plaintiff K-2 Corporation ("K2") hereby alleges as follows against Defendant National Sporting Goods Corporation ("NSG")

PARTIES

1 K2 is a corporation organized and existing under the laws of the state of Indiana, having its principal place of business in Vashon, Washington

2 National Sporting Goods Corporation is a corporation having its principal place of business at 25 Brighton Avenue, Passaic, New Jersey 07055

JURISDICTION AND VENUE

3 This action arises under the patent laws of the United States, particularly including 35 U.S.C. § 271 and § 281. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1332, and 1338 (a).

ORIGINAL

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1
2 4 NSG has imported, offered for sale, and sold infringing in-line skates, including
3 those bearing the Chicago trademark NSG distributes its skates to retailers for subsequent sale
4 at retail outlets with the knowledge and intent that they will be sold throughout the United
5 States, including the greater Seattle area. The infringing skates are sold at retail outlets in the
6 Seattle area, including, for example, Big 5 sporting goods stores Accordingly, personal
7 jurisdiction over NSG is proper in this Court

8 5. For purposes of venue, NSG resides in the Western District of Washington
9 pursuant to 28 U S C § 1391(c) Venue is therefore proper pursuant to 28 U S C § 1400

10 **K2'S PATENT RIGHTS**

11 6 K2 owns several patents issued to inventors Antonin A Meibock and John E
12 Svensson and entitled "In-Line Roller Skate," including U S Patent Nos 5,848,796 (the '796
13 patent), 6,139,030 (the '030 patent), 6,152,459 (the '459 patent), 6,168,172 (the '172 patent),
14 6,254,110 (the '110 patent), and 6,367,818 (the '818 patent) In this complaint, these patents are
15 collectively referred to as the "K2 Skate Patents" K2 is the assignee of each of the K2 Skate
16 Patents Accordingly, K2 owns the full right, title, and interest in the K2 Skate Patents,
17 including the right to assert the claims and causes of action involved in this complaint

18 **NSG'S WRONGFUL CONDUCT**

19 7 In 1997, NSG made and sold inline skates under the designations Chicago RX1,
20 RX2, and RXL. In December, 1997, K2 filed a complaint in the United States District Court for
21 the Western District of Washington at Seattle, Civil Action No C97-1903D, alleging that NSG
22 had infringed K2's U S Patent No 5,437,466

23 8 NSG and K2 subsequently settled the litigation, entering into a settlement
24 agreement in November, 1998 In the settlement agreement, NSG agreed not to make or sell the
25 infringing Chicago RX series of skates

9 Despite NSG's awareness of K2's skate patents and its covenant in the
settlement agreement to cease manufacturing the accused skates, NSG is now making and

1
2 selling skates that are identical in all pertinent respects to the RX series of skates it agreed not
3 to make and sell In addition, the new NSG skates infringe many claims of the K2 Skate
4 Patents

5 **COUNT I: PATENT INFRINGEMENT**

6 10 NSG has imported, offered for sale, and sold in-line skates in the United States
7 that infringe one or more claims of each of the K2 Skate Patents The infringing NSG skates
8 include at least the Chicago 1500 skates Discovery may reveal additional infringing skates

9 11. The NSG offer for sale and sale of infringing in-line skates has not been under
10 license or authority from K2

11 12 NSG's activities constitute direct infringement pursuant to 35 U S C § 271

12 13 As a direct result of NSG's infringement of the K2 Skate Patents, K2 has
13 suffered, and will continue to suffer, damages in an amount to be established at trial In
14 addition, K2 has suffered, and continues to suffer, irreparable harm for which there is no
15 adequate remedy at law

16 14 NSG had actual knowledge of the K2 Skate Patents and K2's patent rights prior
17 to engaging in their infringing activity and prior to the filing of this complaint Despite actual
18 knowledge of the K2 Skate Patents, NSG has continued to offer for sale and sell infringing in-
19 line skates in the state of Washington The infringement is therefore deliberate and willful and
20 will continue unless enjoined by this Court

21 **COUNT II: BREACH OF SETTLEMENT AGREEMENT**

22 15 In its prior settlement agreement with K2, NSG agreed to stop selling the
23 Chicago RX series of skates, not to infringe K2's US Patent No 5,437,466, and not to
24 challenge validity of the '466 patent

25 16. The NSG Chicago 1500 skates are indistinguishable in all pertinent respects
from the Chicago RX series of skates NSG previously agreed to stop making, importing, and
selling

1
2 17 NSG's importation, offer for sale, and sale of the Chicago 1500 skates are a
3 direct and material breach of the settlement agreement K2 has been damaged by that breach, in
4 an amount to be determined at trial

5 **PRAYER FOR RELIEF**

6 K2 requests the following alternative and cumulative relief:

- 7 1 Preliminary and permanent injunctions against the continued sale of all NSG in-
- 8 line skates that infringe the K2 Skate Patents,
- 9 2 An award of damages adequate to compensate for the infringement and NSG's
- 10 breach of the settlement agreement, but in no event less than a reasonable royalty
- 11 for the use of the inventions,
- 12 3 An award of treble damages pursuant to 35 U S C § 284
- 13 4 An award of reasonable attorneys' fees;
- 14 5 An assessment of prejudgment interest and costs; and
- 15 6 Such other and further relief as the Court may deem just and proper

16 **JURY DEMAND**

17 K2 demands a jury trial

18 DATED this 19th day of November, 2002.

19
20 By Lawrence D. Graham

21 BLACK LOWE & GRAHAM^{PLLC}
22 Lawrence D. Graham, WSBA No 25,402
23 David A. Lowe, WSBA No 24,453

24 Attorneys for Plaintiff K-2 Corporation