

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00437-MSK-MJW

INTELLIGENT DESIGNS 2000 CORPORATION
a Colorado corporation,

Plaintiff,

v.

SEARS, ROEBUCK AND CO.,
a New York corporation,
SPRINT/UNITED MANAGEMENT COMPANY,
a Kansas corporation,
ICELLA, INC.
d/b/a EZ COMMUNICATIONS,
a California corporation,
WIRELESS EMPORIUM, INC.,
a California corporation,
LOWES HOME CENTERS, INC.,
a North Carolina corporation,
ROOSTER PRODUCTS INTERNATIONAL, INC.,
a Texas corporation,

Defendants.

THIRD AMENDED COMPLAINT AND JURY DEMAND

Intelligent Designs 2000 Corporation ("ID2"), for its Third Amended Complaint against the following parties (collectively "Defendants"), states and alleges as follows:

PARTIES

1. ID2 is a Colorado corporation having a principal place of business at 6125 East 56th Avenue, Unit A, Commerce City, Colorado 80022. ID2 and its owners, Sandra Martinez and

Paul Badillo, invent and manufacture a variety of fabric-based products, many of which are designed to hold various electronic wireless products, such as flashlights, cell phones, personal digital assistants ("PDA"), etc. ID2 has applied for and been granted several U.S. patents for its inventions, including the patents-in-suit described below.

2. Upon information and belief, Defendant Sears, Roebuck and Co. ("Sears") is a New York Corporation with a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179.

3. Upon information and belief, Defendant Sprint/United Management Company ("Sprint") is a Kansas Corporation with a principal place of business in Overland Park, Kansas.

4. Upon information and belief, Defendant iCella, Inc. d/b/a EZ Communications ("iCella") is a California corporation with a principal place of business at 13071 Arctic Circle, Santa Fe Springs, CA 90670.

5. Upon information and belief, Defendant Wireless Emporium, Inc. ("WE") is a California corporation with a principal place of business at 1410 N. Batavia, Orange, California 92867, and doing business under the name Swiss Leatherware.

6. Upon information and belief, Defendant Lowes Home Centers, Inc. ("Lowes") is a North Carolina corporation with a principal place of business at 1000 Lowes Blvd., Mooresville, North Carolina 28117.

7. Upon information and belief, Defendant Rooster Products International, Inc. ("Rooster") is a Texas corporation with a principal place of business at 17280 Green Mountain Road, San Antonio, Texas 78247.

JURISDICTION AND VENUE

8. Defendants have intentionally and purposefully availed themselves of the privilege of doing business in the State of Colorado through soliciting and making sales of products, directly and through distributors in Colorado, that infringe one or more claims of U.S. Patent No. 7,270,255, entitled "Carrying Case with Selectively Adjustable Stand" ("the '255 Patent") and U.S. Patent No. 7,597,225, entitled "Carrying Case with Selectively Adjustable Stand" ("the '225 Patent") (*see* Exhibits 1 & 2).

9. This action arises under the Patent Act, 35 U.S.C. §§ 101, *et seq.*, the Lanham Act, 15 U.S.C. § 1125(a), and the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.*, as more fully set forth below. The tortuous acts of Defendants, as complained of herein, were committed in Colorado, among other places, and have caused and continue to cause ID2 injury in Colorado. The Court has original jurisdiction over the parties and the Federal claims asserted in this action pursuant to 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over pendant claims asserted in this action pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

THE PATENTS-IN-SUIT

11. The '225 Patent was filed on June 5, 2007, and claims priority to U.S. Patent Application No. 09/902,510, filed on July 9, 2001, which in turn claims priority to multiple provisional patent applications filed as early as July 7, 2000. After filing, the '225 Patent was subsequently taken up for examination by the United States Patent and Trademark Office

("USPTO"), and claims 1-20 were ultimately found allowable. The '225 Patent issued on October 6, 2009, and is assigned to ID2, such assignment recorded with the USPTO.

12. The '255 Patent was filed on May 4, 2004, and also claims priority to U.S. Patent Application No. 09/902,510, filed on July 9, 2001, which in turn claims priority to multiple provisional patent applications filed as early as July 7, 2000. The '255 Patent issued on September 18, 2007, and is assigned to ID2, such assignment recorded with the USPTO. The '225 Patent and '255 Patent are collectively referred to hereinafter as the "Asserted Patents."

GENERAL ALLEGATIONS

13. All of the Defendants identified herein have infringed the Asserted Patents. Defendants have infringed the Asserted Patents by making, using, offering for sale, selling and/or importing one or more mobile phone carrying cases that are covered by one or more claims of the Asserted Patents. Upon information and belief, each Defendant has offered for sale, sold or distributed infringing mobile phone carrying cases in the state of Colorado and elsewhere.

14. Sears has imported and sold in the United States a mobile phone carrying case designated 6000D ToughWear™ Cell Phone Holder with Accessories, part number 948427 (*see* Exhibit 3) ("the Sears Product"). The Sears Product includes a carrying case and a storage sleeve for holding a flashlight or pen. Upon information and belief, the Sears Product was first sold by Sears in 2010.

15. Upon information and belief, iCella imports and sells mobile phone accessories through its website, www.icella.com, and through other retail outlets throughout the United States. iCella offers for sale mobile phone carrying cases having at least one storage sleeve for

holding an item other than a mobile phone which, upon information and belief, have been sold in the United States since at least 2010 (*see* Exhibit 4) ("the iCella Product").

16. Sprint has offered for sale a mobile phone carrying case, item number CCU9211R ("the Sprint Product") in its Small Business Catalog (Spring 2010) and on its Internet website. (*See* Exhibit 5.) In its advertisement of this product, Sprint stated that the Sprint Product has "expandable pockets" and a "headset holder." In December, 2010, ID2 ordered the Sprint Product shown in Sprint's Small Business Catalog, and received an invoice for product number CCU9211R. The mobile phone carrying case received by ID2 was included in a package showing product number CCU9211R. However, the Sprint Product itself did not have any "expandable pockets" or "headset holder," and appeared noticeably different from the product shown on Sprint's website and in its Small Business Catalog (*see* Exhibit 6).

17. Wireless Emporium, Inc. has offered for sale, through retail distribution, multiple mobile phone carrying cases (*see e.g.*, Exhibit 7) in the United States that include at least one storage sleeve for holding an item ("the WE Products"). The WE Products include model numbers 10194 and 10195. The WE Products have been sold in the United States since at least 2010.

18. Rooster Products International, Inc. ("Rooster") entered into a Settlement and License Agreement ("Agreement") with ID2 having an effective date of February 1, 2009. Under that Agreement, Rooster was to provide ID2 with quarterly reports identifying the quantity of licensed products, as that term is defined in the Agreement, that had been produced and sold by Rooster during the preceding calendar quarter, and to pay ID2 royalties thereon. These requirements of the Agreement were highly material to the purpose of the Agreement.

Rooster has distributed product that falls within the definition of "licensed product" from the Agreement (*see* Exhibit 3) without providing quarterly reports to ID2 and without providing the required royalty payments to ID2, at the time those obligations were owed, pursuant to the Agreement. Rooster has been offering for sale and selling at least two other case products which infringe the Asserted Patents and for which no reports have been generated or royalties paid. The first is case number 72419 sold by Rooster's McGuire-Nichols Division. The second infringing product is a PDA holder, number TH-603-BS, sold by The Texas Hold-Ums Division of Rooster. (*See* Exhibit 8, 9). As a result of this conduct, Rooster materially breached the Agreement shortly after it was entered in 2009 and the Agreement has been null, void and terminated since that date. Rooster has now been notified that the Agreement terminated when it first materially breached the Agreement in the second quarter of 2009.

19. Upon information and belief, Lowes purchases certain products from Rooster and sells them throughout the United States (the "Lowes Product"), which is advertised as including a flashlight carrying storage sleeve (*see* Exhibit 10). However, the product shipped by Lowes to consumers purchasing the advertised product via its website, www.lowes.com, is different from the advertised product (*see* Exhibit 11). Upon information and belief, the Lowes Product was first imported and sold in the United States by Lowes in 2010.

FIRST CLAIM FOR RELIEF
Against all Defendants
(Infringement of U.S. Patent No. 7,597,225)

20. ID2 hereby incorporates paragraphs 1 through 19 as though fully set forth herein.

21. Without the permission, authority or license of ID2, Defendants have in the past and continue to import, make, have made, sell, offer to sell, advertise and/or distribute in

interstate commerce, mobile phone carrying cases that infringe, both literally and/or under the doctrine of equivalents, at least one of Claims 1, 2, 5, 9, 13, 14, 16, 17 and 19 of the '225 Patent. These identified Defendants' infringing products are sold through stores located in Colorado and elsewhere, and/or on the Internet accessible in Colorado.

22. ID2 has been damaged, and continues to be damaged by this infringement of the '225 Patent, in an amount to be proven at trial.

23. ID2 will continue to suffer damages and irreparable harm unless the identified Defendants are enjoined, pursuant to 35 U.S.C. § 283, from further patent infringement.

24. Upon information and belief, the infringement by one or more of the identified Defendants has been with knowledge of the scope of the '225 Patent's claims and ID2's rights therein, making such infringement intentional and willful. Where infringement is willful and intentional, ID2 is entitled to seek an award of trebled damages pursuant to 35 U.S.C. § 284 and attorneys' fees under 35 U.S.C. § 285.

SECOND CLAIM FOR RELIEF
Against all Defendants
(Infringement of U.S. Patent No. 7,270,255)

25. ID2 hereby incorporates paragraphs 1 through 24 as though fully set forth herein.

26. Without the permission, authority or license of ID2, Defendants have in the past and continue to import, make, have made, sell, offer to sell, advertise and/or distribute in interstate commerce, mobile phone carrying cases that infringe, both literally and/or under the doctrine of equivalents, at least one claim of the '255 Patent. Defendants' infringing products are sold through stores located in Colorado and elsewhere, and/or on the Internet accessible in Colorado.

27. ID2 has been damaged, and continues to be damaged by this infringement of the '255 Patent, in an amount to be proven at trial.

28. ID2 will continue to suffer damages and irreparable harm unless Defendants are enjoined, pursuant to 35 U.S.C. § 283, from further patent infringement.

29. The infringement by Defendants have been with knowledge of the scope of the '255 Patent's claims and ID2's rights therein, making such infringement intentional and willful. Where infringement is willful and intentional, ID2 is entitled to seek an award of trebled damages pursuant to 35 U.S.C. § 284 and attorneys' fees under 35 U.S.C. § 285.

THIRD CLAIM FOR RELIEF
Against Sprint and Lowes
(False Advertising)

30. ID2 hereby incorporates paragraphs 1 through 29 as though fully set forth herein.

31. Based on the allegations set forth herein, Defendants Sprint and Lowes have engaged in false advertising in violation of the Lanham Act, 15 U.S.C. §§ 1115 et seq.

32. During the course of business in the offering to sell mobile phone carrying cases, Sprint and Lowes engaged in false advertising by displaying images and providing written descriptions of mobile phone carrying cases on Defendants' Internet websites that were false, in that those images and descriptions did not accurately depict or describe the actual product sold to Defendants' customers (*see* Exhibits 5, 6, 10, 11).

33. Upon information and belief, Defendants made multiple false or misleading statements of fact in advertising, which actually deceived (or had the capacity to deceive) a substantial segment of the relevant audience. Defendants' conduct was material, in that it was

likely to influence the purchasing decision. Upon information and belief, Defendants caused their respective product, which was falsely advertised, to enter interstate commerce.

34. Upon information and belief, as a direct result of Defendants false statements, one or more actual customers have relied upon Defendants' false advertising, and ID2 has been and continues to be damages in amounts to be determined at trial.

35. Upon information and belief, Defendants' false or misleading statements were made willfully and intentionally.

FOURTH CLAIM FOR RELIEF
Against Sprint and Lowes
(Violation of Colorado Consumer Protection Act ("CCPA"))

36. ID2 hereby incorporates paragraphs 1 through 35 as though fully set forth herein.

37. During the course of business in the offering to sell, selling and distributing mobile phone carrying cases, Defendants Sprint and Lowes engaged in unfair or deceptive trade practices by knowingly making misrepresentations about the characteristics and/or qualities of the mobile phone carrying cases it was actually distributing to customers in Colorado and elsewhere in the United States.

38. Upon information and belief, the false representations made by Defendants Sprint and Lowes have significantly impacted actual customers of mobile phone carrying cases in Colorado. Upon information and belief, the images and descriptions of mobile phone carrying cases in Sprint's Small Business Catalog and on Sprint's and Lowes' Internet websites (*see* Exhibits 5, 6, 10, 11) were provided to encourage potential customers to purchase mobile phone carrying cases from Defendants, but with the knowledge that the actual Defendants Products provided to those potential customers would not be the same as the product shown and described

on Defendants' Internet website and in Sprint's Small Business Catalog (*see* Exhibits 5, 6, 10, 11).

39. Upon information and belief, as a direct result of Defendants' unfair and deceptive trade practices, ID2 has been and continues to be injured in amounts to be determined at trial.

40. Based on the allegations set forth herein, Defendants have, in bad faith, violated the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.*

FIFTH CLAIM FOR RELIEF
Against Rooster
(Breach of Contract)

41. ID2 hereby incorporates paragraphs 1 through 40 as though fully set forth herein.

42. Rooster entered into a valid and binding written Agreement with ID2, which included material duties to provide ID2 with quarterly reports identifying the quantity of licensed products sold by Rooster and to pay ID2 royalties thereon.

43. Rooster has willfully and materially violated its contractual obligations owed ID2 under the Agreement, since at least as early as 2009, by distributing licensed product without providing any quarterly report or royalty payment to ID2, resulting in breach of the Agreement. ID2 provided written notice of Rooster's breach on May 11, 2011.

44. ID2 has been damaged by Rooster's willful breach of the Agreement, in an amount to be proven at trial, and continues to be damaged by Rooster's continuing sale of infringing products without license or authorization from ID2.

PRAYER FOR RELIEF

WHEREFORE, ID2 prays that judgment be entered in its favor against Defendants, and that it be awarded the following relief.

A. Defendants, its agents, principals and employees, and anyone else acting in concert with Defendants, be permanently enjoined from importing, making, using, offering to sell or selling any product which infringes the '225 Patent or the '255 Patent;

B. Judgment against Defendants for all damages sustained by ID2 as a consequence of Defendants' wrongful conduct as provided for in 35 U.S.C. § 284, including an appropriate award of enhanced damages;

C. ID2 be awarded damages for Lowes' and Sprint's intentional false statements to customers, suppliers and other third parties, in violation of the Colorado Consumer Protection Act;

D. ID2 be awarded the full amount of damages available under 15 U.S.C. § 1117, including for willful violation of § 43(a) by Lowes and Sprint, and an award of profits, attorneys' fees and costs;

E. ID2 be awarded trebled actual damages and attorneys' fees for Lowes' and Sprint's violation of the CCPA;

F. ID2 be awarded all compensatory, treble, punitive, statutory or other damages allowable under the law for the claims asserted against Defendants;

G. ID2 be awarded damages for Rooster's breach of contract;

H. Prejudgment and post judgment interest on all damages awarded;

I. ID2 be awarded its costs and attorneys' fees incurred herein; and

J. ID2 be awarded such other and additional relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ID2 demands a trial by jury on all issues so triable.

DATED: June 6, 2011

Respectfully submitted,

By: s/ Robert R. Brunelli
Robert R. Brunelli
rbrunelli@sheridanross.com
Ian R. Walsworth
iwalsworth@sheridanross.com
SHERIDAN ROSS P.C.
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
Telephone: 303-863-9700
Facsimile: 303-863-0223
E-mail: litigation@sheridanross.com

ATTORNEY FOR PLAINTIFF
INTELLIGENT DESIGNS
2000 CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2011, the undersigned electronically filed the foregoing with the Clerk of Court of the District Court, using the CM/ECF system, which will send notice via electronic filing to the following email addresses:

Mark A. Nadeau
DLA Piper LLP
2525 East Camelback Road
Esplanade II Suite 1000
Phoenix, AZ 85016
Phone: 480-606-5110
Mark.nadeau@dlapiper.com

Mark A. Nadeau
DLA Piper LLP
2525 East Camelback Road
Esplanade II Suite 1000
Phoenix, AZ 85016
Telephone: 480-606-5110
Mark.nadeau@dlapiper.com

Kent C. Modesitt
Larry S. Pozner
Reilly Pozner LLP
1900 Sixteenth Street, Suite 1700
Denver, CO 80202
Telephone: 303-893-6100
kmodesitt@rplaw.com
lpozner@rplaw.com

Dirk de Roos
FAEGRE & BENSON LLP
1700 Lincoln Street, Suite 3200
Denver, CO 80203
Telephone: 303-607-3500
dderoos@faegre.com

Evan M. Rothstein
Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, CO 80202
Telephone: 303-629-3400
Rothstein.evan@dorsey.com

s/ Nicole L. Bell

Nicole L. Bell

Assistant to Robert R. Brunelli/Ian R. Walsworth

SHERIDAN ROSS P.C.

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

Telephone: 303-863-9700

Facsimile: 303-863-0223

E-mail: nbell@sheridanross.com

litigation@sheridanross.com