

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01947-CMA-MEH

FRILLY JILLY, LLC,
a Colorado limited liability company,

Plaintiff,

v.

COCONUT GROVE INTIMATES, INC.,
a Canadian company,
COCONUT GROVE PADS, INC.,
a Canadian company,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Frilly Jilly, LLC ("Frilly Jilly"), by and through its undersigned attorneys, for its Amended Complaint against Coconut Grove Intimates, Inc. and Coconut Grove Pads, Inc. (collectively unless otherwise indicated, "Defendants"), states as follows:

PARTIES

1. Plaintiff Frilly Jilly is a Colorado limited liability company with its principal place of business in Aspen, Colorado.
2. Upon information and belief, Defendant Coconut Grove Intimates, Inc. is a Canadian company with its principal place of business at 525 Denison Street, Markham, Ontario L3R 1B8 Canada.

3. Upon information and belief, Defendant Coconut Grove Pads, Inc. is a Canadian company with its principal place of business at 525 Denison Street, Markham, Ontario L3R 1B8 Canada.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.*

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1338.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400, because Defendants are engaged in the regular, continuous and systematic transaction of business in this judicial district, including through the distribution, sale and/or offer for sale of infringing reusable strapless, backless bras in Colorado, has purposefully shipped infringing reusable strapless, backless bras into Colorado through an established distribution chain, and has otherwise committed acts of patent infringement in this judicial district and/or elsewhere that have caused injury in this judicial district.

FRILLY JILLY'S PATENTS

7. On July 10, 2001, United States Patent No. 6,257,951 (the "'951 Patent"), entitled "Reusable Strapless Backless Bra," was duly and legally issued to Jill R. DeMarco. A true and correct copy of the '951 Patent is attached as Exhibit A .

8. On June 4, 2002, United States Patent No. 6,397,391 (the "'391 Patent"), entitled "Reusable Strapless Backless Bra" was duly and legally issued to Jill R. DeMarco. A true and correct copy of the '391 Patent is attached as Exhibit B.

9. The '957 and '391 Patents are enforceable and, pursuant to 35 U.S.C. § 282, enjoy a statutory presumption of validity.

10. By assignment, Frilly Jilly owns all right, title and interest in and to the '951 and '391 Patents, including, without limitation, the right to enforce these patents and collect damages for past infringements.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 6,257,951)

11. Frilly Jilly incorporates herein by reference each and every allegation in paragraphs 1 through 10.

12. Defendants are making, using, selling and/or offering to sell in the United States and/or importing into the United States, reusable strapless, backless bras. These activities constitute direct infringement of the '951 Patent, in violation of 35 U.S.C. § 271(a).

13. Defendants are knowingly inducing direct infringement of the '951 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '951 Patent, in violation of 35 U.S.C. § 271(b), including through the dissemination of instructions that specifically describe how to use their reusable strapless, backless bras in an infringing manner.

14. Defendants are contributing to direct infringement of the '951 Patent by others by offering to sell or selling one or more components of a patented process, including Defendants' reusable strapless, backless bras and accessories, which components constitute a material part of the invention defined by the claims of the '951 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '951 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

15. Defendants have actual knowledge of the '951 Patent as a result of at least Frilly Jilly's past enforcement of the '951 Patent against Defendants' customers. Defendants' actions in infringing the '951 Patent have been, and are, willful, deliberate and/or in conscious disregard of

Frilly Jilly's and/or its predecessor-in-interest's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Frilly Jilly to the award of its attorneys' fees.

16. Defendants' infringement of the '951 Patent has caused and will continue to cause damage to Frilly Jilly in an amount to be ascertained at trial.

17. Defendants' infringement of the '951 Patent has caused and will continue to cause irreparable injury to Frilly Jilly as to which there exists no adequate remedy at law. Defendants' infringement of the '951 Patent will continue unless enjoined by this Court.

SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 6,397,391)

18. Frilly Jilly incorporates herein by reference each and every allegation in paragraphs 1 through 17.

19. Defendants are making, using, selling and/or offering to sell in the United States and/or importing into the United States, reusable strapless, backless bras. These activities constitute direct infringement of the '391 Patent, in violation of 35 U.S.C. § 271(a).

20. Defendants are knowingly inducing direct infringement of the '391 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '391 Patent, in violation of 35 U.S.C. § 271(b), including through the dissemination of instructions that specifically describe how to use their reusable strapless, backless bras in an infringing manner.

21. Defendants are contributing to direct infringement of the '391 Patent by others by offering to sell or selling one or more components of a patented process, including Defendants' reusable strapless, backless bras and accessories, which components constitute a material part of the invention defined by the claims of the '391 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '391 Patent, and which components are

not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

22. Defendants have actual knowledge of the '391 Patent as a result of at least Frilly Jilly's past enforcement of the '391 Patent against Defendants' customers. Defendants' actions in infringing the '391 Patent have been, and are, willful, deliberate and/or in conscious disregard of Frilly Jilly's and/or its predecessor-in-interest's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Frilly Jilly to the award of its attorneys' fees.

23. Defendants' infringement of the '391 Patent has caused and will continue to cause damage to Frilly Jilly in an amount to be ascertained at trial.

24. Defendants' infringement of the '391 Patent has caused and will continue to cause irreparable injury to Frilly Jilly as to which there exists no adequate remedy at law. Defendants' infringement of the '391 Patent will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Frilly Jilly requests that judgment be entered in its favor and against Defendants as follows:

A. Declaring that Defendants have infringed United States Patent Nos. 6,257,951 and 6,397,391;

B. Issuing temporary, preliminary, and permanent injunctions enjoining Defendants, its officers, agents, subsidiaries, and employees, and those in privity or in active concert with any of the foregoing, from further activities that constitute infringement of the United States Patent Nos. 6,257,951 and 6,397,391, pursuant to 35 U.S.C. § 283;

C. Awarding Frilly Jilly damages arising out of Defendants' infringement of United States Patent Nos. 6,257,951 and 6,397,391 in an amount not less than a reasonable royalty for

each act of infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and prejudgment and post-judgment interest;

D. Finding that this is an "exceptional case" within the meaning of 35 U.S.C. § 285 and award reasonable attorneys' fees to Frilly Jilly; and

E. Awarding Frilly Jilly such further legal and equitable relief as the Court deems just and proper.

JURY DEMAND

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

DATED: October 25, 2010

Respectfully submitted,

By: s/ Benjamin B. Lieb
Benjamin B. Lieb
blieb@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
FRILLY JILLY, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Neal S. Cohen
HOLME ROBERTS & OWEN LLP
1801 13th Street, Ste. 300
Boulder, CO 80302
Telephone: 303-444-5955
Facsimile: 303-866-0200
E-mail: neal.cohen@hro.com

Richard S. Ross
Atrium Centre
4801 South University Drive, Suite 237
Ft. Lauderdale, FL 33328
Telephone: 954-252-9110
Facsimile: 954-252-9192
E-mail: prodp@ix.netcom.com

ATTORNEYS FOR DEFENDANTS

s/ Nicole L. Bell

Nicole L. Bell
Assistant to Benjamin B. Lieb
SHERIDAN ROSS P.C.
1560 Broadway, Suite 1200
Denver, CO 80202-5141
Telephone: (303) 863-9700
Facsimile: (303) 863-0223
E-mail: nbell@sheridanross.com
litigation@sheridanross.com