

JAMES B. BELSHE (USB No. 9826)

jbelshe@wnlaw.com

CHARLES L. ROBERTS (USB No. 5137)

croberts@wnlaw.com

JAMES T. BURTON (USB No. 11875)

jburtont@wnlaw.com

WORKMAN | NYDEGGER

1000 Eagle Gate Tower

60 East South Temple

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHE BAG, LLC, a Utah limited liability company,)	Civil Action No. 2:10-cv-00781-TS
)	
Plaintiff,)	
v.)	FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL
)	
THIRTY ONE GIFTS LLC, a New Jersey limited liability company,)	Judge Ted Stewart
)	
Defendant.)	

MICHE BAG’S ORIGINAL COMPLAINT

Plaintiff Miche Bag, LLC (“Miche Bag”) complains against Defendant Thirty One Gifts LLC (“Thirty-One”) and alleges as follows:

PARTIES

1. Miche Bag is a Utah limited liability company having its principal place of business in Riverton, Utah.
2. Thirty-One is a New Jersey limited liability company, with its principal place of business located at 231 Commerce Blvd., Johnstown, Ohio 43031.

3. Miche Bag and Thirty-One are competitors in the market of purses, handbags, and related products.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement under 35 U.S.C. §§ 271, 281, 283, 284, and 285.

5. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b) as Thirty-One has committed acts of patent infringement in this district.

7. Thirty-One has transacted business within the State of Utah, has contracted to supply goods or services within the State of Utah directly through the sale of products on its websites, and has otherwise purposefully availed itself of the privileges and benefits of the laws of the State of Utah and is, therefore, subject to the jurisdiction of this Court pursuant to Utah Code § 78B-3-205.

BACKGROUND

8. Miche Bag has manufactured and distributed handbags, purses, and related interchangeable purse products to customers in the United States since 2007.

9. Miche Bag is the owner by assignment of U.S. Patent No. 6,186,201 (the “’201 patent”). A true and correct copy of the ’201 Patent is attached hereto as Exhibit 1.

10. Miche Bag has sold purses, handbags, and removable decorative covers for purses and handbags incorporating at least the elements of claim 8 of the ’201 Patent.

11. Thirty-One sells handbags and removable decorative covers for handbags.

12. Thirty-One markets and offers its products for sale on the Internet, *inter alia*, at www.mythirtyone.com and at www.31giftsonline.com.

13. Thirty-One also markets and sells its products through a network of consultants who sell Thirty-One products through “Home Parties, Parties To Go, Catalog Parties or Online Ordering through [a] Thirty-One Consultant’s personal website.” See <http://www.mythirtyone.com/content/Order.aspx>, attached hereto as Exhibit 2.

14. Thirty-One markets its base interchangeable purse products that are the target of this Complaint as “Skirt Purses” and its removable purse shells as “Fitted Purse Skirts.” See Thirty-One Catalogue, 39, attached hereto as Exhibit 3.

15. Thirty-One, directly or through its subsidiaries, divisions, groups, distributors, or consultants, makes, sells and/or offers for sale or allows others to make, use, sell and/or offer for sale products infringing the ’201 patent, including but not limited to, the product identified as the Snap Skit Purse with Fitted Purse Skirt – Paparazzi Dot.

16. Thirty-One markets its removable purse product as “Purse + Skirt = Style all Week” and as “like having a NEW purse every time you change the look.” *Id.* at 12-13, attached hereto as Exhibit 4.

17. Thirty-One has a Utah consultant named Whitney Luna, located in Bountiful, Utah, who promotes Thirty-One’s products in Utah. See Exhibit 5.

18. Thirty-One sells and ships its removable purse products to consumers in Utah.

FIRST CLAIM FOR RELIEF

Patent Infringement, 35 U.S.C. § 271

19. Miche Bag restates, realleges, and incorporates by reference the allegations contained in the preceding paragraphs of its Complaint as if fully set forth herein.

20. The '201 Patent is directed to a handbag with an inner bag removably attached to an outer shell, and was validly issued by the United States Patent and Trademark Office on February 13, 2001.

21. Miche Bag is the owner of the '201 patent by assignment.

22. Thirty-One has made, used, sold and/or offered to sell products falling within the scope of claims of the '201 Patent, without license or authority from Miche Bag, in violation of Miche Bag's rights, thereby directly and indirectly infringing at least claims 1 and 8 of the '201 Patent.

23. Thirty-One has sold and/or offered for sale products infringing at least claim 8 of the '201 patent within the State of Utah.

24. On information and belief, Thirty-One is aware of the existence of the '201 Patent and, despite such knowledge, continues to willfully, wantonly, and deliberately engage in acts of infringement, as that term is defined in 35 U.S.C. § 271, without regard to the '201 Patent.

25. Miche Bag has been and will continue to be damaged by the infringing conduct of Thirty-One, in an amount to be established at trial.

26. Miche Bag is suffering irreparable harm due to Thirty-One's infringement of the '201 Patent, and will continue to be irreparably harmed unless and until Thirty-One is enjoined from future infringement.

PRAYER FOR RELIEF

WHEREFORE, Miche Bag prays for judgment against Thirty-One, as follows:

1. For a judgment holding Thirty-One liable for patent infringement pursuant to 35 U.S.C. § 271;

2. For preliminary and permanent injunctive relief enjoining Thirty-One, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them, as follows:

- a. from using, manufacturing, offering to sell or selling any products falling within the scope of the claims of the '201 Patent;
 - b. from importing any product into the United States which falls within the scope of the '201 Patent;
 - c. from actively inducing others to infringe any of the claims of the '201 Patent;
 - d. from engaging in acts constituting contributory infringement of any of the claims of the '201 Patent; and
 - e. from all other acts of infringement of any of the claims of the '201 Patent;
3. For an injunction under 35 U.S.C. § 283 restraining and enjoining Thirty-One, its agents, servants, employees, officers and those persons in act of concert or participation with Thirty-One, from any further infringement of the '201 Patent;
 4. For an order directing Thirty-One to recall and destroy any and all products, packaging, and advertising material infringing the '201 Patent;
 5. For an award of damages adequate to compensate Miche Bag for its lost profits, but not less than a reasonable royalty for infringement of the '201 Patent, including treble damages, interest, costs, and all other categories of damages allowed by 35 U.S.C. § 284;
 6. That this be declared an exceptional case and that Miche Bag be awarded its attorneys' fees against Thirty-One pursuant to 35 U.S.C. § 285;
 7. For such further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Miche Bag hereby demands trial by jury as to all issues in this action triable
by a jury.

DATED this 1st day of September, 2010.

WORKMAN | NYDEGGER

By /s/ James B. Belshe
JAMES B. BELSHE
CHARLES L. ROBERTS
JAMES T. BURTON

Attorneys for Plaintiff
MICHE BAG, LLC