

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|------------------------|---|---------------------------|
| FURMINATOR, INC. |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | CASE NO. 4:06-CV-1314-DJS |
| |) | |
| KIM LAUBE & CO., INC., |) | JURY TRIAL DEMANDED |
| |) | |
| Defendant. |) | |

FIRST AMENDED COMPLAINT

This is FURminator, Inc.'s ("FURminator") complaint against Defendant Kim Laube & Co., Inc. ("Kim Laube").

JURISDICTION AND VENUE

1. This is an action for patent infringement. FURminator seeks preliminary and permanent injunctive relief and damages.
2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (patents).
3. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400 because Kim Laube resides in this judicial district because it is subject to personal jurisdiction here.

THE PARTIES

4. FURminator is a Missouri corporation with its principal place of business in St. Louis, Missouri.
5. Kim Laube is a California corporation with its principal place of business at 2221 Statham Blvd., Oxnard, California 93033.
6. Kim Laube's products at issue in this case are offered for sale and sold in the Eastern District of Missouri, through the interactive website www.kimlaubecoshop.com.

FURminator's Patents

7. FURminator is the owner by assignment of U.S. Patent Nos. 6,782,846 (the "First Porter Patent") and 7,077,076 (the "Second Porter Patent") (collectively the "Porter Patents"). Exhibits A and B.

8. The Porter Patents are valid, enforceable and were duly issued in full compliance with Title 35 of the United States Code.

FURminator's Grooming Tool

9. FURminator sells a grooming tool as claimed in the Second Porter Patent and for use in the patented methods of the Porter Patents.



Kim Laube's Infringing Activities

10. On information and belief, Kim Laube makes, uses, offers to sell, sells or imports into the United States the iVac grooming tool and the Lazor Blade Rake grooming tool (hereinafter collectively "Accused Grooming Tools"). A picture of the iVac grooming tool is attached hereto as Exhibit C and a picture of the Lazor Blade Rake is attached hereto as Exhibit D.

Count I

Kim Laube's Infringement of the First Porter Patent under 35 U.S.C. § 271(a)

11. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

12. Kim Laube has been and is infringing the First Porter Patent under 35 U.S.C. § 271(a).

13. Kim Laube directly infringes the First Porter Patent by making, using, selling, offering to sell and/or importing Accused Grooming Tools, including but not limited to the iVac grooming tool.

14. Kim Laube's conduct has damaged and will continue to damage FURminator.

15. On information and belief, Kim Laube's infringement of the First Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count II

Kim Laube's Infringement of the First Porter Patent under 35 U.S.C. § 271(b)

16. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

17. Kim Laube has been and is infringing the First Porter Patent under 35 U.S.C. § 271(b).

18. Kim Laube, and others, directly infringe the First Porter Patent by making, using, selling, offering to sell and/or importing Accused Grooming Tools.

Kim Laube's Infringement of the First Porter Patent under 35 U.S.C. § 271(c)

24. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

25. Kim Laube has been and is infringing the First Porter Patent under 35 U.S.C. § 271(c).

26. Kim Laube, and others, directly infringe the First Porter Patent by making or using the method claimed in the Second Porter Patent.

27. Kim Laube makes, uses, offers to sell, sells and/or imports into the United States
Accused Grooming Tools.

28. Kim Laube's Accused Grooming Tools are for use in practicing FURminator's patented method as claimed in the First Porter Patent.

29. Kim Laube's Accused Grooming Tools constitute a material part of FURminator's method as claimed in the First Porter Patent.

30. On information and belief, Kim Laube knows the Accused Grooming Tools to be especially made or especially adapted for use in infringement of the First Porter Patent.

32. On information and belief, Kim Laube knows of the First Porter Patent.

33. On information and belief, Kim Laube knowingly aided and abetted direct infringement of the First Porter Patent by making, using, offering to sell, selling or importing Kim Laube's Accused Grooming Tools.

34. Kim Laube's conduct has damaged and will continue to damage FURminator.

35. On information and belief, Kim Laube's infringement of the First Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count IV

Kim Laube's Infringement of the Second Porter Patent under 35 U.S.C. § 271(a)

36. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

37. Kim Laube has been and is infringing the Second Porter Patent under 35 U.S.C. § 271(a).

38. Kim Laube directly infringes the Second Porter Patent by making, using, selling, offering to sell and/or importing into the United States Accused Grooming Tools.

39. Kim Laube's conduct has damaged and will continue to damage FURminator.

40. On information and belief, Kim Laube's infringement of the Second Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count V

Kim Laube's Infringement of the Second Porter Patent under 35 U.S.C. § 271(b)

41. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

42. Kim Laube has been and is infringing the Second Porter Patent under 35 U.S.C. § 271(b).

43. Kim Laube, and others, directly infringe the Second Porter Patent by making, using, selling, offering to sell and/or importing into the United States Accused Grooming Tools.

44. On information and belief, Kim Laube knows of the Second Porter Patent.

45. On information and belief, Kim Laube knows its Accused Grooming Tools have no substantial use that does not infringe the Second Porter Patent.

46. On information and belief, Kim Laube intends for others to infringe the Second Porter Patent.

47. Kim Laube's conduct has damaged and will continue to damage FURminator.

48. On information and belief, Kim Laube's infringement of the Second Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count VI

Kim Laube's Infringement of the Second Porter Patent under 35 U.S.C. § 271(c)

49. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

50. Kim Laube has been and is infringing the Second Porter Patent under 35 U.S.C. § 271(c).

51. Kim Laube, and others, directly infringe the Second Porter Patent by making or using the method claimed in the Second Porter Patent.

52. Kim Laube makes, uses, offers to sell, sells and/or imports into the United States Kim Laube's Accused Grooming Tools.

53. Kim Laube's Accused Grooming Tools are for use in practicing FURminator's patented method as claimed in the Second Porter Patent.

54. Kim Laube's Accused Grooming Tools constitute a material part of FURminator's method as claimed in the Second Porter Patent.

55. On information and belief, Kim Laube knows the Accused Grooming Tools to be especially made or especially adapted for use in infringement of the Second Porter Patent.

56. Kim Laube's Accused Grooming Tools are not staple articles or commodities of commerce suitable for substantial non-infringing use.

57. On information and belief, Kim Laube knows of the Second Porter Patent.

58. On information and belief, Kim Laube knowingly aided and abetted direct infringement of the Second Porter Patent by making, using, offering to sell, selling or importing Kim Laube's Accused Grooming Tools.

59. Kim Laube's conduct has damaged and will continue to damage FURminator.

60. On information and belief, Kim Laube's infringement of the Second Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, FURminator prays for judgment against Kim Laube as follows:

A. Preliminarily and permanently enjoin Kim Laube and any person acting in concert with it from further infringement of U. S. Patent Nos. 6,782,846 and/or 7,077,076;

B. Award FURminator damages resulting from Kim Laube's infringements;

C. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;

D. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;

E. Award FURminator reasonable attorney fees under 35 U.S.C. § 285;

F. Order the impounding and destruction of all Kim Laube's products that infringe U.S. Patent Nos. 6,782,846 and/or 7,007,076;

G. Award FURminator interests and costs;

H. Kim Laube must pay FURminator punitive damages due to their willful infringement;

I. Kim Laube must report to this Court of their compliance of the foregoing within thirty (30) days of judgment; and

J. For such other and further relief that the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury on all issues so triable.

Respectfully submitted,

Thompson Coburn LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2007, a true and correct copy of the foregoing was filed with the Clerk of Court, to be served via the Court's ECF system, on the following:

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