

subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338. Venue is proper in this District, where CASE IT is subject to personal jurisdiction, pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

BACKGROUND FACTS

4. MEADWESTVACO is in the business of, among other activities, providing consumers with a wide range of school, home and office products including but not limited to file folders, notebooks, binders and date planners.

5. United States Patent No. 6,558,062, entitled “Binder with Expandable Outside Pocket,” (hereinafter “the '062 Patent”) was duly and legally issued by the United States Patent and Trademark Office on May 6, 2003. A true copy of the '062 Patent is attached at Exhibit A.

6. MEADWESTVACO is the owner of the '062 Patent by nature of an assignment recorded at the United States Patent and Trademark Office at Reel 010922, Frame 0107.

7. The '062 Patent is presumed valid pursuant to 35 U.S.C. §282.

8. MEADWESTVACO manufactures and sells throughout the United States, under the trademarks EXPANDABLES and XPANZ, binders having an expandable outside pocket with a releasable closure to control expansion of the pocket.

9. MEADWESTVACO manufactures and sells throughout the United States, under the trademarks EXPANDABLES and XPANZ, binders that are covered by the claims of the '062 Patent.

10. MEADWESTVACO and CASE IT are direct competitors in the sale of binders.

CLAIM I: PATENT INFRINGEMENT

11. MEADWESTVACO repeats and reasserts the allegations of paragraphs 1 through 10 as if set forth at length herein.

12. CASE IT offers to sell and sells binders under model numbers D-400, E-600 and DUAL-SLG-815 that include an expandable outer pocket with a zipper to control expansion of the pocket. Photographs of the D-400, E-600 and DUAL-SLG-815 binders are attached as Exhibits B, C and D, respectively.

13. CASE IT has offered to sell and sold the D-400, E-600 and DUAL-SLG-815 binders within the Southern District of Ohio, or in the alternative, has shipped such binders with the expectation that the shipped binders will arrive and be purchased by consumers in the Southern District of Ohio.

14. CASE IT has infringed the '062 Patent under 35 U.S.C. §271 by offering to sell, selling, making, using and/or importing the D-400, E-600 and DUAL-SLG-815 binders within the United States and within this District.

15. CASE IT's infringement of the '062 Patent has been willful and wanton.

16. MEADWESTVACO informed CASE IT of the issued '062 Patent and the relevance of the '062 patent to CASE IT's ongoing business operations by a certified letter dated November 19, 2004, receipt of which was acknowledged by BMI on November 22, 2004.

17. Notwithstanding CASE IT's knowledge of the '062 Patent, CASE IT has continued to willfully infringe the '062 Patent.

18. The infringement of the '062 Patent by CASE IT is causing MEADWESTVACO to suffer economic damages.

19. The infringement of the '062 Patent by CASE IT as described above is causing irreparable damage to MEADWESTVACO and will continue to cause irreparable damage to MEADWESTVACO unless CASE IT is enjoined by this Court.

CLAIM II: FALSE MARKING (35 U.S.C. §292)

20. MEADWESTVACO repeats and reasserts the allegations of paragraphs 1 through 19 as if set forth at length herein.

21. CASE IT operates a website, www.caseit.com (hereinafter "website"), on which it advertises its products and promotes itself as an innovator. Consumers within the United States can view and purchase CASE IT products directly from the website.

22. CASE IT routinely marks its products and/or describes its products on its website or in its other advertisements as being patented, having patented features or being patent pending when they are not and CASE IT knows that they are not. CASE IT falsely marks and advertises its products in this manner to deceive consumers and purchasers into believing that the products have qualities that they do not. A listing of CASE IT's misconduct follows.

23. CASE IT has sold binders having expandable outer pockets under model number D-400 in the United States with identifying hang tags bearing the marking "Patents Pending." Copies of such hang tags are attached as Exhibits E and F, respectively. In fact, CASE IT has never filed a patent application directed to, disclosing or claiming the D-400 binders at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

24. At least as early as October 14, 2005, CASE IT advertised a 2-in-1 Zipper Binder on its website under model number DUAL-100 (hereinafter "DUAL-100 binder"), with the description "Patented Velcro dividers secure contents." A true and accurate October 14, 2005, printout of this advertisement from the website is attached as Exhibit G. In fact, at the time of the advertisements, the DUAL-100 binder was an unpatented article.

25. At least as early as October 14, 2005, CASE IT advertised a Dual-Style Sewn View Binder, style # BIND-DL-1 (hereinafter "Dual Binder"), an S-Style Sewn View Binder, style # BIND-S-1 (hereinafter "S-Binder"), and a Z-Style Sewn View Binder, style # BIND-Z-1 (hereinafter "Z-Binder"), on its website with the description "Patented TitleSlide™ Spine Applicator." True and accurate October 14, 2005, printouts of the Dual-Binder, S-Binder, and Z-Binder advertisements from the website are attached as Exhibits H, I and J, respectively. In fact, at the time of the advertisements, these binders were unpatented articles.

26. At least as early as October 13, 2005 and as late as July 19, 2006, CASE IT advertised all of its binder products on its website with the description "Patented spine design allows binder to lie flat when opened." True and accurate October 13, 2005, and July 19, 2006, printouts of CASE IT's binder advertisements from the website are attached as Exhibits K and L, respectively. In fact, at the time of the advertisements, these binders were unpatented articles.

27. CASE IT advertised its products in 2004 by means of a catalog, which CASE IT distributed to potential customers. A true and accurate copy of excerpts from CASE IT's 2004 product catalog is attached as Exhibit M.

28. In the catalog, CASE IT advertised a color CD Organizer under model number CL-RING-304 with the descriptions "Patented Dual-Ring Binder" and "Patented dual binder with hold-down page to keep inactive side in place." True and accurate copies of these advertisements are attached at pages BMI00328 and BMI00340 of Exhibit M.

29. At least as early as July 26, 2006, CASE IT advertised another CD Organizer under model number RING-304 on its website with the description "we use patented hold down pages to keep you more organized. This configuration can be found on Case-it's RING-304, Dual

binders, and Dual Sewn Binders." A true and accurate July 26, 2006 printout of this advertisement from the website is attached as Exhibit N.

30. At the time that the catalog was published and at the time the binders were advertised on the website the CL-RING-304 and RING-304 binders were in fact unpatented articles.

31. In its catalog, CASE IT advertised nylon CD cases, including style # CD-15, CD-30 and CD-60 with the description "our patented removable molded tray creates additional options for wall-mount or table top-home storage." A true and accurate copy of an advertisement from BMI's 2004 Catalog for CD-15, CD-30 and CD-60 is attached at page BMI00331 of Exhibit M. In fact, at the time that the catalog was published CD-15, CD-30 and CD-60 were unpatented articles.

32. In its catalog, CASE IT advertised imitation leather CD cases, including style # LL-CD-15 and LL-CD-30 (hereinafter "Leather CD Cases"), with the description "we made our patented molded tray removable for wall-mount or table-top home storage." A true and accurate copy of the Leather CD Cases advertisement is attached at page BMI00336 of Exhibit M. At the time that the catalog was published, the Leather CD Cases were in fact unpatented articles.

33. In its catalog, CASE IT advertised imitation leather MDV cases, including style # MDV-12/6 and MDV-24/12 (hereinafter "MDV Cases"), with the description "The digital craze was the catalyst for our patented MDV case." A true and accurate copy of the MDV Cases advertisement is attached at page BMI00346 of Exhibit M. At the time that the catalog was published, the MDV Cases were in fact unpatented articles.

34. CASE IT advertised DVD cases, including style # DVD-22 and DVD-44 (hereinafter "DVD Cases"), in its 2004 Catalog with the description "Our patented window flap

makes title recognition a snap and movie booklets have their own clear pocket to view entire image." A true and accurate copy of the DVD Cases advertisement is attached at page BMI00345 of Exhibit M.

35. In 2004, CASE IT also advertised a DVD case on its website under style # DVD-22-SLV with the description "Easy title recognition with our patented window flap." A true and accurate printout of the advertisement for DVD-22-SLV from the website in 2004, as provided by the internet archive, <http://www.archive.org>, is attached as Exhibit O.

36. At the time that the catalog was published and at the time the DVD cases were advertised on the CASE IT website, DVD-22, DVD-44 and DVD-22-SLV were in fact unpatented articles.

37. CASE IT advertised CD racks, including style # RAC-15, RAC-30 and RAC-60 (hereinafter "CD Racks"), in its 2004 Catalog with the description "The 4-sided interlocking Rails allow for expansion in all directions and the patented Pos-i-Lok system makes it easy to securely snap them together." A true and accurate copy of the CD Racks advertisement is attached at page BMI00342 of Exhibit M.

38. In 2004, CASE IT also advertised a CD rack on its website under style # RACK-15 with the description "The 4-sided Interlocking Rails allow for expansion in all directions and the patented Pos-i-Lok system makes it easy to snap them together securely." A true and accurate printout of the advertisement for RACK-15 from the website in 2004, as provided by the internet archive, <http://www.archive.org>, is attached as Exhibit P.

39. At the time that the catalog was published and at the time they were advertised on the CASE IT website, RAC-15, RAC-30, RAC-60 and RACK-15 were in fact unpatented articles.

40. CASE IT sells book sling backpacks, including model numbers BK-SLG-45 and BK-SLG-55 (hereinafter "Book Slings"), in the United States with identifying tags affixed thereto bearing the description "Patented Auto Cinch-Self-Tightening system." True and accurate copies of a tag from a BK-SLG-45 and a tag from a BK-SLG-55 are attached as Exhibits Q and R, respectively. In fact, the Book Slings are unpatented articles.

41. CASE IT has advertised metal CD/DVD cases under model numbers MTL-280, MTL-SL-280 and/or MTL-BK-280 with the description "Patented metal rod that holds CDs/DVDs in place." In fact, at the time of the advertisement, the metal CD/DVD cases were unpatented articles.

42. In 2004, CASE IT advertised faux leather CD organizers on its website under model numbers PR-ORG-24 and PR-ORG-72 with the description "Patent Pending." True and accurate printouts of advertisements for PR-ORG-24 and PR-ORG-72 from the website in 2004, as provided by the internet archive, <http://www.archive.org>, are attached as Exhibits S and T, respectively. At the time of the advertisement, CASE IT had not filed a patent application directed to, disclosing or claiming PR-ORG-24 and PR-ORG-72 at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

43. CASE IT has sold 3" zipper binders in the United States under model numbers D-145 and D-150 with identifying labels bearing the marking "Patents Pending." True and accurate copies of D-145 and D-150 labels are attached as Exhibits U and V, respectively. In fact, CASE IT has not filed a patent application directed to, disclosing or claiming the D-145 or D-150 binders at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

44. CASE IT has sold zipper binders with removable expanding files in the United States under model number D-900 with identifying labels bearing the marking "Patents Pending." A true and accurate copy of one such label is attached as Exhibit W. CASE IT has not filed a patent application directed to, disclosing or claiming the D-900 binder at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

45. CASE IT has sold book slings in the United States under model number BK-SLG-35 with identifying labels bearing the marking "Patents Pending." A true and accurate copy of one such label is attached as Exhibit X. CASE IT has not filed a patent application directed to, disclosing or claiming the BK-SLG-35 book sling at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

46. CASE IT has sold "Z" configuration binders in the United States under model number Z-175 with identifying labels bearing the marking "Patents Pending." A true and accurate copy of one such label is attached as Exhibit Y. At least as early as July 19, 2006, CASE IT advertised its Z-175 binder on its website with the description "Patent pending Design." A true and accurate July 19, 2006, printout of the Z-175 advertisement from the website is attached as Exhibit Z. In fact, CASE IT has not filed a patent application directed to, disclosing or claiming the Z-175 binder at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

47. CASE IT has sold binders having a dry erase board in the United States under model number E-750 with identifying labels bearing the marking "Patents Pending." A true and accurate copy of one such label is attached as Exhibit AA. CASE IT has not filed a patent

application directed to, disclosing or claiming the E-750 binder at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

48. CASE IT has sold binders having an external book hugger strap in the United States under model number W-350 with identifying labels bearing the marking "Patents Pending." A true and accurate copy of one such label is attached as Exhibit BB. CASE IT has not filed a patent application directed to, disclosing or claiming the W-350 binders at the United States Patent and Trademark Office. Nor has CASE IT acquired or licensed any such patent application.

CLAIM III: FALSE ADVERTISING (15 U.S.C. §1125(a)(1)(B))

49. MEADWESTVACO repeats and reasserts the allegations of paragraphs 1 through 48 as if set forth at length herein.

50. CASE IT has falsely marked, advertised and sold its products in the United States with the words "Patents Pending" or as being protected by patents when no application for patent has been made and no patents existed.

51. These advertisements and false markings create a false impression regarding the nature and quality of the goods.

52. The representation of fact that CASE IT's products are covered by a pending patent application or by a patent is material to the purchasing decision of consumers, including commercial retailers.

53. CASE IT's false representations regarding its products have benefited CASE IT through increased sales, increased profits, and increased market share.

54. CASE IT's false representations regarding its products have harmed MEADWESTVACO by diverting sales in violation of 15 U.S.C. §1125(a)(1)(B).

WHEREFORE, PLAINTIFF prays for judgment against CASE IT as follows:

- (1) Issuance of preliminary and permanent injunctions pursuant to 35 U.S.C. §283 enjoining further acts of infringement of the '062 Patent.
- (2) An award of treble damages and costs pursuant to 35 U.S.C. §284 for willful infringement of the '062 Patent.
- (3) An award of attorney fees pursuant to 35 U.S.C. §285.
- (4) A fine pursuant to 35 U.S.C. §292.
- (5) An award of profits, treble damages, and costs pursuant to 15 U.S.C. §1117.
- (6) An award or attorney fees pursuant to 15 U.S.C. §1117.
- (7) Issuance of preliminary and permanent injunctions pursuant to 15 U.S.C. §1116 enjoining further acts of false advertising, including improper use to the "Patent Pending" or patent marking on CASE IT products.
- (8) An award of such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Jeffrey C. Metzcar

Jeffrey C. Metzcar, Trial Counsel (#0072648)

Scott A. King, Trial Counsel (#0037582)

THOMPSON HINE LLP

2000 Courthouse Plaza N.E.

P.O. Box 8801

Dayton, OH 45401-8801

Telephone: (937) 443-6841

Facsimile: (937) 443-6805

E-mail: Jeff.Metzcar@Thompsonhine.com

OF COUNSEL:

Steven J. Elleman (#0066332)
THOMPSON HINE LLP
2000 Courthouse Plaza N.E.
P.O. Box 8801
Dayton, OH 45401-8801
Telephone: (937) 443-6600
Facsimile: (937) 443-6635
E-mail: Steve.Elleman@Thompsonhine.com

Attorneys for Plaintiff
MeadWestvaco Corporation

JURY DEMAND

Plaintiff MEADWESTVACO CORPORATION demands a trial by jury on all issues.

/s/ Jeffrey C. Metzcar

Jeffrey C. Metzcar (#0072648)

Thompson Hine LLP

2000 Courthouse Plaza, N.E.

P.O. Box 8801

Dayton, OH 45401-8801

Telephone: (937) 443-6841

Facsimile: (937) 443-6805

Jeff.Metzcar@Thompsonhine.com

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Susan Blasik-Miller
Freund, Freeze & Arnold
One Dayton Centre
1 South Main Street, Suite 1800
Dayton, OH 45402-2017
Telephone: 937-222-2424
Facsimile: 937-222-5369
sblasikm@ffalaw.com

Trial Attorney for Defendant

Of counsel:

Eric D. Kirsch
William E. Pelton
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036
Telephone: 212-278-0400
Facsimile: 212-391-0526

Attorneys for Defendant

/s/ Jeffrey C. Metzcar

Jeffrey C. Metzcar

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