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DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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L. J. MCGEE, CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZAPPOS.COM, INC.,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES E. HILL & ASSOCIATES, INC.,)
)
 Defendant.)

No.

1 : 06-cv- 1282-DFH -VSS

**COMPLAINT FOR DECLARATORY RELIEF
AND DEMAND FOR JURY TRIAL**

The plaintiff, Zappos.com, Inc., complains and alleges against the defendant, Charles E. Hill & Associates, Inc. ("Hill") as follows:

INTRODUCTION

1. By its complaint, the plaintiff, Zappos.com, Inc. ("Zappos"), seeks a declaration that it has not infringed U.S. Patent Nos. 5,528,490, 5,761,649 and 6,029,142 (collectively "the patents-in-suit," and individually, "the '490 patent," "the '649 patent," and "the '142 patent," respectively) and that the patents-in-suit are invalid.

PARTIES

2. Zappos is a California corporation, with a principal place of business at Henderson, Nevada.

3. On information and belief, Hill is a Delaware corporation with a principal place of business at Indianapolis, Indiana.

JURISDICTION

4. Zappos's claims arise under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, and the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, and thus this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338.

THE PATENTS

5. The United States Patent and Trademark Office issued the '490 patent on June 18, 1996. On information and belief, Hill claims to be the current owner of all rights, interest, and title in the '490 patent.

6. The United States Patent and Trademark Office issued the '649 patent on June 2, 1998. On information and belief, Hill claims to be the current owner of all rights, interest, and title in the '649 patent.

7. The United States Patent and Trademark Office issued the '142 patent on February 22, 2000. On information and belief, Hill claims to be the current owner of all rights, interest and title in the '142 patent.

EXISTENCE OF AN ACTUAL CONTROVERSY

8. On May 5, 2006, Hill's counsel sent a letter (the "May Letter") to Zappos requesting that Zappos take a license to the patents-in-suit on or before May 29, 2006. The letter identified other e-commerce companies that Hill asserts have taken licenses to or received covenants not to sue under the patents-in-suit. The letter also describes in detail two court actions commenced by Hill against e-commerce businesses alleging infringement of the patents-in-suit. Hill attached to its letter copies of court orders issued in those actions.

9. On May 19, 2006, Zappos telephoned Timothy Niednagel, Hill's counsel, to request additional time to respond to the May Letter. Mr. Niednagel orally agreed to extend

Zappos' time to respond until June 30, 2006. Zappos confirmed that extension in a letter to Mr. Niednagel dated May 19, 2006.

10. As the June 30, 2006, deadline approached, Zappos again telephoned Mr. Niednagel to request additional time to respond to the May Letter. On June 26, 2006, Mr. Niednagel orally agreed to extend Zappos' time to respond until September 1, 2006. Zappos confirmed that extension in a June 26, 2006, email to Mr. Niednagel, and Mr. Niednagel confirmed the extension in a June 30, 2006, email.

11. On June 30, 2006, Hill filed a complaint (the "Complaint") in the United States District Court, Eastern District of Texas, Marshall Division (the "Texas Court"), against a number of internet retailers. On information and belief, one or more of those defendants received a letter from Hill's counsel similar to the May Letter. The Complaint alleged infringement of the patents identified in the May Letter.

12. On August 18, 2006, Zappos telephoned Mr. Niednagel to confirm that its written response would be delivered by the agreed deadline of September 1, 2006.

13. On August 23, 2006, Zappos discovered that despite Hill's agreement to allow Zappos until September 1, 2006, to respond to the May Letter, Hill, without notice to Zappos, filed an amended complaint naming Zappos as a defendant.

14. Zappos disputes the validity of the patents-in-suit and denies that it has infringed, induced, or contributed to their infringement.

15. There is a substantial and actual controversy between Zappos and Hill regarding whether Zappos infringes the patents-in-suit and whether the patents-in-suit are valid.

16. The false allegations of infringement relating to the invalid patents-in-suit place a cloud over Zappos's e-commerce business.

17. Given Hill's conduct, there exists a clear and serious threat to Zappos's business so long as the issues regarding the patents-in-suit remain unresolved. Zappos therefore needs and seeks resolution of the issues asserted in this complaint for declaratory relief to lift the cloud over Zappos's business. On such basis, Zappos is entitled to declaratory relief.

FIRST CLAIM FOR RELIEF
[Declaration of Non-Infringement of the '490 Patent]

18. Zappos repeats the allegations of the preceding paragraphs as if fully set forth in this paragraph.

19. Hill has alleged, and now alleges, that Zappos has been and is still making, using, selling, or offering for sale, products and/or services embodying the patented inventions claimed in the '490 patent.

20. Hill has alleged, and now alleges, that Zappos has committed, actively induced, and contributed to, and continues to commit, actively induce, and contribute to, acts of patent infringement. Hill also contends that such alleged infringement is willful and deliberate, and that irreparable injury has been caused to Hill.

21. Zappos denies the allegations of Hill identified in the preceding paragraphs.

22. Zappos has alleged, and hereby alleges, that it has not infringed and presently is not infringing the '490 patent, either literally or under the doctrine of equivalents, nor has or is Zappos actively inducing or contributing to the infringement of the '490 patent. As such, Zappos has alleged, and hereby continues to allege, that it is not liable for damages arising from the claimed infringement.

23. Zappos desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited above. Such a determination and declaration are necessary and appropriate at this time so that the parties may

ascertain their respective rights and duties regarding the non-infringement, unenforceability, and invalidity of the '490 patent.

SECOND CLAIM FOR RELIEF
[Declaration of Non-Infringement of the '649 Patent]

24. Zappos repeats the allegations of the preceding paragraphs as if fully set forth in this paragraph.

25. Hill has alleged, and now alleges, that Zappos has been and is still making, using, selling, or offering for sale, products and/or services embodying the patented inventions claimed in the '649 patent.

26. Hill has alleged, and now alleges, that Zappos has committed, actively induced, and contributed to, and continues to commit, actively induce, and contribute to, acts of patent infringement. Hill also contends that such alleged infringement is willful and deliberate, and that irreparable injury has been caused to Hill.

27. Zappos denies the allegations of Hill identified in the preceding paragraphs.

28. Zappos has alleged, and hereby alleges, that it has not infringed and presently is not infringing the '649 patent, either literally or under the doctrine of equivalents, nor has or is Zappos actively inducing or contributing to the infringement of the '649 patent. As such, Zappos has alleged, and hereby continues to allege, that it is not liable for damages arising from the claimed infringement.

29. Zappos desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited above. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties regarding the non-infringement, unenforceability, and invalidity of the '649 patent.

THIRD CLAIM FOR RELIEF
[Declaration of Non-Infringement of the '142 Patent]

30. Zappos repeats the allegations of the preceding paragraphs as if fully set forth in this paragraph.

31. Hill has alleged, and now alleges, that Zappos has been and is still making, using, selling, or offering for sale, products and/or services embodying the patented inventions claimed in the '142 patent.

32. Hill has alleged, and now alleges, that Zappos has committed, actively induced, and contributed to, and continues to commit, actively induce, and contribute to, acts of patent infringement. Hill also contends that such alleged infringement is willful and deliberate, and that irreparable injury has been caused to Hill.

33. Zappos denies the allegations of Hill identified in the preceding paragraphs.

34. Zappos has alleged, and hereby alleges, that it has not infringed and presently is not infringing the '142 patent, either literally or under the doctrine of equivalents, nor has or is Zappos actively inducing or contributing to the infringement of the '142 patent. As such, Zappos has alleged, and hereby continues to allege, that it is not liable for damages arising from the claimed infringement.

35. Zappos desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited above. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties regarding the non-infringement, unenforceability, and invalidity of the '142 patent.

FOURTH CLAIM FOR RELIEF
[Declaration of Invalidity and Unenforceability of the '490 Patent]

36. Zappos repeats the allegations of the preceding paragraphs as if fully set forth in this paragraph.

37. On information and belief, the subject matters of each and all of the patents-in-suit do not meet the requirements of 35 U.S.C. § 101, and the patents-in-suit are each and all invalid, void, and unenforceable because they fail to meet the conditions specified in 35 U.S.C. § 101, *et seq.*

38. On information and belief, the claims of each and all of the patents-in-suit are invalid and unenforceable because they fail to meet the conditions of patentability set forth in 35 U.S.C. § 102.

39. On information and belief, the claims of each and all of the patents-in-suit are invalid and unenforceable because they fail to meet the conditions of patentability set forth in 35 U.S.C. § 112.

40. On information and belief, any claim for damages that Hill might make for infringement of each and all of the patents-in-suit is limited by 35 U.S.C. §§ 286 and 287.

41. On information and belief, Hill's claims of infringement of each and all of the patents-in-suit are barred, in whole or in part, by the equitable doctrine of laches.

42. On information and belief, Hill's claims of infringement of each and all of the patents-in-suit are barred, in whole or in part, by the equitable doctrine of waiver.

43. For the reasons set forth in the preceding paragraphs, each and all of the patents-in-suit are invalid and unenforceable.

44. Based on the foregoing, Zappos is entitled to a judgment that each and all of the patents-in-suit are invalid and unenforceable against Zappos.

JURY DEMAND

Zappos demands a trial by jury of all issues so triable in this action.

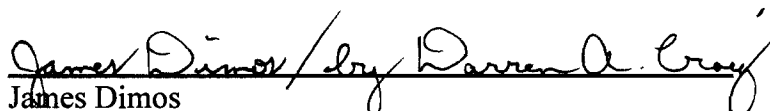
PRAYER FOR RELIEF

WHEREFORE, Zappos requests that the Court enter judgment:

- A. Declaring that Zappos has not infringed any of the patents-in-suit;
- B. Declaring each and all of the patents-in-suit invalid and unenforceable;
- C. Awarding Zappos its costs, disbursements, and attorneys' fees pursuant to 35 U.S.C. § 285, and other provisions of law; and
- D. Granting Zappos such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 25, 2006


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