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UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

MAY 16 2002

FOR THE WESTERN DISTRICT OF LOUISIANA

ROBERT H. SHEMWEEL, CLERK
BY [Signature]
DEPUTY

SHREVEPORT DIVISION

GERBER PRODUCTS COMPANY,

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CIVIL ACTION NO. CV02-0689-S

PLAINTIFF

JUDGE WALTER

v.

MAGISTRATE JUDGE PAYNE

LUV N' CARE, LTD.,

DEFENDANT.

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT

The First Amended Complaint of GERBER PRODUCTS COMPANY

("Gerber" or "plaintiff"), with respect represents:

I. Parties

1. Plaintiff, GERBER PRODUCTS COMPANY, is a corporation organized under the laws of Michigan.

2. Defendant, LUVN' CARE, LTD. ("Luv" or "defendant"), is a corporation that is incorporated under the laws of the State of Louisiana. Defendant has its principal place of business in the State of Louisiana. Defendant may be serviced with process by serving its registered agent, N. Edward Hakim, 200 Sabine St., Monroe, La 71201.

(4)

II. Jurisdiction

1. The court has subject matter jurisdiction over the lawsuit under 28 U.S.C. § 1338 and 28 U.S.C. § 1400(b).

III. Facts

1. Gerber is the owner by assignment of a United States utility patent and two United States design patents for flexible pacifiers. The relevant patents are: US 6,228,105 B1, issued May 8, 2001 (the “‘105 patent”), US D441,452 S, issued May 1, 2001 (the “‘452 patent”), and US D444,880 S, issued July 10, 2001 (the “‘880 patent”).

2. All three patents are valid and enforceable.

3. Defendant Luv has been infringing one or more claims of the ‘105 patent by importing, selling, manufacturing and/or having manufactured products that embody the patented invention, in particular, flexible pacifiers which it distributes under the brand name NATURAL FORM. Luv has been selling the infringing NATURAL FORM pacifiers in this judicial district and elsewhere in the United States.

4. Further, The NATURAL FORM pacifiers also infringe each of the ‘452 and ‘880 design patents by embodying the claimed ornamental designs, and Luv has thereby infringed each of these patents as well.

5. On information and belief, Luv will continue manufacturing, using, importing, selling and/or having manufactured the infringing NATURAL FORM pacifiers unless enjoined by this Court.

Count 1 – Patent Infringement

6. Defendant Luv, through its unauthorized acts of importing, selling, manufacturing, and/or having manufactured the NATURAL FORM pacifiers, has infringed each of the '452, '880 and '105 patents. Further, on information and belief, defendant Luv, with full knowledge of the patents, has willfully committed these acts of infringement.

Count 2 – Contributory Patent Infringement

7. Defendant Luv, through its unauthorized acts of importing, selling, manufacturing, having manufactured and/or distributing the NATURAL FORM pacifiers has committed contributory patent infringement of each of the '452, '880 and '105 patents.

Count 3 – Inducement to Infringe

8. Defendant Luv, through its unauthorized acts of importing, selling, manufacturing, having manufactured and/or distributing the NATURAL FORM pacifiers has induced others to commit acts that directly infringe each of the '452, '880 and '105 patents.

IV. Damages

1. As a direct result of defendant Luv's conduct, Gerber has suffered actual damages, lost profits and has been forced to retain legal counsel and pay costs of court to bring this action.

V. Injunction

1. On information and belief, defendant Luv will continue to infringe Gerber's patent rights unless enjoined by this Court. Accordingly, Gerber requests a preliminary injunction against Luv's infringement pending trial of this case on the merits, and a permanent injunction after the conclusion of the trial.

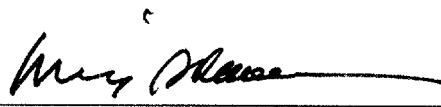
PRAYER

WHEREFORE, PLAINTIFF, GERBER PRODUCTS COMPANY, PRAYS that this First Amended Original Complaint be filed, that defendant, LUV N' CARE, LTD., be duly cited to appear and answer same, and, after due proceedings are had, that Judgment be rendered in favor of plaintiff, GERBER PRODUCTS COMPANY, and against defendant, LUV N' CARE, LTD., for the following:

- (a) Defendant Luv, its officers, agents, servants, employees, attorneys, and all persons in active concert or are participating with any of them, be preliminarily and permanently enjoined from making, having made, using, importing, selling, or offering for sale the NATURAL FORM pacifiers, and any other similar pacifiers which infringe any claim of the '452, '880 or '105 patents;
- (b) Plaintiff recover all damages it has sustained as a result of Defendant's infringement, and that these damages be trebled because of the knowing and willful conduct of defendant;
- (c) Plaintiff recover its costs of action, pre-judgment and post-judgment interest;
- (d) Plaintiff be awarded reasonable attorneys' fees for prosecuting this action; and
- (e) Plaintiff have all other relief the Court deems appropriate.

Shreveport, Louisiana, this 16th day of May, 2002.

BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corporation)

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