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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

GOJO INDUSTRIES, INC.,

and

JOSEPH S. KANFER,

Plaintiffs,

v.

D-A SPECIALTY CO., INC.

and

BETCO CORPORATION,

Defendants.

5:02CV 2228

Civil Case No.:

JUDGE OLIVER

COMPLAINT

MAG. JUDGE HEMANN

DEMAND FOR JURY TRIAL

Plaintiffs GOJO Industries, Inc. ("GOJO") and Joseph S. Kanfer ("Kanfer"), by their undersigned attorneys, for their complaint, herein allege:

NATURE OF THE ACTION

1. Plaintiffs GOJO and Kanfer bring this action against Defendants D-A Specialty Co. ("Specialty") and Betco Corporation ("Betco") for patent infringement under Sections 271 and 281-285 of the U.S. Patent Code, 35 U.S.C. §§ 271, 281-85; against Defendant Betco for false and misleading description and representation of goods in interstate commerce under

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); against Betco for unfair and deceptive trade practices under Sections 4165.02 and 4165.03 of Ohio's Deceptive Trade Practices' Act, Ohio Rev. Code Ann. §§ 4165.02, 4165.03; and against Betco for tortious interference with business relationships under the common law of Ohio.

PARTIES

2. Plaintiff GOJO is an Ohio corporation with its corporate headquarters and principal place of business at One GOJO Plaza, Suite 500, Akron, OH 44311. Plaintiff GOJO designs, manufactures, sells, supplies, and distributes hygiene and skin care products and dispensers for those products, including soap and soap dispensers.

3. Plaintiff Kanfer is an individual and a resident of Ohio. Plaintiff Kanfer is President and Chief Executive Officer of GOJO Industries, Inc.

4. Defendant Specialty is an Ohio corporation with its corporate headquarters and principal place of business at 589 Wolf Ledges Parkway, Akron, OH 44311. Defendant sells and offers to sell, a variety of products, including hygiene and skin care products, and dispensers for those products, including soap and soap dispensers of Betco Corp.

5. Defendant Betco is an Ohio corporation with its headquarters and principal place of business at 1001 Brown Avenue, Toledo, OH 43607. Defendant makes, sells, imports, supplies, and distributes hygiene and skin care products, and dispensers for those products, including soap and soap dispensers.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) for the claims of patent infringement arising out of Defendant Betco's and Specialty's violation of Sections 271 and 281-285 of the U.S. Patent Code, 35 U.S.C. §§ 271, 281-85. This Court also has jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) for the claims arising out of Defendant Betco's violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). This Court additionally has jurisdiction under 28 U.S.C. §§ 1338(b) and 1367 and principles of supplemental and pendant jurisdiction for the claims arising out of Defendant Betco's violation

of Sections 4165.02 and 4165.03 of Ohio's Deceptive Trade Practices' Act, Ohio Rev. Code Ann. §§ 4165.02, 4165.03, and arising out of Defendant's tortious interference with business relationships under the common law of Ohio.

7. Venue is proper in the Northern District of Ohio ("District") under 28 U.S.C. §§ 1391(b) and 1400(b). Venue is proper in the Eastern Division of the Northern District of Ohio under Local Rule 3.8(c) which authorizes the filing in the divisional office of the county in which the claim arose, in this instance where the act of patent infringement occurred, when multiple defendants are involved. Defendant Specialty is incorporated in Ohio, resides in this judicial District, is subject to personal jurisdiction in this judicial District, and has committed acts of patent infringement in this judicial District. Defendant Betco is incorporated in Ohio, has its principal place of business in Ohio, maintains an office and regular employees for daily conduct of business in Toledo, Ohio, and regularly and continuously engages in substantial business transactions in this judicial District, has committed acts of patent infringement in this judicial District, and a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial District.

RELEVANT FACTS

8. On April 17, 2001, the United States Patent and Trademark Office duly and legally issued United States Patent No. 6,216,916 (the "'916 Patent") to Plaintiff Kanfer for a compact fluid pump; and since that date Plaintiff Kanfer has been and still is the owner of the '916 Patent. Plaintiff GOJO is the exclusive licensee of the '916 Patent. A true copy of the '916 Patent is attached hereto as Exhibit A.

9. Defendant Specialty has been and still is infringing one or more claims of the '916 Patent by making, using, selling, and/or offering to sell compact fluid pumps and pouches for use therewith, embodying the patented invention, and will continue to do so unless enjoined by this Court.

10. Defendant Betco has been and still is infringing one or more claims of the '916 Patent by making, using, selling, and/or offering to sell compact fluid pumps and pouches for use

therewith, embodying the patented invention, and will continue to do so unless enjoined by this Court.

11. Upon information and belief, Defendants Specialty and Betco have had actual knowledge of the '916 Patent since on or about April 17, 2001, the date the '916 Patent issued.

12. Plaintiff GOJO makes and sells dispensers for liquid soap for use, for example, in restrooms in commercial places of business. Plaintiff GOJO also makes and sells refills for the dispensers. These refills may comprise a bag of liquid soap to which a compact fluid pump is attached. When a lever on the dispenser is depressed, it activates the compact fluid pump, which then dispenses soap from the bag.

13. Defendants Specialty and Betco sell refills for soap dispensers comprising a bag of liquid soap and a compact fluid pump to be used as a refill for a soap dispenser. Defendant Betco recently launched a new product line called the "NEW 2000mL SKIN CARE SYSTEM", and began offering to sell the "NEW 2000mL Refill Pouch," which includes a compact fluid pump, to customers and distributors such as Specialty as of October 1, 2002. Examples of such written offers for sale are attached as Exhibit B and Exhibit C (addressee name redacted).

14. In Defendant Betco's written offer for sale of the "NEW 2000mL Refill Pouch" attached as Exhibit B (addressee name and address redacted) and dated September 30, 2002, Defendant Betco states the following: (a) that Defendant's product is being offered at a "Lower price" and at a "25% savings off Go-Jo's best price"; and (b) that Defendant's product "Fits the Go-Jo 2000 ml dispenser (leading competitor)."

15. In Defendant Betco's written offer for sale of the "NEW 2000mL Refill Pouch" attached as Exhibit C and dated October 26, 2002, Defendant Betco states the following: (a) that Defendant's product is being offered at a "lower price" and at a "25% savings off Go-Jo's ... best price"; (b) that Defendant's "refill bag is patented", there are "three patent numbers on the outside edge of the circular dome pump", and as a result Defendant is "not infringing on GoJo's patent"; and (c) that Defendant's product is compatible with "Gojo 2000 ml, Brand" dispensers and that although "Gojo established different color keys for their customers so the individual

dispensers will only accept their specific refill pouch [sic] ... the tip that we [Defendant] use on our refill pouch is smaller and we fit [GOJO's] dispensers."

16. Defendant Betco advertises its "NEW 2000mL SKIN CARE SYSTEM" package on its website, www.betco.com, for sales beginning October 1, 2002. A copy of the website advertisement is attached as Exhibit D.

17. Defendant Specialty is selling and offering to sell bags of liquid soap and compact fluid pumps to be used as a refill for a soap dispenser, which are compatible with GOJO 2000 ml, Brand dispensers, as shown on the Defendant Specialty's D-A Specialty Co. INVOICE dated 11/13/02 and attached as Exhibit E.

18. Defendant Specialty has committed acts of patent infringement in this judicial District by selling and offering to sell, bags of liquid soap and compact fluid pumps to be used as a refill for a soap dispenser, which are compatible with GOJO 2000 ml, Brand dispensers.

19. Defendant Betco has committed acts of patent infringement in this judicial District by selling and offering to sell bags of liquid soap and compact fluid pumps embodying the patented invention to be used as a refill for a soap dispenser, which are compatible with GOJO 2000 ml, Brand dispensers.

20. Upon information and belief, Defendant Betco has made numerous statements and representations in commercial advertising and promotions published in interstate commerce throughout the United States, including this District, concerning the nature, characteristics and qualities of goods, services and commercial activities, including the legality thereof, of its product, the "NEW 2000mL Refill Pouch", which are false, misleading, and/or deceptive.

21. Upon information and belief, Defendant Betco has interfered, with malice, with the marketing, distribution and sale of Plaintiffs' hygiene and skin care products, and dispensers for those products, including soap and soap dispensers.

22. Upon information and belief, Defendants Specialty and Betco have committed the unlawful acts described herein with the intention of injuring Plaintiffs and with knowledge that its acts would cause substantial injury to Plaintiffs and to consumers. As a result of Defendants'

unlawful actions, Plaintiffs have suffered and continue to suffer damages, including reduced sales or lost profits or both.

23. Upon information and belief, Defendants have committed the unlawful acts described herein with the intention of injuring Plaintiffs and with knowledge that its acts would cause substantial injury to Plaintiffs and to consumers. As a result of Defendants' unlawful actions, Plaintiffs have suffered and continue to suffer irreparable injury for which they have no adequate remedy at law.

COUNT ONE

(Patent Infringement)

24. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 22 above.

25. The foregoing acts of Defendants Specialty and Betco constitute infringement of the '916 Patent, with knowledge of Plaintiffs' patent rights and without a reasonable basis for believing that Defendants' conduct is lawful, in violation of Sections 271 and 281-285 of the U.S. Patent Code, 35 U.S.C. §§ 271, 281-85.

26. Defendants' acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Plaintiffs' patent rights.

COUNT TWO

(Federal Unfair Competition)

27. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 22 above.

28. The foregoing acts of Defendant Betco constitute false and misleading representations in commercial advertising and promotion concerning the nature, characteristics and qualities of goods, services and commercial activities, including the legality thereof, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. Defendant Betco's false and misleading representations in commercial advertising and promotion have been and continue to be willful, deliberate, and in reckless disregard of Plaintiffs' rights.

COUNT THREE

(State Deceptive Trade Practices)

30. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 22 above.

31. The foregoing acts of Defendant Betco constitute deceptive trade practices in violation of Sections 4165.02 and 4165.03 of Ohio's Deceptive Trade Practices' Act, Ohio Rev. Code Ann. §§ 4165.02, 4165.03.

32. Defendant Betco's deceptive trade practices have been and continue to be willful, deliberate, and in reckless disregard of Plaintiffs' rights.

COUNT FOUR

(State Tortious Interference With Business Relationships)

33. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 22 above.

34. The foregoing acts of Defendant Betco constitute tortuous interference with Plaintiffs' business relationships in violation of the common law of Ohio.

35. Defendant Betco's interference with business relationships have been and continue to be malicious, willful, deliberate, and in reckless disregard of Plaintiffs' rights.

WHEREFORE, Plaintiffs demand judgment as follows:

A. Preliminarily and permanently enjoining and restraining Defendants Betco and Specialty, their officers, directors, employees, agents, servants, successors and assigns, and any and all persons acting in privity, under its control, or in concert with Defendants Betco and Specialty, from further infringement of the '916 Patent;

B. Preliminarily and permanently enjoining and restraining Defendant Betco, its officers, directors, employees, agents, servants, successors and assigns, and any and all persons acting in privity, under its control, or in concert with Defendant Betco, from making any false, misleading or deceptive representations in commercial advertising or promotion concerning the nature, characteristics and qualities of goods, services and commercial activities, including the legality thereof, related to the product called "NEW 2000mL SKIN CARE SYSTEM" or "NEW 2000mL Refill Pouch" or any other of Plaintiffs' products;

C. Preliminarily and permanently enjoining and restraining Defendant Betco, its officers, directors, employees, agents, servants, successors and assigns, and any and all persons acting in privity, under its control, or in concert with Defendant Betco, from making any false, misleading, deceptive, disparaging or defamatory representations in commercial advertising or promotion concerning the nature, characteristics and qualities of goods, services and commercial activities of Plaintiffs;

D. Issuing a mandatory injunction directing Defendant Betco, its officers, directors, employees, agents, servants, successors and assigns, and any and all persons acting in privity, under its control, or in concert with Defendant Betco, to issue corrective advertising and a public statement to dispel the impact and effect of Defendant Betco's false, misleading, deceptive, disparaging and defamatory statements in commercial advertising and promotions;

E. Awarding Plaintiffs their damages, including lost profits, together with prejudgment interest and costs, and increasing said damages to three times the amount found or assessed as provided by 35 U.S.C. § 284 and by 15 U.S.C. § 1117;

F. Awarding Plaintiffs punitive damages for Defendant Betco's tortious conduct;

G. Declaring this an exceptional case within the meaning of 35 U.S.C. § 285 and of 15 U.S.C. § 1117, and awarding Plaintiffs their reasonable attorney's fees and costs and disbursements in this action; and

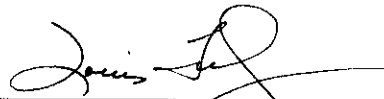
H. Granting to Plaintiffs such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

DATED: November 13, 2002

Respectfully submitted:



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