

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**SOFPOOL LLC,**

**Plaintiff,**

**v.**

**INTEX RECREATION CORP.,**

**Defendant.**

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**CIVIL ACTION NO. 2:07CV097(TJW)  
JURY TRIAL DEMANDED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff Sofpool LLC (“Sofpool”) files this First Amended Complaint against Defendant Intex Recreation Corp. (“Intex”) and alleges as follows:

**THE PARTIES**

1. Sofpool is a limited liability company residing in Rancho Cordova, California.
2. Intex Recreation Corp. is a corporation duly organized and existing under the laws of the state of California and may be served with process through its registered agent W. F. Smith, 4001 Via Oro Avenue, Suite 210, Long Beach, California 90810.

**JURISDICTION**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271, et seq. The Court has personal jurisdiction over Intex because it has committed acts within Texas and this judicial district giving rise to this action and has established minimum contacts with the forum such that the exercise of jurisdiction over Intex would not offend traditional notions of fair play and substantial justice.

**VENUE**

4. Intex has committed acts within this judicial district giving rise to this action and does business in this district, including one or more of the infringing acts of offering for sale, selling and using infringing products and providing service and support to its customers in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

**CLAIMS FOR RELIEF**

**COUNT I**

**INFRINGEMENT OF U.S. PATENT NO. DES. 408,546**

5. Sofpool hereby incorporates the allegations in paragraphs 1-4 as if fully set forth herein.

6. On April 20, 1999, United States Patent No. DES. 408,546 (the “‘546 Patent”) was duly and legally issued for an invention entitled “Above Ground Swimming Pool.” Sofpool currently holds all rights, title and interest in the ‘546 Patent, as the assignee.

7. Intex has infringed and continues to infringe the ‘546 Patent by manufacturing, using, marketing, selling, offering for sale, and/or importing products and services covered by the ‘546 Patent. In so doing, Intex has in the past and continues to infringe directly, by inducement and by contributing to the infringement of the ‘546 Patent. Intex is liable for infringement of the ‘546 Patent pursuant to 35 U.S.C. §§ 271 and 289.

8. Intex’s acts of infringement have caused damage to Sofpool, and Sofpool is entitled to recover the damages sustained as a result of Intex’s individual wrongful acts in an amount subject to proof at trial. Intex’s infringement of Sofpool’s exclusive rights under the ‘546 Patent will continue to damage Sofpool, causing irreparable harm for which there is no adequate remedy at law unless Intex is enjoined by this Court.

9. Intex’s conduct with respect to the ‘546 Patent was and is willful under 35 U.S.C. § 284 in that, among other things, Intex had actual and/or constructive knowledge of the ‘546

Patent and continued its infringing conduct in disregard of Sofpool's rights.

10. This is an exceptional case entitling Sofpool to treble damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

## COUNT II

### INFRINGEMENT OF U.S. PATENT NO. D480,817 S

11. Sofpool hereby incorporates the allegations in paragraphs 1-10 as if fully set forth herein.

12. On October 14, 2003, United States Patent No. D480,817 (the "'817 Patent'") was duly and legally issued for an invention entitled "Above Ground Swimming Pool." Sofpool currently holds all rights, title and interest in the '817 Patent, as the assignee.

13. Intex has infringed and continues to infringe the '817 Patent by manufacturing, using, marketing, selling, offering for sale, and/or importing products and services covered by the '817 Patent. In so doing, Intex has in the past and continues to infringe directly, by inducement and by contributing to the infringement of the '817 Patent. Intex is liable for infringement of the '817 Patent pursuant to 35 U.S.C. §§ 271 and 289.

14. Intex's acts of infringement have caused damage to Sofpool, and Sofpool is entitled to recover the damages sustained as a result of its individual wrongful acts in an amount subject to proof at trial. Intex's infringement of Sofpool's exclusive rights under the '817 Patent will continue to damage Sofpool, causing irreparable harm for which there is no adequate remedy at law unless Intex is enjoined by this Court.

15. Intex's conduct with respect to the '817 Patent was and is willful under 35 U.S.C. § 284 in that, among other things, Intex had actual and/or constructive knowledge of the '817 Patent and continued its infringing conduct in disregard of Sofpool's rights.

16. This is an exceptional case entitling Sofpool to treble damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

prayer for relief

WHEREFORE, Sofpool prays for judgment and seeks relief against Intex as follows:

- a. For judgment that Intex has infringed and will continue to infringe the '546 and '817 Patents directly, by inducement and/or by contribution;
- b. For judgment that this is an exceptional case and that Intex's infringement of the '546 and '817 Patents has been and continues to be willful under 35 U.S.C. § 284;
- c. For an accounting by Intex;
- d. For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by Intex, its officers, agents, servants, employees, subsidiaries and attorneys, and those persons in privity or acting in concert with them, including related individuals and entities, customers, representatives, OEMs, dealers, and distributors;
- e. For actual damages together with pre- and post-judgment interest;
- f. For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- g. For all costs of suit; and
- h. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Under Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule CV-38 of the United States District Court for the Eastern District of Texas, Plaintiff hereby demands a trial by jury of all issues properly triable by jury.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 6<sup>th</sup> day of September 2007.

/s/  
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Melissa Smith