

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

BRICA, Inc.,)
a Florida corporation)
)
and)
)
6134548 CANADA INC.,)
a Canadian corporation)
)
Plaintiffs,)
)
vs.)
)
MONAHAN PRODUCTS, LLC,)
a Massachusetts limited liability)
company)
)
Defendant.)

File No.:

**COMPLAINT FOR
WILLFUL PATENT
INFRINGEMENT**

Plaintiffs, BRICA, Inc. and 6134548 Canada Inc., through counsel, for their complaint against Monahan Products, LLC, state as follows:

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the Unites States Code. Plaintiffs, BRICA, Inc. ("BRICA") and 6134548 Canada Inc. seek a full range of remedies for the willful infringement of U.S. Patent No. 7,150,499 B2, titled

"Collapsible Cover For Seating Unit" ("the '499 patent") by Defendant, Monahan Products, LLC ("Monahan"), as a result of Monahan's marketing and sale of certain infant car seat protector products under the names "Bubble" and "Cabana." These products are hereinafter referred to as "the Infringing Products." Monahan sells the Infringing Products under the trademark UPPAbaby®, and essentially does business as UPPAbaby.

PARTIES

2. BRICA, Inc. is a Florida corporation, with its principal place of business located at 500 West 5th Street, Suite 220, Charlotte, North Carolina 28202. BRICA is the exclusive licensee of the '499 patent and has standing to sue for its infringement.

3. 6134548 Canada Inc. is a Canadian corporation, with its principal place of business located at 250 Consumers Road, Suite 406, Toronto, Ontario, M2J 4V6, Canada. 6134548 Canada Inc. is the sole owner of the '499 patent and has standing to sue for its infringement.

4. Monahan Products, LLC is a Massachusetts limited liability company, with a place of business at 60 Sharp Street, Suite 3, Hingham, Massachusetts 02043.

JURISDICTION AND VENUE

5. Monahan transacts business in this judicial district, including the use of the internet for purposes of marketing, offering for sale, and selling Infringing Products in this judicial district. Specifically, Monahan is marketing and offering for sale the Infringing Products through its own UPPAbaby website (www.uppababy.com), through the website of Amazon.com, Inc. (www.amazon.com), through the website of BuyBuyBaby, Inc. (www.buybuybaby.com), and, Monahan has sold Infringing Products through BuyBuyBaby, Inc. retail stores in this judicial district. Therefore, this Court has personal jurisdiction over Monahan.

6. This Court has exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

8. BRICA is in the business of designing, manufacturing, and marketing products intended to promote the safety and entertainment of infants and young children. BRICA and Monahan are in direct competition with one another in this business.

9. 6134548 Canada Inc. is the assignee and sole owner of the '499 patent by an assignment recorded in the United States Patent and Trademark Office on June 27, 2005, on reel/frame 016422/0246. A copy of the '499 patent is attached hereto as Exhibit 1.

10. Under a prior agreement, Defendant Monahan d/b/a UPPAbaby had been authorized to sell a product covered by one or more claims of the '499 patent, and during the calendar year 2009, Monahan paid 6134548 Canada Inc. approximately \$14,000 for permission to sell 15,000 units in the United States. UPPAbaby's product at that time was marketed under the name "Bubble," and was marked "USA Patent 7150499." Monahan subsequently terminated its agreement with 6134548 Canada Inc., and indicated that inventory would be exhausted by the end of 2010.

11. In February 2011, after Monahan had terminated the agreement which gave it rights under the '499 patent, 6134548 Canada Inc. granted BRICA an exclusive license under the '499 patent, including the right to institute an action for patent infringement.

12. Upon information and belief, Monahan currently makes, uses, sells, offers for sale and/or imports offers a "Cabana" model infant seat protector. These "Cabana" products are covered by and infringe one or more claims of the '499 patent, as there is no material difference between the older "Bubble" model (marked with the '499 patent number) and the newer "Cabana" model.

13. Monahan has also continued to make, use, sell, offer for sale and/or import infringing "Bubble" model products within the United States.

14. For instance, Monahan markets the Infringing Products through at least its own UPPAbaby website (www.uppababy.com), through the website of Amazon.com, Inc. (www.amazon.com), through the website of BuyBuyBaby, Inc. (www.buybuybaby.com), and through BuyBuyBaby, Inc. retail stores, including retail stores in this judicial district.

SOLE COUNT
WILLFUL PATENT INFRINGEMENT

15. Paragraphs 1-14 of this Complaint are incorporated herein by reference.

16. Monahan, on information and belief, is infringing one or more claims of the '499 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing into the United States, without authority, the Infringing Products.

17. Monahan, on information and belief, is infringing one or more claims of the '499 patent in violation of 35 U.S.C. § 271(b) and/or (c) by actively inducing others to infringe and/or contributing to the infringement by others in the making, using, selling, offering for sale and/or importing into the United States, without authority, the Infringing Products.

18. On information and belief, Monahan's infringement of the '499 patent has taken place with knowledge of the '499 patent and has been willful, deliberate, and intentional.

19. As a result of Monahan's infringing activities, BRICA and 6134548 Canada Inc. will be damaged and will be irreparably harmed unless and until such infringing activities are enjoined by this Court.

WHEREFORE, BRICA and 6134548 Canada Inc. respectfully request this Court:

A. To enter judgment that Monahan has infringed the '499 patent;

B. To enter an order preliminarily and permanently enjoining Monahan, and its respective officers, agents, employees, representatives, and all persons in active concert or participation with any of them, from infringing the '499 patent;

C. To award BRICA and 6134548 Canada Inc. their respective damages in amounts sufficient to compensate them for Monahan's infringement of the '499 patent, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

D. To treble the damages awarded to BRICA and 6134548 Canada Inc. by reason of Monahan's willful infringement;

E. To declare that this is an exceptional case under 35 U.S.C. § 285 and to award BRICA and 6134548 Canada Inc. their attorneys' fees, expenses, and costs incurred in this action; and

F. To award BRICA and 6134548 Canada Inc. such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

BRICA, Inc. and 6134548 Canada Inc. demand trial by jury on all issues so triable.

This the 7th day of June, 2011.

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