

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GENAL STRAP, INC. d/b/a VOGUESTRAP,

Plaintiff,

Civil Action No.

-against-

IRIT DAR, ELI PINCHASSI DAR,
ID STUDIOS, INC., and ID SOLUTIONS,
LLC,

Defendants.
-----X

JOHNSON, J

GO. M. J.

COMPLAINT FOR DECLARATORY JUDGMENT OF PLAINTIFF'S RIGHTS

Plaintiff Genal Strap, Inc. d/b/a Voguestrap (hereinafter "Voguestrap" or "Plaintiff"), by and through its undersigned attorneys, for its Declaratory Judgment Complaint against Defendants Irit Dar ("Irit Dar"), Eli Pinchassi Dar ("Pinchassi"), ID Studios, Inc. ("ID Studios") and ID Solutions, LLC ("ID Solutions")(hereinafter collectively "Defendants") alleges as follows:

1. This is an action for a declaratory judgment arising under the patent laws of the United States, 35 U.S.C. § 101 et. seq. for a declaration that U.S. Patent Nos. 6,170,664, issued on January 9, 2001 ("the '667 Patent"), and D 439,404, issued on March 27, 2001 ("the '404 Patent")(hereinafter collectively "the Contact Lens Holder Patents"), are unenforceable and not infringed by Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1338 with respect to the claims arising under the Patent Act, 35 U.S.C. §101 et. seq., and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq. This Court also

has supplemental jurisdiction over the remaining claims alleged herein pursuant to 28 U.S.C. §1367

3. There is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, this Court also has subject matter jurisdiction over this action under 28 U.S.C. §1332(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) and §1400 because a substantial part of the events giving rise to the claims occurred in this district, and Defendants are subject to personal jurisdiction in this judicial district and Defendants may be found in this judicial district.

5. Upon information and belief, each of Defendants is doing business within this State and judicial district, transact business within this State and judicial district, derive substantial revenue from intra-state and inter-state commerce, have committed acts within this State and judicial district having injurious consequences within the State and judicial district, and are otherwise within the jurisdiction of this Court.

THE PARTIES

6. Plaintiff Voguestrap is a corporation organized and existing under the laws of the State of New York, located and doing business at 31-00 47th Avenue, Long Island City, New York 11101.

7. Upon information and belief, Defendant Irit Dar is an individual residing at 3502 Hillside Terrace, Fair Lawn, New Jersey 07410 and the named inventor of the Contact Lens Holder Patents.

8. Upon information and belief, Defendant Pinchassi is an individual residing

at 3502 Hillside Terrace, Fair Lawn, New Jersey 07410.

9. Upon information and belief, Defendant ID Studios is a Delaware corporation having a principal place of business at East 64 Midland Avenue, Paramus, New Jersey 07652.

10. Upon information and belief, Defendant ID Solutions is a New Jersey limited liability company having a principal place of business at East 64 Midland Avenue, Paramus, New Jersey 07652.

THE PRODUCTS

11. The products involved here are contact lens holders ("Contact Lens Holder Products") designed pursuant to the Contact Lens Holder Patents.

RELEVANT FACTS

12. Upon information and belief, Defendant ID Studios was the assignee of all rights, title and interests to the Contact Lens Holder Patents, having been assigned those rights from Defendant Irit Dar.

13. Upon information and belief, Defendant Pinchassi is the President of Defendant ID Studios and owns an interest therein.

14. Upon information and belief, by a document entitled Organizational Agreement, made July 1, 2001, and by other agreements, Defendants Irit Dar, Pinchassi and ID Studios conveyed their rights in the Contact Lens Holder Patents to Defendant ID Solutions. Said Organizational Agreement stated, in paragraph 4 thereof, in pertinent part, "IDS, LLC [ID Solutions, LLC], IDS, [ID Studio] and/or Pinchassi [Eli Pinchassi] shall assign and contribute to the IDS, LLC [ID Solutions, LLC] all of its

business assets, including inventory, merchandise supplier, customer and supplier lists, records, all trademarks, patents, service marks, its right to use the 'ID Studios' and any and all other intellectual property". Thereby, Defendant ID Solutions owned all rights, title and interests in the Contact Lens Holder Patents.

15. Upon information and belief, at all relevant times herein, Milton E. Gerard ("Gerard") was a director of Defendant ID Solutions.

16. Upon information and belief, at all relevant times herein, Gerard was a Chairman of the Board of Governors of Defendant ID Solutions.

17. Upon information and belief, at all relevant times herein, Gerard was the Chief Manager of Defendant ID Solutions.

18. Pursuant to said Organizational Agreement, at all relevant times herein, Gerard had the "final decision" for "Management, Marketing, Public Relations, Sales Representatives and/or Distributors, Vendors, including Manufacturing Agents, or Manufacturers" of the business of Defendant ID Solutions, all specifically relating to the manufacture and sale of the Contact Lens Holder Products.

19. By an employment agreement dated March 1, 2002, by and between Plaintiff Voguestrap and Gerard, Gerard agreed to transfer to Voguestrap, under specified conditions, the exclusive rights to the Contact Lens Holder Patents and the Contact Lens Holder Products, including "product distribution, sales, vendors, manufacturing agents, manufacturers, management, marketing, public relations."

20. The employment agreement provided that in the event that Gerard leaves the employment of Plaintiff Voguestrap, all of the foregoing rights were to remain with Plaintiff.

21. Under said employment agreement, Plaintiff Voguestrap's only financial obligation was to pay a specified "licensing fee" to Defendant ID Solutions, which it is and has been ready, willing and able to pay.

22. All of the foregoing arrangements between Plaintiff and Gerard were known to the various Defendants, who implicitly approved such arrangements and benefitted therefrom.

23. On or about May 15, 2003, Plaintiff Voguestrap, at its place of business, received a "cease and desist" letter from counsel for Defendant ID Studios, which, upon information and belief, was written at the behest of the other Defendants, and alleged that the Contact Lens Holder Products, marketed and sold by Voguestrap, infringe upon the Contact Lens Holder Patents. In the cease and desist letter, Defendant ID Studios alleged that it owned the Contact Lens Holder Patents.

24. By letter dated November 26, 2003, counsel for Defendant ID Studios, which, upon information and belief was written at the behest of the other Defendants, also sent a "cease and desist" letter to Wal-Mart Stores ("Wal-Mart"), located at 702 S.W. 8th Street, Bentonville, Arkansas 72716, which is one of Plaintiff's most important customers for Contact Lens Holder Products. The letter requested that Wal-Mart "cease and desist" the sale of Contact Lens Holder Products. Upon information and belief, counsel for Defendant ID Studios sent additional cease and desist letters to Wal-Mart requesting that Wal-Mart "cease and desist" the sale of Contact Lens Holder Products.

25. Upon information and belief, counsel for Defendant ID Studios has also sent "cease and desist" letters to other customers of Plaintiff Voguestrap and

threatened to take legal action against these customers if said Defendant's demands were not met.

26. At various times thereafter, counsel for Defendant ID Studios sent numerous additional similar letters to Voguestrap, requesting an exorbitant amount of damages and threatening to go to court on this matter, if necessary, always alleging that it owned the Contact Lens Holder Patents.

**COUNT I: DECLARATION OF UNENFORCEABILITY AND
NON-INFRINGEMENT UNDER THE PATENT LAWS**

27. Plaintiff repeats and re-alleges each allegation in paragraphs 1-26 as if set forth in full herein.

28. Plaintiff has sold and intends to continue to market and sell Contact Lens Holder Products in commerce.

29. Defendant ID Studios has asserted that the Contact Lens Holder Products marketed and sold by Plaintiff Voguestrap infringe upon the Contact Lens Holder Patents.

30. Plaintiff believes and alleges that the Contact Lens Holder Products do not now, nor have ever, infringed upon any claim of the Contact Lens Holder Patents since Plaintiff is authorized to sell products embodying the claimed subject matter of the Contact Lens Holder Patents, namely the Contact Lens Holder Products, based on its agreement with Gerard who had authority, both actual and apparent, to grant such rights by and through the various Defendants and by virtue of his relationship with Defendants.

31. In view of the foregoing, there has been and now is an actual controversy between Plaintiff and Defendants regarding the enforceability and non-infringement of the Contact Lens Holder Patents as against Plaintiff.

32. Plaintiff seeks and is entitled to a Declaration by this Court that it is a non-infringer of the Contact Lens Holder Patents and that it has rights to manufacture, have manufactured, distribute, import and sell the Contact Lens Holder Products in commerce, free and clear of any contrary claims by any of the Defendants.

33. This is an exceptional case which will entitle Plaintiff to an award of reasonable attorney fees under 35 U.S.C. § 285.

**COUNT II: INTERFERENCE WITH CONTRACTUAL RELATIONS
AND PROSPECTIVE ECONOMIC ADVANTAGE**

34. Plaintiff repeats and re-alleges each allegation in paragraphs 1-33 as if set forth in full herein.

35. Prior to Defendants' actions with respect to the assertion of infringement of the Contact Lens Holder Patents against Plaintiff and its customers, Plaintiff maintained a profitable contractual relationship with Wal-Mart and other customers for the supply and sale of Contact Lens Holder Products, to be sold in Wal-Mart stores nationwide, as well as in other stores owned and operated by Plaintiff's customers. Plaintiff expended considerable time, effort and resources during this period to promote and solidify a mutually successful relationship with its customers, including Wal-Mart. Plaintiff's efforts in connection with the sale of Contact Lens Holder Products to Wal-Mart and its other customers resulted in a profitable business venture for Plaintiff and Wal-Mart and Plaintiff's other customers.

36. As heretofore alleged, Defendants, through their counsel, wrongfully sent letters to Wal-Mart and Plaintiff's other customers demanding that these customers "cease and desist" the sale of Plaintiff's Contact Lens Holder Products, thereby, upon information and belief, inducing Wal-Mart and Plaintiff's other customers to reduce or cease purchase orders for Plaintiff's Contact Lens Holder Products for sale in their stores and other establishments, thus wrongfully interfering with Plaintiff's contractual relationships with its customers.

37. Further, the cease and desist letters wrongfully sent by Defendant ID Studio's counsel to Plaintiff's customers, at the behest of Defendants, and other wrongful and unjustified acts, damaged Plaintiff by poisoning the atmosphere and relationship that Plaintiff had developed and had intended to continue to develop through its salespersons, to its business advantage, with Wal-Mart and its other customers with respect to the Contact Lens Holder Products.

38. Defendants' acts herein were with full knowledge that Plaintiff Voguestrap had full rights to manufacture, distribute and sell the Contact Lens Holder Products. Defendants' wrongful and intentional actions thus prevented Plaintiff from fully exploiting its authority to market the Contact Lens Holder Products to said customers.

39. As a direct and proximate result of Defendants' activities, including their intentional interference with Plaintiff's business and contractual relationship with Wal-Mart and its other customers, Plaintiff has been substantially injured in its business, property, goodwill and reputation in an amount to be determined but, on information and belief, not less than \$1,000,000.

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

A. For a declaration and judgment declaring that the Contact Lens Holder Patents are not infringed by the Contact Lens Holder Products sold by Plaintiff;

B. That the Contact Lens Holder Products manufactured, marketed and sold by Plaintiff, are manufactured, marketed and sold pursuant to various agreements with Defendants, and therefore the Contact Lens Holder Patents are not enforceable against Plaintiff;

C. For judgment that Defendants are liable to Plaintiff for interference with contractual relations and interference with prospective economic advantage, in an amount to be determined by the Court, such amount, on information and belief, to be not less than \$1,000,000.00;

D. Awarding Plaintiff its costs, expenses and reasonable attorney fees as permitted by law; and

E. Awarding Plaintiff such other and further relief as the as the Court may deem just and proper.

Dated: April 22, 2004
New York, New York

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