

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.: 8:08-cv-01645-T-23MAP

MURPHY WALL-BEDS HARDWARE, INC. , a Canadian corporation,)	
)	
Plaintiff,)	COMPLAINT FOR PATENT
)	INFRINGEMENT AND COPYRIGHT
)	INFRINGEMENT
v.)	
)	
CREATE MORE SPACE, INC. , a Florida corporation, ROY A. NEWMAN , and ASIAN TREASURE CHEST, INC. , a Florida corporation,)	DEMAND FOR JURY TRIAL
)	
Defendants.)	INJUNCTIVE RELIEF SOUGHT
)	

FIRST AMENDED COMPLAINT

Plaintiff, Murphy Wall-Beds Hardware, Inc. (“Murphy Beds”) hereby makes and files this First Amended Complaint against Defendants Create More Space, Inc. (“Create More Space”), Roy A. Newman (“Newman”) and Asian Treasure Chest, Inc. (“Asian Treasure”) (collectively, “Defendants”) and alleges as follows:

INTRODUCTION

1. This case concerns the Defendants’ knowing and willful infringement of Murphy Beds’ patented wall-bed product and the accompanying copyrighted instruction manual under the provisions of 35 U.S.C. §§ 1 et seq. and 17 U.S.C. §§ 101.

2. Murphy Beds is a leading manufacturer and supplier of wall-beds. Create More Space, a former Murphy Beds dealer, under the supervision and direction of Newman, and with the assistance of Asian Treasure, sells a wall-bed product that is a

knockoff of Murphy Beds' wall-bed product, the design of which has been duly and legally patented by Murphy Beds. Because of Create More Space's former dealer relationship with Murphy Beds, Create More Space and Newman are knowledgeable of Murphy Beds' patented design, and have possessed such knowledge at all times relevant to the sale of the infringing product by Create More Space.

3. Upon information and belief, Create More Space contracted with Asian Treasure to produce a copy of a wall-bed product based on a patented design owned by Murphy Beds.

4. Upon information and belief, Create More Space also includes an infringing instruction manual with each infringing wall-bed unit that it sells. Because of Create More Space's former dealer relationship with Murphy Beds, Create More Space and Newman have had access to this material and thus are knowledgeable of Murphy Beds' copyright rights, and have possessed such knowledge at all times relevant to the sale of the infringing product by Create More Space.

5. By this suit, Plaintiff Murphy Beds seeks to prevent the continued infringement of its patent and copyright rights, and damages for such infringement.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff Murphy Beds is a Canadian corporation having its principal place of business at 19231 54th Avenue, Unit 1, Surrey, British Columbia V3S 8E5, Canada.

7. Defendant Create More Space is a corporation organized and existing under the laws of Florida with its principal place of business at 1251 Commercial Way, Spring Hill, Florida 34606. Create More Space manufactures, sells and offers for sale

products and systems designed to maximize spaces, including Murphy Bed's patented product.

8. Defendant Newman is an individual who, upon information and belief, currently resides at 336 Silas Court, Spring Hill, Florida 34609. Upon information and belief, Newman is the vice president of Defendant Create More Space.

9. Defendant Asian Treasure is a corporation organized and existing under the laws of Florida with its principal place of business at 11257 N.W. 34th Place, Coral Springs, Florida 33065.

10. Create More Space is subject to personal jurisdiction in this district by virtue of, among other things, doing business and committing acts of infringement in the State of Florida, including in this judicial district, through agents and representatives, otherwise having substantial contacts with this State and this judicial district, and/or by virtue of its answer and appearance in this case as a defendant.

11. Newman is subject to personal jurisdiction in this district by virtue of, among other things, doing business and committing acts of infringement in the State of Florida, including in this judicial district, otherwise having substantial contacts with this State and this judicial district, and/or by virtue of his answer and appearance in this case as a defendant.

12. Asian Treasure is subject to personal jurisdiction in this district by virtue of, among other things, doing business and committing acts of infringement in the State of Florida, including in this judicial district, through agents and representatives, and/or by otherwise having substantial contacts with this State.

13. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* and the Copyright Laws of the United States, 17 U.S.C. §§ 101 *et seq.*

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

INTELLECTUAL PROPERTY IN SUIT

16. On November 7, 2000, United States Design Patent No. 433,246, entitled “BED FRAME” (the “‘246 Patent”), was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). A true and accurate copy of the ‘246 Patent is attached hereto as Exhibit 1.

17. Murphy Beds is the assignee owner of the entire right, title and interest in the ‘246 Patent.

18. On July 24, 2008, Copyright Registration No. TX 6-854-143, entitled “MURPHY WALL-BEDS HARDWARE INC., SUPREME STEEL BED FRAME & MECHANISM MODELS SBF-M AND SBF INSTRUCTIONS” (the “Instruction Manual”), was duly and legally issued by the United States Copyright Office. A true and accurate copy of the Certificate of Registration is attached hereto as Exhibit 2. A true and accurate copy of the Instruction Manual is attached hereto as Exhibit 3.

19. Murphy Beds is the copyright claimant for the Instruction Manual.

FACTUAL BACKGROUND

20. Murphy Beds was established in 1975. Originally specializing in panel bed hardware, Murphy Beds has expanded to become a fully integrated wall-bed supply and service company. Murphy Beds' customers can purchase hardware kits and construct a Murphy Bed themselves or order a customized Murphy Bed unit and have it professionally installed by Murphy Beds.

21. If a Murphy Beds' customer decides to construct a Murphy Bed himself, the hardware kit includes Murphy Beds' easy to follow Instruction Manual.

22. Murphy Beds offers dealership opportunities. Create More Space became a Murphy Beds dealer in February 2006 and continued in that capacity until July 2007. As a Murphy Beds' dealer, Create More Space and Newman, as its vice president, were provided with complete information about Murphy Beds' products and had access to and knowledge of Murphy Beds' patented designs and Instruction Manual.

23. Upon information and belief, Create More Space ceased operating as a Murphy Beds dealer in order to begin selling an infringing wall-bed product that it obtained through a lower cost foreign supplier – Asian Treasure.

24. Create More Space contracted with Asian Treasure for the design and manufacture of the infringing wall-bed product. In doing so, Create More Space, Newman and Asian Treasure copied Murphy Beds' bed frame design, drill hole patterns, and the like as a short cut for not having pay to develop their own materials and in order to pass the infringing product off as a Murphy Bed product.

25. Upon information and belief, Asian Treasure manufactured the infringing wall-bed product in its location in Jiangmen, China and then shipped the infringing wall-bed product to Create More Space in Florida, where the infringing wall-bed product would eventually be sold.

26. Create More Space has sold and continues to sell a wall-bed product that is a direct knockoff of Murphy Beds' wall-bed product. Murphy Beds' wall-bed product is known as the "SUPREME Steel Bed Frame & Mechanism" and comes in models "SBF-M" and "SBF." Moreover, upon information and belief, Create More Space also includes an infringing reproduction of the Instruction Manual with each infringing product that it sells.

27. Like Murphy Beds, Create More Space offers its customers the option of ordering a wall-bed unit and constructing it themselves or having the wall-bed unit installed by Create More Space. Create More Space advertises for sale its do-it-yourself infringing wall-bed frame on its Internet website – www.murphybedframe.com.

28. Murphy Beds has never granted Create More Space, Newman, or Asian Treasure permission to use the design claimed in the '246 Patent or the copyrighted Instruction Manual.

COUNT ONE
Patent Infringement by Create More Space

29. Murphy Beds repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 28 above.

30. Upon information and belief, Defendant Create More Space has, in violation of 35 U.S.C. §§ 271(a) and (b), infringed, actively induced the infringement of,

and contributorily infringed, literally or under the doctrine of equivalents, the '246 Patent in this judicial district, without authority, by, among other things, making, having made, importing, using, offering for sale, and/or selling a bed system that embodies the design claimed in the '246 Patent.

31. Upon information and belief, at all times Create More Space's infringement has been knowing, willful, and deliberate, justifying the assessment of costs and attorneys' fees pursuant to 35 U.S.C. § 285.

32. Murphy Beds has suffered damages as a result of Create More Space's infringing activities and will continue to suffer damages and irreparable harm in the future unless Create More Space's activities are enjoined by this Court.

COUNT TWO
Patent Infringement by Asian Treasure

33. Murphy Beds repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 32 above.

34. Upon information and belief, Defendant Create More Space has, in violation of 35 U.S.C. §§ 271(a), infringed, literally or under the doctrine of equivalents, the '246 Patent in this judicial district, without authority, by, among other things, making, having made, importing, using, offering for sale, and/or selling a bed system that embodies the design claimed in the '246 Patent.

35. Upon information and belief, at all times Asian Treasure's infringement has been knowing, willful, and deliberate, justifying the assessment of costs and attorneys' fees pursuant to 35 U.S.C. § 285.

36. Murphy Beds has suffered damages as a result of Asian Treasure's infringing activities and will continue to suffer damages and irreparable harm in the future unless Asian Treasure's activities are enjoined by this Court.

COUNT THREE
Inducing Patent Infringement by Newman

37. Murphy Beds repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 36 above.

38. Newman had knowledge of the claims of the '246 Patent in his position as vice president of Create More Space, a former Murphy Beds dealer.

39. Upon information and belief, Defendant Newman has, in violation of 35 U.S.C. § 271 (b), actively and knowingly induced Create More Space and/or one or more of Create More Space's customers to directly infringe, literally or under the doctrine of equivalents, the '246 Patent.

40. Upon information and belief, at all times Newman's infringement has been knowing, willful, and deliberate, justifying the assessment of costs and attorneys' fees pursuant to 35 U.S.C. § 285.

41. Murphy Beds has suffered damages as a result of Newman's infringing activities and will continue to suffer damages and irreparable harm in the future unless Newman's activities are enjoined by this Court.

COUNT FOUR
Copyright Infringement by Create More Space

42. Murphy Beds repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 41 above.

43. The Instruction Manual is an original work of authorship, embodying copyrightable subject matter, subject to the full protection of the United States copyright laws. Murphy Beds is currently, and at all relevant times has been, the sole and exclusive owner of all right, title, and interest in and to the copyrights in the Instruction Manual.

44. Defendant Create More Space has, in violation of 17 U.S.C. § 501, copied and/or created derivative works based upon the Instruction Manual, and/or copyrightable original expression thereof, and distributed these reproductions and/or claimed attribution in the market to support, promote, advertise, and/or solicit its products and services, without Murphy Beds' permission or authorization.

45. Upon information and belief, at all times Create More Space's infringement has been knowing, willful, and deliberate, justifying the assessment of increased damages pursuant to 17 U.S.C. § 504 and costs and attorneys' fees pursuant to 17 U.S.C. § 505.

46. Murphy Beds has suffered damages as a result of Create More Space's infringing activities and will continue to suffer damages and irreparable harm in the future unless Create More Space's activities are enjoined by this Court.

COUNT FIVE
Contributory Copyright Infringement by Newman

47. Murphy Beds repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 46 above.

48. The Instruction Manual is an original work of authorship, embodying copyrightable subject matter, subject to the full protection of the United States copyright

laws. Murphy Beds is currently, and at all relevant times has been, the sole and exclusive owner of all right, title, and interest in and to the copyrights in the Instruction Manual.

49. Defendant Newman had access to and possessed knowledge of the Instruction Manual in his position as vice president of Create More Space, a former Murphy Beds dealer.

50. Newman is, and has been, aware that Create More Space is making and using unauthorized reproductions of the Instruction Manual to its own and his own personal gain.

51. Newman has actively and knowingly induced, caused, or materially contributed to the unauthorized reproduction and use of the Instruction Manual.

52. Upon information and belief, at all times Newman's infringement has been knowing, willful, and deliberate, justifying the assessment of increased damages pursuant to 17 U.S.C. § 504 and costs and attorneys' fees pursuant to 17 U.S.C. § 505.

53. Murphy Beds has suffered damages as a result of Newman's infringing activities and will continue to suffer damages and irreparable harm in the future unless Newman's activities are enjoined by this Court.

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

A. Preliminary and permanent injunctions against Defendants Create More Space and Newman, and all those in active concert with them, enjoining their infringement of the '246 Patent and the Instruction Manual, including advertisement of

the infringing wall-bed product on Create More Space's website – www.murphybedframe.com;

B. A preliminary and permanent injunction against Defendant Asian Treasure, and all those in active concert with Asian Treasure, enjoining their infringement of the '246 Patent.

C. Judgment that Defendants Create More Space and Newman have infringed, actively induced infringement of, and/or contributorily infringed the '246 Patent;

D. Judgment that Defendant Asian Treasure has infringed the '246 Patent;

E. Judgment that Defendants Create More Space and Newman have infringed, actively induced infringement of, and/or contributorily infringed Plaintiff's copyrighted Instruction Manual;

F. Awarding patent damages under 35 U.S.C. § 289 of Defendants' profits of not less than \$250 per unit, plus prejudgment interest, to compensate Plaintiff for Defendants' infringement of the '246 Patent;

G. Awarding Plaintiff's costs and reasonable attorneys' fees for all acts of patent infringement complained of herein, as provided under 35 U.S.C. § 285;

H. Awarding copyright damages under 17 U.S.C. § 504 of actual damages, or statutory damages of not less than \$750 or more than \$30,000, and a finding of willfulness and increased damages of \$150,000, against Defendants Create More Space and Newman;

I. Ordering the impounding and disposition of infringing articles as provided under 17 U.S.C. § 503;

J. Awarding Plaintiff's costs and reasonable attorneys' fees for all acts of copyright infringement complained of herein, as provided under 17 U.S.C. § 505;

K. Awarding Plaintiff's costs as provided in Rule 54(d) of the Federal Rules of Civil Procedure; and

L. Such further and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues properly triable by jury in this action.

Dated: March 26, 2009.

Respectfully Submitted,

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***MURPHY WALL-BEDS
HARDWARE, INC.***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2009, the foregoing **FIRST AMENDED COMPLAINT** was served on Defendants Create More Space, Inc. and Roy A. Newman through their counsel, **Richard J. Mockler, Esq.**, Rywant, Alvarez, Jones, Russo & Guyton, P.A., Perry Paint & Glass Building, Suite 500, 109 Brush Street, Tampa, Florida 33602, rjm@rywantalvarez.com via U.S. Postal Service with the proper postage affixed thereto, as well as by electronic mail.

I HEREBY FURTHER CERTIFY that the foregoing **FIRST AMENDED COMPLAINT**, along with a summons from this Court, will be served by hand delivery on Defendant Asian Treasure Chest, Inc. via private process server at Asian Treasure Chest, Inc.'s principal place of business located at 11257 N.W. 34th Place, Coral Springs, Florida 33065.

/s/ Christian B. Turner

Christian B. Turner