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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TOTAL GARD CORPORATION)

)
)
)
Plaintiff,)

v.)

Civil Action No. _____

DENTEK ORAL CARE, INC.)

**COMPLAINT FOR PATENT
INFRINGEMENT AND JURY DEMAND**

Defendant.)
)
)

Plaintiff, Total Gard Corporation (hereinafter, "Total Gard"), for its complaint against defendant, Dentek Oral Care, Inc. ("Dentek"), alleges and states the following:

PARTIES

1. Plaintiff Total Gard is a New Jersey corporation having a principal place of business at 175 Cedar Lane, Suite 1, Teaneck, New Jersey 07666-4315.

2. Upon information and belief, Defendant Dentek is a Tennessee corporation having a place of business at 807 Excellence Way, Maryville, Tennessee 37801.

3. Upon information and belief, Dentek regularly does or solicits business in the State of New Jersey, engages in a persistent course of conduct in the State of New Jersey, and/or derives substantial revenue from its products used in the State of New Jersey, including the products at issue in this lawsuit.

JURISDICTION AND VENUE

4. Total Gard brings this action pursuant to the Patent Laws of the United States, codified at 35 U.S.C. § 1 *et seq.*

5. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (original jurisdiction under patent laws).

6. Venue of this action is properly laid in the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §§ 1391(b),(c) (general venue statute) and/or 1400(b) (venue for patent infringement claims).

PATENTS IN SUIT

7. On September 9, 2008, U.S. Patent No. 7,422,017 entitled "Mouthguard," issued with James J. Bancroft, DMD as the named inventor (hereinafter "the Bancroft '017 patent"). A true and correct copy of the Bancroft patent is attached hereto as Exhibit 1.

8. The Bancroft '017 patent was duly and legally issued by the U.S. Patent and Trademark Office on September 9, 2008. The Bancroft '017 patent is valid and subsisting.

9. On September 5, 1995, U.S. Patent No. 5,447,168 entitled "Mouthguard," issued with James J. Bancroft, DMD as the named inventor (hereinafter, the "Bancroft '168 patent"). A true and correct copy of the Bancroft patent is attached hereto as Exhibit 2.

10. The Bancroft '168 patent was duly and legally issued by the U.S. Patent and Trademark Office on September 5, 1995. The Bancroft '168 patent is valid and subsisting.

11. Total Gard is the owner by assignment of all legal rights, title, and interests in and to the Bancroft '017 patent and the Bancroft '168 patent, including the right to bring this suit for damages and injunctive relief for infringement thereof.

COUNT 1: INFRINGEMENT OF BANCROFT '017 PATENT

12. Total Gard incorporates by reference paragraphs 1-11 above as though fully set forth herein.

13. Total Gard designs, develops, and markets oral care products, including teeth protection devices called mouthguards that are covered by the patents invented by Dr. Bancroft, including the Bancroft '017 patent and the Bancroft '168 patent. Total Gard markets its oral care products under the TOTALGARD, STRESSGARD and STRESSGARD II names. The TOTALGARD product is an athletic protection device, while the STRESSGARD and STRESSGARD II products are devices used at night (commonly called nighttime dental guards or nightguards) that prevent grinding and/or clenching (bruxism) of teeth during sleep. The TOTALGARD, STRESSGARD, and STRESSGARD II mouthguards are examples of commercial embodiments of products protected by the claims of the Bancroft '017 patent and the Bancroft '168 patent.

14. Total Gard derives significant competitive advantages from the patented features of the Bancroft '017 patent, including the use of at least one division, such as a split or opening, in the bite tab that improves flexibility and fit, while permitting occlusal contact with all of the wearer's teeth. The division permits spacing between the bite tab sections to change to provide flexibility and to accommodate different mouth sizes. (*See, e.g., Ex. 1 at col. 2, lines 37-43.*)

15. Dentek offers for sale and sells its nightguards, including its "Original Nightguard," in the State and District of New Jersey through sales in stores located in New

Jersey, through the Internet and by advertising in nationally published trade magazines circulated in this District, such as Drug Store News. The Dentek Original Nightguard includes divisions in its bite tab in the form of splits (openings) that enable the spacing between the bite tab sections to change to accommodate different mouth sizes, as taught by the Bancroft '017 patent.

16. The application that led to the issuance of the Bancroft '017 patent was published on June 14, 2007, as US 2007/0131232 A1. Dentek has been on actual notice of this publication and its infringement of its pending claims since on or about February 29, 2008. Dentek has been on actual notice of the imminent issue and infringement of the Bancroft '017 patent since on or about July 14, 2008.

17. Dentek has infringed and continues to infringe the claims of the Bancroft '017 patent, in this District and elsewhere in the United States; by making, using, importing, offering for sale, and/or selling nightguards, including the Dentek Original Nightguard, having each and every element recited in at least one claim of the Bancroft '017 patent in violation of 35 U.S.C. § 271.

18. On information and belief, Dentek's infringement of the Bancroft '017 patent is and will continue to be deliberate and willful.

19. Total Gard has been damaged as a result of the above-referenced infringement of the Bancroft '017 patent in amount to be determined at trial, and has suffered, and will continue to suffer, irreparable injury unless Dentek is enjoined from infringing the Bancroft patent.

COUNT 2: INFRINGEMENT OF BANCROFT '168 PATENT

20. Total Gard incorporates by reference paragraphs 1-19 above as though fully set forth herein.

21. Total Gard derives significant competitive advantages from the patented features of the Bancroft '168 patent, including the use of a stress release mechanism in the form of a groove defining a hinge permitting flexing of the mouthguard to conform to the wearer's mouth, thereby enhancing the comfort, fit, and/or retention of the mouthguard during use.

22. Dentek's Comfort-Fit Nightguard includes a groove defining a hinge permitting flexing of the nightguard to conform to the wearer's mouth, as taught by the Bancroft '168 patent.

23. Dentek offers for sale and sells nightguards, including its Comfort-Fit Nightguard, in the State and District of New Jersey through sales in stores located in New Jersey, through the Internet and by advertising in nationally published trade magazines circulated in this District, such as Drug Store News.

24. Total Gard has given the public, including Dentek, constructive notice of the Bancroft '168 patent since 1997 by marking its patented products with U.S. Patent No. 5,447,168.

25. Dentek has been on actual notice of the Bancroft '168 patent since at least February 29, 2008.

26. Dentek has infringed and continues to infringe the claims of the Bancroft '168 patent, in this District and elsewhere in the United States, by making, using, importing, offering for sale, and/or selling nightguards, including the Comfort-Fit Nightguard, having each and

every element recited in at least one claim of the Bancroft '168 patent in violation of 35 U.S.C. § 271.

27. On information and belief, Dentek's infringement of the Bancroft '168 patent has been, and continues to be, deliberate and willful.

28. Total Gard has been damaged as a result of the above-referenced infringement of the Bancroft '168 patent in amount to be determined at trial, and has suffered, and will continue to suffer, irreparable injury unless Dentek is enjoined from infringing the Bancroft patent.

PRAYER FOR RELIEF

WHEREFORE, Total Gard prays for the following relief:

1. A preliminary and permanent injunction prohibiting Dentek from making using, importing, offering for sale, selling, and/or advertising nightguards that infringe the Bancroft '017 patent, and from otherwise directly infringing, contributing to, or inducing the infringement of the Bancroft '017 patent, and for all further and proper injunctive relief pursuant to 35 U.S.C. §283;

2. A preliminary and permanent injunction prohibiting Dentek from making using, importing, offering for sale, selling, and/or advertising nightguards that infringe the Bancroft '168 patent, and from otherwise directly infringing, contributing to, or inducing the infringement of the Bancroft '168 patent, and for all further and proper injunctive relief pursuant to 35 U.S.C. §283;

3. A judgment that Dentek has infringed the Bancroft '017 patent by making, using, importing, offering for sale and/or selling infringing nightguards as claimed in the Bancroft '017 patent;

4. A judgment that Dentek has infringed the Bancroft '168 patent by making, using, importing, offering for sale and/or selling infringing nightguards as claimed in the Bancroft '168 patent;

5. A judgment that Dentek's infringement of the Bancroft '017 and '168 patents is willful;

6. An accounting and award of damages against Dentek for any and all damages allowable by law, including but not limited to: (a) monetary damages sustained by Total Gard as a result of Dentek's acts of infringement, contributory infringement and active inducement of infringement, including provisional damages pursuant to 35 U.S.C. § 154(d); (b) treble damages pursuant to 35 U.S.C. §284; (c) costs and prejudgment interests; and (d) attorney's fees;

7. A finding that this is an exceptional case and an order awarding reasonable attorney's fees to Total Gard under 35 U.S.C. §285; and

8. Any and all such other and further relief as this Court may deem appropriate.

JURY DEMAND

Plaintiff Total Gard hereby demands trial by jury on all issues triable by jury.

By: /s/ Robert J. Fettweis
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Dated: September 9, 2008

30735-01

RULE 11.2 CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other action pending in this or any other court or of any pending arbitration or administrative proceeding.

Dated: September 9, 2008

/s/ Robert J. Fettweis
Robert J. Fettweis