

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HEELING SPORTS LIMITED,

Plaintiff,

v.

DOLGENCORP, LLC
DOLGENCORP OF TEXAS, INC ,
d/b/a DOLLAR GENERAL,

Defendants

~~~~~

Civil Action \_\_\_\_\_

## JURY TRIAL DEMANDED

# PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Heeling Sports Limited files this Complaint against defendants Dolgencorp, LLC and Dolgencorp of Texas, Inc., d/b/a Dollar General, and alleges as follows:

**PARTIES**

1. Plaintiff Heeling Sports Limited (“Heeling”) is a limited partnership organized and existing under the laws of the State of Texas and having a principal place of business at 3200 Belmeade Drive, Suite 100, Carrollton, Texas 75006.

2. On information and belief, defendant Dolgencorp, LLC (“Dollar USA”) is a Kentucky corporation with a principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Dollar USA can be served through its registered agent, Corporation Service Company, d/b/a CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601

3. On information and belief, defendant Dolgencorp of Texas, Inc , d/b/a Dollar General, (“Dollar Texas”) is a Kentucky corporation with a principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Dollar Texas can be served through its

registered agent, Corporation Service Company, d/b/a CSC-Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

### **JURISDICTION AND VENUE**

4. This action for patent infringement arises under the patent laws of the United States, Title 35 U.S.C. §§ 101 *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, this Court has personal jurisdiction over Defendants because Defendants regularly conduct business and sell infringing articles within the State of Texas and within this judicial district.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c).

### **FACTUAL BACKGROUND**

7. Heeling was founded in Carrollton, Texas in 2000, and is in the business of designing, manufacturing and distributing wheeled footwear. Heeling developed and patented the internationally famous HEELYS brand wheeled footwear.

8. Since their introduction in December 2000, HEELYS wheeled footwear (also referred to as HEELYS skates) have become tremendously popular and commercially successful in the United States and in numerous countries around the world.

9. HEELYS skates are unique and innovative in many respects. HEELYS skates have at least one wheel in the heel, and are used by walking or running on the forefoot and transitioning to rolling on the wheel or wheels in the sole. Some models of HEELYS skates have two wheels in the sole, including one wheel in the heel and another wheel positioned forward of the wheel in the heel. The HEELYS skates are dual-purpose footwear that incorporate one or more stealth wheels in the heel that allow a user to seamlessly transition from walking or running to rolling by shifting weight to the one or more wheels in the sole.

10. Heeling's innovations in the HEELYS skates are protected by a portfolio of patents, both in the United States and in numerous countries around the world

11. On June 18, 2002 Heeling received United States Patent No. 6,406,038 ("the '038 Patent"), attached hereto as Exhibit A, entitled "Heeling Apparatus and Method." The '038 Patent was duly and legally issued to Heeling as the assignee of the inventors' entire right, title, and interest in the '038 Patent. The '038 Patent is valid, subsisting and in full force and effect.

12. On May 25, 2004 Heeling received United States Patent No. 6,739,602 ("the '602 Patent"), attached hereto as Exhibit B, entitled "Heeling Apparatus and Method." The '602 Patent was duly and legally issued to Heeling as the assignee of the inventors' entire right, title, and interest in the '602 Patent. The '602 Patent is valid, subsisting and in full force and effect.

13. On June 8, 2004 Heeling received United States Patent No. 6,746,026 ("the '026 Patent"), attached hereto as Exhibit C, entitled "Heeling Apparatus and Method." The '026 Patent was duly and legally issued to Heeling as the assignee of the inventors' entire right, title, and interest in the '026 Patent. The '026 Patent is valid, subsisting and in full force and effect.

14. At all relevant times Heeling has been and is now the sole and exclusive assignee and owner of all right, title, and interest to the '038, '602 and '026 Patents.

15. Heeling has not granted Defendants any license or permission to use or exploit any of its patents, including the '038, '602 and the '026 Patents.

16. Defendants are offering for sale and/or selling infringing knockoffs of the '038, '602, and '026 Patents, evidence of which can be seen in Exhibit D (Dollar General advertising circular for week of November 23, 2008) and Exhibit E (November 20, 2008 Corporate Press Release) attached hereto to this Complaint.

17. The exact configuration of the infringing knockoffs being offered for sale and/or sold by Defendants has been the subject of litigation and favorable judgments in multiple jurisdictions, including Texas, California, and Florida.

## COUNT I

### **Infringement of the '038 Patent**

18 Heeling realleges and incorporates by reference the allegations of paragraphs 1-17 above.

19 Upon information and belief, Defendants and/or their agents willfully encourage purchasers of infringing skates to use them just like the HEELYS skates.

20. Purchasers and users of the infringing skates directly infringe the '038 Patent by using the skates in accordance with the claimed invention of the '038 Patent and equivalents thereof.

21 Upon information and belief, Defendants are infringing the '038 Patent, in this judicial district and elsewhere in the United States, by actively inducing the infringement of others. Upon information and belief, in addition to offering infringing skates for sale, Defendants and/or their agents advise purchasers of the infringing skates to use them like the HEELYS skates and provide instructions to purchasers and users of the skates describing how to use them in accordance with the claimed invention of the '038 Patent and equivalents thereof.

22. As a direct and proximate result of Defendants' infringement of the '038 Patent, Heeling has suffered substantial harm and damages in amounts that are presently undetermined.

23 Unless Defendants and all of those acting in concert and all those aiding or abetting Defendants and their employees, agents or the like are permanently enjoined by this Court, the '038 Patent will continue to be infringed. Defendants' infringing acts will cause irreparable harm to Heeling for which it has no adequate remedy at law.

## COUNT II

### Infringement of the '602 Patent

24. Heeling realleges and incorporates by reference the allegations of paragraphs 1-23 above

25. Upon information and belief, Defendants have been and are willfully infringing the '602 Patent by using, offering to sell, selling, and/or importing within and into the United States, and inducing others to use within the United States, products and/or methods that infringe the '602 Patent. Unless enjoined by the Court, Defendants will continue to infringe and induce infringement of the '602 Patent.

26. As a direct and proximate result of Defendants' infringement of the '602 Patent, Heeling has suffered substantial harm and damages in amounts that are presently undetermined

27. Unless Defendants and all of those acting in concert and all those aiding or abetting Defendants and their employees, agents or the like are permanently enjoined by this Court, the '602 Patent will continue to be infringed. Defendants' infringing acts will cause irreparable harm to Heeling for which it has no adequate remedy at law.

## COUNT III

### Infringement of the '026 Patent

28. Heeling realleges and incorporates by reference the allegations of paragraphs 1-27 above

29. Upon information and belief, Defendants have been and are, willfully infringing the '026 Patent by using, offering to sell, selling, and/or importing within and into the United States, and inducing others to use within the United States, products and/or methods that infringe the '026 Patent. Unless enjoined by the Court, Defendants will continue to infringe and induce infringement of the '026 Patent.

30. As a direct and proximate result of Defendants' infringement of the '026 Patent, Heeling has suffered substantial harm and damages in amounts that are presently undetermined.

31. Unless Defendants and all of those acting in concert and all those aiding or abetting Defendants and their employees, agents or the like are permanently enjoined by this Court, the '026 Patent will continue to be infringed. Defendants' infringing acts will cause irreparable harm to Heeling for which it has no adequate remedy at law.

**PRAYER**

WHEREFORE, Heeling prays for the following:

- A. Judgment that Defendants have infringed and have actively induced others to infringe the '038, '602 and '026 Patents;
- B. Preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283 prohibiting Defendants, including their agents, affiliates, servants, and employees, and all other persons in active concert or participation with them, including those aiding and abetting Defendants, from (i) infringing and inducing the infringement of the '038, '602 and '026 Patents, including, for example, prohibiting the sales of infringing product as detailed in Defendants' advertising circular, for the week of November 23, 2008, and as shown in Exhibit D, and (ii) transferring or returning of the infringing product to any third party;
- C. That Defendants, including their agents, affiliates, servants, and employees, and all other persons in active concert or participation with them, including those aiding and abetting Defendants, be ordered to submit to the Court a sworn, written report detailing the manner of their compliance with the requested injunctive relief;

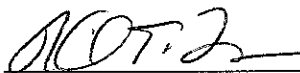
- D. An award of damages pursuant to 35 U.S.C. § 284 to compensate Heeling for Defendants' infringement and inducement of infringement of the '038, '602 and '026 Patents, together with pre-judgment and post-judgment interest;
- E. Judgment that the damages so adjudged be trebled pursuant to 35 U.S.C. § 284 due to Defendants' willful infringement;
- F. Judgment that this is an exceptional case pursuant to 35 U.S.C. § 285 and that Heeling be awarded its attorney fees, costs, and expenses incurred in this action;
- G. A full and complete inspection of business records, including records relating to import and export of relevant products, in support of Heeling's claim for an accounting; and
- I. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Heeling hereby demands a trial by jury of all issues so triable in this action.

Dated: November 24, 2008

Respectfully submitted,

By:   
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**Kirk T. Florence**  
State Bar No. 07160900

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**ATTORNEY FOR PLAINTIFF**