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Attorneys for Plaintiff

K-TEC, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

K-TEC, Inc., a Utah corporation,

Plaintiff,

vs.

Vita-Mix Corp., an Ohio corporation,

Defendant.

COMPLAINT

Case No. 2:07-cv-785

Judge: Ted Stewart

Jury Demanded

Plaintiff K-TEC, Inc., by and through counsel alleges and complains against Defendant Vita-Mix Corp. as follows:

THE PARTIES

1. Plaintiff K-TEC, Inc. (“K-TEC” or “Plaintiff”) is a Utah corporation having its principal place of business at 1206 South 1680 West, Orem, Utah 84058. Plaintiff sells unique, patented blending systems, including blending jars that incorporate a unique, patented stackable, truncated wall configuration, throughout the United States, including this judicial district.

2. Upon information and belief, Defendant Vita-Mix Corporation (“Vita-Mix” or “Defendant”) is an Ohio corporation having a place of business at 8615 Usher Road, Cleveland, Ohio 44138. Upon information and belief, Defendant makes, sells and distributes blending systems, including blending jars with a stackable, truncated wall configuration, throughout the United States, including this judicial district.

JURISDICTION AND VENUE

3. This action is for patent infringement under 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Vita-Mix due to its infringing activities in the State of Utah, including the sale, offering for sale, and/or advertising of infringing products in Utah.

5. Venue is proper in the District of Utah pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

6. K-TEC owns a valid and enforceable United States patent, U.S. Patent No. 7,281,842 (“the ‘842 patent”), entitled “Blending Jar Apparatus Having a Generally Rectangular Shape.” The ‘842 patent issued October 16, 2007. A copy of the ‘842 patent is attached as Exhibit A.

7. Vita-Mix makes, uses, and sells blending jars that infringe one or more of the claims of the ‘842 patent (hereafter “the Vita-Mix blending jar(s)”). Photographs of the infringing Vita-Mix blending jars are attached as Exhibit B.

8. Vita-Mix actively induces others through advertising, product manuals, user instructions, and otherwise, to stack the infringing Vita-Mix blending jars in a way that directly infringes one or more claims of the ‘842 patent. Vita-Mix intended to

cause these acts, which they knew or should have known would directly infringe one or more claims of the '842 patent.

9. Upon information and belief, Vita-Mix copied Plaintiff's commercial embodiment of the invention claimed and disclosed in the '842 patent after trying and failing to design a blending container on its own that could achieve the performance achieved by the invention of the '842 patent.

10. In Case No. 2:06-cv-00108 in the United States District Court for the District of Utah, K-TEC filed suit claiming the Vita-Mix blending jars infringe U.S. Patent No. 6,979,117, which is a parent to the '842 patent and shares the same written description.

11. In Case No. 2:06-cv-00108, Vita-Mix presented some prior art references to challenge the validity of U.S. Patent No. 6,979,117. Case No. 2:06-cv-00108 is currently stayed pending the United States Patent and Trademark Office's ("USPTO") reexamination of the claims of U.S. Patent No. 6,979,117 in light of the prior art presented by Vita-Mix.

12. The claims of the '842 patent were allowed and issued by the USPTO following the USPTO's full consideration of all material prior art presented by Vita-Mix in Case No. 2:06-cv-00108.

13. At no time has K-TEC given Vita-Mix permission, license, or authorization to use K-TEC's patented blending jar technology.

14. Upon information and belief, Vita-Mix is and has been actively tracking K-TEC's patent applications and was aware of the allowed claims and the prosecution history of the '842 patent prior to the filing of this action.

15. Despite having knowledge of K-TEC's patent rights, Vita-Mix will likely continue to willfully and deliberately engage in acts of infringement of the '842 patent unless enjoined by this Court.

16. Vita-Mix's continued making, using, importing, selling, offering for sale, and distribution of the Vita-Mix blending jars has injured, is injuring, and will continue to cause irreparable injury to K-TEC and K-TEC's valuable patent rights and market.

FIRST CAUSE OF ACTION

(Patent Infringement Under 35 U.S.C. § 271)

17. K-TEC re-alleges and incorporates by this reference the preceding allegations of this Complaint.

18. Vita-Mix's actions as described above, and specifically Vita-Mix's unauthorized manufacture, use, importation, offers to sell, and sales of the Vita-Mix blending jars, constitute infringement of the '842 patent under 35 U.S.C. § 271.

19. Vita-Mix actions as described above, and specifically Vita-Mix's active inducement of others to sell, offer to sell, or use the Vita-Mix blending jars in a manner that directly infringes one or more claims of the '842 patent constitute induced infringement of the '842 patent under 35 U.S.C. § 271.

20. Vita-Mix's continued actions of making, using, importing, selling, offering for sale, and/or distributing the Vita-Mix blending jars has injured, is injuring, and will cause irreparable injury to K-TEC if not preliminarily and permanently enjoined.

21. In view of the fact that Vita-Mix's blending jars are a direct copy of the commercial embodiment of the invention claimed in the '842 patent, and of Vita-Mix's

knowledge that the claims of the '842 patent were allowed over all material prior art of which Vita-Mix is aware, any further manufacturing, sales, offers for sale, uses, importing, or distribution by Vita-Mix of the Vita-Mix blending jars will demonstrate a deliberate and conscious decision to infringe the '842 patent or, at the very least, a reckless disregard of K-TEC's patent rights.

22. K-TEC is entitled to an injunction prohibiting Vita-Mix from further making, using, selling, or offering to sell the Vita-Mix blending jars without permission or license from K-TEC under 35 U.S.C. § 283.

23. K-TEC is entitled to recover all damages caused by Vita-Mix's direct and induced infringement under 35 U.S.C. § 284.

24. If Vita-Mix has continued to manufacture, use, offer to sell, and/or sell the Vita-Mix blending jars following the issuance of the '842 patent, K-TEC will be entitled to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

a. the Court preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, selling, or offering to sell the Vita-Mix blending jars, and from inducing others to make, use, sell or offer to sell the Vita-Mix blending jars;

b. the Court enter judgment against Defendant for direct and induced infringement of the '842 patent under 35 U.S.C. § 271;

c. the Court order that Defendant account to Plaintiff for all sales, revenues, and profits derived from the sale of the Vita-Mix blending jars, and that Defendants pay to Plaintiff all compensatory damages to which Plaintiff is entitled by law, including without limitation lost profits, reasonable royalties, price erosion damages, and convoyed sales damages;

d. the Court award Plaintiff three times the damages found in accordance with subparagraph (c) above pursuant to 35 U.S.C. § 284;

e. the Court award Plaintiff, against Defendant, the costs and reasonable attorneys' fees and expenses incurred in this action pursuant to 35 U.S.C. § 285 and the equity powers of the Court;

f. the Court award Plaintiff prejudgment interest against Defendant on all sums allowed by law;

g. the Court award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

K-TEC demands that all claims or causes of action raised in this Complaint be tried by a jury to the fullest extent possible under the United States Constitution.

DATED this 16th day of October, 2007.

HOLLAND & HART LLP

/s/ Mark A. Miller
L. Grant Foster
Brett L. Foster
Mark A. Miller
Attorneys for Plaintiff
K-TEC, Inc.