

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

PATECT, LLC,
Relator,

v.

**(1) CHAMPION DISCS, INCORPORATED,
d/b/a INNOVA CHAMPION DISCS and
INNOVA DISC GOLF,
(2) CIRCULAR PRODUCTIONS, LLC, d/b/a
MILLENNIUM GOLF DISCS,
*Defendants.***

Civil Action No.

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator Patect, LLC (“Relator”) makes the following allegations against Champion Discs, Incorporated, d/b/a/ INNOVA Champion Discs and INNOVA Disc Golf (“Champion Discs”), and Circular Productions, LLC, d/b/a MILLENNIUM Golf Discs (“Circular Productions”) (collectively, “Defendants”).

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is a Texas limited liability company having a principal place of business at 1177 West Loop South, Suite 1700, Houston, Texas 77027. Relator has appointed Law Tech Services, Inc., 1177 West Loop South, Suite 1700, Houston, Texas 77027, as its agent for service of process.

3. On information and belief, Champion Discs is a California corporation with its principal place of business at 11077 Arrow Route, Rancho Cucamonga, CA 91730. Champion Discs has appointed Timothy Selinske, an individual residing at 85 W. Longden Avenue, Arcadia, CA 91007, as its agent for service of process.

4. On information and belief, Circular Productions is a Texas limited liability company with its principal place of business at P.O. Box 792, Austin, TX 78767. Circular Productions has appointed John Houck, an individual residing at 4714 David Thomas Road, Austin, TX 78746, as its agent for service of process.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

7. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendants have and continue (and/or have and continue to cause others) to transact business in this District, and have and continue (and/or have and continue to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendants have and continue (and/or have and continue to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

CHAMPION DISCS - FACTS

8. Champion Discs has and continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, the United States certain products,

including, but not limited to INNOVA Champion Beast Distance Driver, INNOVA Banshee Fairway Driver, INNOVA Leopard Fairway Driver, INNOVA Viper Fairway Driver, INNOVA Shark Multi-Purpose, and INNOVA Wraith Distance Driver. A more complete list is available at <http://www.innovadiscs.com/discs/index.html>.

9. Champion Discs has and continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising U.S. Patent No. 4,568,297 (“The ’297 Patent”), a true and correct copy of which is attached as Exhibit A, in connection with products and/or related product packaging, including, by way of example only, the INNOVA Champion Beast Distance Driver, INNOVA Banshee Fairway Driver, INNOVA Leopard Fairway Driver, INNOVA Viper Fairway Driver, INNOVA Shark Multi-Purpose, and INNOVA Wraith Distance Driver (collectively, “Marked Innova Discs”), as illustrated in Exhibits B-G, respectively.

10. The ’297 Patent, which is titled “Flying Disc,” was filed on October 27, 1983 and issued on February 4, 1986.

11. The ’297 Patent expired, at the very latest, on October 27, 2003.

12. When the ’297 Patent expired, all future rights in that patent ceased to exist.

13. Champion Discs’ website (www.innovadiscs.com) touts the patented nature of its products. *See, e.g., Exhibit H* (“That first disc, the Eagle - U.S. Patent # 4,568,297, established INNOVA as the technological pacesetter in Disc Golf.”).

14. Champion Discs’ website was updated on or after 2008, which was after expiration of the ’297 Patent.

15. Champion Discs has experience applying for patents, obtaining patents, licensing patents, and/or litigating patents in infringement lawsuits.

16. Champion Discs knows that an expired patent, particularly the '297 Patent, does not cover the Marked Innova Discs, or any products whatsoever. See Exhibit I ("The ['297 Patent] is now expired allowing other companies to copy the original designs.").

CHAMPION DISCS - CLAIM

17. Relator incorporates paragraphs 1–16 as if fully set forth herein. Champion Discs has violated 35 U.S.C. § 292 by falsely marking its products, including the Marked Innova Discs, with intent to deceive the public.

CIRCULAR PRODUCTIONS - FACTS

18. Circular Productions has and continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, the United States certain products, including, but not limited to the MILLENNIUM Orion LF Long Fade Driver and MILLENNIUM JLS Long Straight Driver. A more complete listing is available at <http://www.golfdisc.com/index.html>.

19. Circular Productions has and continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising U.S. Patent No. 4,568,297 ("The '297 Patent"), a true and correct copy of which is attached as Exhibit A, in connection with products and/or related product packaging, including, by way of example only, the MILLENNIUM Orion LF Long Fade Driver and MILLENNIUM JLS Long Straight Driver (collectively, "Marked Circular Productions Discs"), as illustrated in Exhibits J-K, respectively.

20. The '297 Patent, which is titled "Flying Disc," was filed on October 27, 1983 and issued on February 4, 1986.

21. The '297 Patent expired, at the very latest, on October 27, 2003.

22. When the '297 Patent expired, all future rights in that patent ceased to exist.

23. Circular Productions' website (www.circularproductions.com) touts the patented nature of its products. *See, e.g., Exhibit L* ("Dunipace invented and patented the modern beveled-edge golf disc and in 1983, founded Innova-Champion Discs. . . . Today, while retaining his role at Innova, Dave Dunipace is the genius behind the disc designs of Millennium Golf Discs.").

24. Circular Productions' website was updated on or after 2007, which was after expiration of the '297 Patent.

25. Circular Productions has experience applying for, obtaining, and/or licensing intellectual property, including patents.

26. Circular Productions knows that an expired patent does not cover the Marked Circular Productions Discs, or any products whatsoever.

CIRCULAR PRODUCTIONS - CLAIM

27. Relator incorporates paragraphs 1–7 and 18-26 as if fully set forth herein. Circular Productions has violated 35 U.S.C. § 292 by falsely marking its products, including the Marked Circular Production Discs, with intent to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendants have falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;

- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendants, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: April 26, 2010

Respectfully submitted,

By: /s/ Hao Ni

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