

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DENTAL CONCEPTS LLC,

Plaintiff,

Civil Action No.02 CV 07751(WHP)(DF)  
ECF CASE

-against-

GOSMILE, INC., GOSMILE CORPORATION,  
JONATHAN B. LEVINE, SEPHORA USA,  
LLC, FEDERATED DEPARTMENT  
STORES, INC., SAKS INCORPORATED,  
NORDSTROM, INC., NEIMAN MARCUS  
GROUP, INC. AND C.O. BIGELOW  
CHEMISTS, INC.,

COMPLAINT

Defendants.

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The Plaintiff, DENTAL CONCEPTS LLC, by its attorneys, Natter & Natter, for its complaint against the Defendants, GOSMILE, INC., GOSMILE CORPORATION, JONATHAN B. LEVINE, SEPHORA USA, LLC, FEDERATED DEPARTMENT STORES, INC., SAKS INCORPORATED, NORDSTROM, INC., NEIMAN MARCUS GROUP, INC. AND C.O. BIGELOW CHEMISTS, INC., alleges as follows:

1. The Plaintiff, DENTAL CONCEPTS LLC is a Delaware limited liability company having an office and place of business at 650 From Road, Paramus, New Jersey.

2. The Defendant, GOSMILE, INC. is a Delaware corporation having an office and place of business at 110 East 42 Street, New York, New York.

3. The Defendant, GOSMILE CORPORATION is a New York corporation having an office and place of business at 110 East 42 Street, New York, New York.

4. The Defendant, JONATHAN B. LEVINE is, upon information and belief a resident of the State of New York having an office and place of business at 923 Fifth Avenue, New York, New York.

5. The Defendant, SEPHORA USA, LLC is a Delaware limited liability company transacting business within this judicial district and having an office and place of business at 41 West 57<sup>th</sup> Street, New York, New York.

6. The Defendant, FEDERATED DEPARTMENT STORES, INC. is a Delaware corporation having an office and principal place of business at 151 West 37 Street, New York, New York.

7. The Defendant, SAKS INCORPORATED is a Tennessee corporation transacting business within this judicial district and maintaining a principal place of business at 750 Lakeshore Parkway, Birmingham, Alabama.

8. The Defendant, NORDSTROM, INC. is a Washington corporation, transacting business within this judicial district and maintaining a principal place of business at 1617 Sixth Avenue, Seattle, Washington.

9. The Defendant, NEIMAN MARCUS GROUP, INC. is a corporation transacting business within this judicial district and maintaining an office and principal place of business at 1618 Main Street, Dallas, Texas.

10. The Defendant, C.O. BIGELOW CHEMISTS, INC. is a New York corporation maintaining an office and principal place of business at 414 Sixth Avenue, New York, New York.

11. This action is for infringement under the patent laws of the United States, Title 35, United States Code.

12. Subject matter jurisdiction of this Court is based upon Title 28, United States Code §1331 and §1338(a).

13. Venue is proper in this district pursuant to Title 28 United States Code §1391 and §1400.

14. On March 18, 1997, United States Letters Patent No. 5,611,687 was duly and legally issued to Dental Concepts Inc., as assignee of the inventor, Eugene C. Wagner, for an invention entitled ORAL HYGIENE DELIVERY SYSTEM. A copy of said Letters Patent No. 5,611,687 is attached hereto as Exhibit A.

15. The Plaintiff, DENTAL CONCEPTS LLC, is the owner of said Letters Patent No. 5,611,687 pursuant to an assignment from Dental Concepts Inc. recorded at the United States Patent and Trademark Office on August 26, 1999 in Reel 010180 at Frame 0833.

**AS AND FOR A FIRST COUNT AGAINST DEFENDANTS  
GOSMILE INC., GOSMILE CORPORATION  
AND JONATHAN B. LEVINE**

16. In violation of Title 35 United States Code §271, the Defendants, GOSMILE INC., GOSMILE CORPORATION and JONATHAN B. LEVINE, within this judicial district and throughout the United States have infringed, and contributorily infringed said Letters Patent No. 5,611,687 by making and/or importing into the United States, using, selling and offering to sell, an oral hygiene delivery system which embodies the patented invention and have practiced the patented invention without license of the Plaintiff and are still infringing said Letters Patent No. 5,611,687. A photograph of the infringing oral hygiene delivery system is attached hereto as Exhibit B.

17. In violation of Title 35 United States Code §271, the Defendants, GOSMILE, INC., GOSMILE CORPORATION and JONATHAN B. LEVINE, within this judicial district and throughout the United States, without license of the Plaintiff, have caused others to practice the patented invention and to sell, offer for sale, expose for sale and use an oral hygiene delivery system which infringes said Letters Patent No. 5,611,687.

18. The Defendants, GOSMILE, INC., GOSMILE CORPORATION and JONATHAN B. LEVINE have received written notice from the Plaintiff of said infringement and continue to infringe said Letters Patent No. 5,611,687.

19. The infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687, by the Defendants, GOSMILE, INC., GOSMILE

CORPORATION and JONATHAN B. LEVINE upon information and belief, is willful, intentional and deliberate.

20. Upon information and belief, this is an exceptional case within the provisions of 35 United States Code §285 and the Plaintiff, DENTAL CONCEPTS LLC, is therefore entitled to the recovery of attorneys' fees against Defendants, GOSMILE, INC., GOSMILE CORPORATION and JONATHAN B. LEVINE.

21. The Defendants' infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

22. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A SECOND COUNT AGAINST DEFENDANT  
SEPHORA USA, LLC**

23. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

24. In violation of Title 35 United States Code §271, the Defendant, SEPHORA USA, LLC, within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell and offer for sale, expose for sale and use an oral hygiene delivery system

which embodies the patented invention and to practice the patent invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687. Attached hereto as Exhibit C is a copy of an advertisement of the Defendant, SEPHORA USA, LTD. offering to sell an infringing oral hygiene delivery system.

25. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

26. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A THIRD COUNT AGAINST DEFENDANT  
FEDERATED DEPARTMENT STORES, INC.**

27. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

28. In violation of Title 35 United States Code §271, the Defendant, FEDERATED DEPARTMENT STORES, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell, offer for sale, expose for sale and use an oral hygiene delivery system which embodies the patented invention and to practice the patented invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687.

Attached hereto as Exhibit D is a copy of an advertisement of the Defendant, FEDERATED DEPARTMENT STORES, INC. offering to sell an infringing oral hygiene delivery system.

29. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

30. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A FOURTH COUNT AGAINST DEFENDANT  
SAKS INCORPORATED**

31. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

32. In violation of Title 35 United States Code §271, the Defendant, SAKS INCORPORATED, within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell, offer for sale, expose for sale and use an oral hygiene delivery system which embodies the patented invention and to practice the patented invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687. Attached hereto as Exhibit E is a copy of an advertisement of the Defendant, SAKS INCORPORATED offering to sell an infringing oral hygiene delivery system.

33. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

34. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A FIFTH COUNT AGAINST DEFENDANT  
NORDSTROM, INC.**

35. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

36. In violation of Title 35 United States Code §271, the Defendant, NORDTROM, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell, offer for sale, expose for sale and use an oral hygiene delivery system which embodies the patented invention and to practice the patented invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687. Attached hereto as Exhibit F is a copy of an advertisement of the Defendant, NORDSTROM, INC. offering to sell an infringing oral hygiene delivery system.

37. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC



to suffer monetary damages, the full extent of which are as yet undetermined.

38. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A SIXTH COUNT AGAINST DEFENDANT  
NEIMAN MARCUS GROUP, INC.**

39. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

40. In violation of Title 35 United States Code §271, the Defendant, NEIMAN MARCUS GROUP, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell, offer for sale, expose for sale and use an oral hygiene delivery system which embodies the patented invention and to practice the patented invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687. Attached hereto as Exhibit G is a copy of an advertisement of the Defendant, NEIMAN MARCUS GROUP, INC. offering to sell an infringing oral hygiene delivery system.

41. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

42. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

**AS AND FOR A SEVENTH COUNT AGAINST DEFENDANT  
C.O. BIGELOW CHEMISTS, INC.**

43. Plaintiff repeats and realleges complaint paragraphs 1 through 22 as it set forth fully herein.

44. In violation of Title 35 United States Code §271, the Defendant, C.O. BIGELOW CHEMISTS, within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. 5,611,687 by selling, offering to sell, or causing others to sell, offer for sale, expose for sale and use an oral hygiene delivery system which embodies the patented invention and to practice the patented invention without license of the Plaintiff and is still infringing said Letters Patent No. 5,611,687. Attached hereto as Exhibit H is a copy of an advertisement of the Defendant, C.O. BIGELOW CHEMISTS, INC. offering to sell an infringing oral hygiene delivery system.

45. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. 5,611,687 has caused the Plaintiff, DENTAL CONCEPTS LLC to suffer monetary damages, the full extent of which are as yet undetermined.

46. The Plaintiff has no adequate remedy at law and is presently suffering and will

continue to suffer irreparable harm and damage if such infringement is allowed to continue.

WHEREFORE, the Plaintiff requests judgment against the Defendants, GOSMILE, INC., GOSMILE CORPORATION, JONATHAN B. LEVINE, SEPHORA USA, LLC, FEDERATED DEPARTMENT STORES, INC., SAKS INCORPORATED, NORDSTROM, INC., NEIMAN MARCUS GROUP, INC. AND C.O. BIGELOW CHEMISTS, INC. as follows:

1. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendants, their officers agents, servants, employees and all those persons in active concert or participation with said Defendants from further infringement of U.S. Patent No. 5,611,687.
2. That pursuant to 35 U.S.C. §284, the Defendants, account to the Plaintiff for damages for all past infringement of said U.S. Patent No. 5,611,687 including treble damages as appropriate;
3. That pursuant to 35 U.S.C. §285, the Defendants, pay the Plaintiff's costs and attorneys' fees; and
4. For such other and further relief as this Court deems just and proper.

Dated: September 30, 2004

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By /Seth Natter/  
Seth Natter (SN 4913)