

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
ATICO INTERNATIONAL USA, INC., a)	
Delaware corporation, and NEW ATICO)	
INTERNATIONAL LIMITED CORPORATION, a)	
Delaware corporation,)	
)	
Defendants.)	

**COMPLAINT FOR PATENT INFRINGEMENT, TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiff APPLE INC. ("Apple"), for its complaint against Defendants, alleges as follows:

INTRODUCTION

1. Apple is the developer and seller of a revolutionary consumer electronics product, the iPod® digital music player. First launched in October, 2001, the iPod® has become a cultural icon, one of the most widely-acclaimed and sought-after consumer product of all time. The *Washington Post* described the iPod® as "a work of technological art." With over 140 million iPods® sold to date, Apple has transformed how millions of music lovers acquire, manage and use their music and video. The iPod's® success has spawned an enormous demand for iPod®-compatible accessories, including speaker systems, docking stations, cables, adapters and numerous other products. In order to ensure the quality, reliability and compatibility of these accessories and to protect the value of its goodwill and intellectual property relating to the iPod® brand, Apple maintains a robust licensing program (called Made for iPod®) through which third party companies can obtain Apple's authorization and license to manufacture, sell and distribute iPod®-compatible accessories. As more fully alleged below, Defendants herein manufacture and/or sell iPod® accessories which are not licensed or otherwise sponsored by Apple. These

products not only infringe Apple's valuable intellectual property pertaining to the iPod®, but they are advertised and sold in a manner that falsely and unfairly implies affiliation with Apple. To prevent the continued unfair and unlawful exploitation of Apple's proprietary technology and to avoid further consumer confusion over the source of origin of these products, Apple has instituted the present action against Defendants and seeks an injunction against further infringement of Apple's intellectual property, an award of its actual damages, and its attorneys' fees.

PARTIES

2. Apple is a California corporation with its principal place of business located at 1 Infinite Loop, Cupertino, California. Apple is a computer hardware, software and consumer electronics company founded in 1976. Apple's current line of products include, among other things, personal computers, computer software and hardware, portable media players and mobile phones. Apple employs over 20,000 permanent and temporary workers worldwide, and operates approximately 200 retail stores in five countries and an online store where its products are advertised and sold.

3. Upon information and belief, Defendants ATICO INTERNATIONAL USA, INC. and NEW ATICO INTERNATIONAL LIMITED CORPORATION, are Delaware corporations each with their principal place of business located at 501 South Andrews Avenue, Fort Lauderdale, Florida. Defendants ATICO INTERNATIONAL USA, INC. and NEW ATICO INTERNATIONAL LIMITED CORPORATION are hereinafter jointly referred to as "Atico" or "Defendants."

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a)-(b) and 15 U.S.C. §1121 because this action arises under the patent and trademark laws of the United States.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) as Defendants have done business in this judicial district, have committed acts of patent

infringement and trademark infringement in this judicial district, and continue to commit such acts in this judicial district, entitling Apple to relief as hereinafter set forth.

FACTUAL ALLEGATIONS

6. Apple has devoted substantial time and resources to developing, manufacturing and marketing its iPod® brand of portable media players. The first generation iPod® was introduced in October 2001; the second generation iPod® was introduced in July 2002; and the third generation iPod® was released in April 2003. The current line of iPod® products includes the iPod® shuffle; the iPod® classic; the iPod® nano; and the iPod® touch.

7. Since its inception, the iPod® has spawned numerous accessory devices manufactured and sold by companies other than Apple, including docking stations, speaker systems, AM/FM alarm clock radios, cables, adapters, RF transmitters, etc., which are designed to work exclusively with the iPod®.

8. To ensure the quality and compatibility of iPod® accessories with the iPod® line of products, Apple implemented the "Made for iPod" ("MFi") licensing program which allows manufactures, distributors and retailers of iPod® accessories to obtain the benefits of Apple's proprietary technology, intellectual property and support pertaining to the iPod® and to use the "Made for iPod"® logo in their packaging and advertising. Apple has developed a growing international portfolio of intellectual property rights protecting different aspects of the iPod®, which in the United States includes various utility patents, design patents and trademarks.

9. Upon information and belief, Atico manufactures and distributes various iPod® accessories branded under the name "Living Solutions," which are sold online and nationwide in stores located in Delaware and elsewhere, such as Walgreens and Happy Harry's drug stores. The Living Solutions accessories include: 1) AM/FM Portable Boom Box with iPod® Dock; 2) AM/FM Alarm Clock Radio with iPod® Dock; and 3) Portable Speakers with iPod® Dock.

10. As alleged further below, the Living Solutions iPod® accessories offered by Defendants are not licensed or otherwise authorized by Apple. By misappropriating Apple's

proprietary technology and designs, and by utilizing several Apple registered word and design trademarks on the Living Solutions packaging that are likely to cause consumer confusion as to the source, sponsorship or affiliation of the products, Defendants are infringing on Apple's intellectual property and are wrongfully and unfairly exploiting Apple's name and reputation.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,305,506)

11. Apple incorporates by reference paragraphs 1 through 10 above.

12. On December 4, 2007, United States Patent No. 7,305,506 ("the '506 patent") was duly and legally issued for an invention entitled: "Method and System for Transferring Status Information Between a Media Player and an Accessory." Apple is the assignee of the '506 patent and continues to hold all rights and interest in the '506 patent. A copy of the '506 patent is attached hereto as Exhibit A.

13. Defendants have directly, indirectly, contributorily and/or by inducement infringed and continue to infringe the '506 patent through their manufacture, use, sale, importation and/or offer for sale of unlicensed iPod® accessories.

14. Defendants' infringement of the '506 patent has caused and continues to cause damage to Apple in an amount to be determined at trial.

15. Defendants' infringement as herein alleged will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

16. Upon information and belief, Defendants' infringement of the '506 patent is willful and deliberate, entitling Apple to increased damages under 35 U.S.C. §284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

SECOND CLAIM FOR RELIEF

(Infringement of U.S. Patent No. D551,212)

17. Apple incorporates by reference paragraphs 1 through 10 above.

18. On September 18, 2007, United States Patent No. D551,212 ("the '12 patent") was duly and legally issued for an invention entitled: "Dock Insert." Apple is the assignee of the '12 patent and continues to hold all rights and interest in the '12 patent. A copy of the '12 patent is attached hereto as Exhibit B.

19. Defendants have directly, indirectly, contributorily and/or by inducement infringed and continue to infringe the '12 patent through their manufacture, use, sale, importation and/or offer for sale of unlicensed iPod® accessories.

20. Defendants' infringement of the '12 patent has caused and continues to cause damage to Apple in an amount to be determined at trial. Apple is also entitled to an award of Defendants' profits derived from the infringement pursuant to 35 U.S.C. §289.

21. Defendants' infringement as herein alleged will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

22. Upon information and belief, Defendants' infringement of the '12 patent is willful and deliberate, entitling Apple to increased damages under 35 U.S.C. §284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

THIRD CLAIM FOR RELIEF

(Infringement of U.S. Patent No. D551,213)

23. Apple incorporates by reference paragraphs 1 through 10 above.

24. On September 18, 2007, United States Patent No. D551,213 ("the '13 patent") was duly and legally issued for an invention entitled: "Dock Insert." Apple is the assignee of the '13 patent and continues to hold all rights and interest in the '13 patent. A copy of the '13 patent is attached hereto as Exhibit C.

25. Defendants have directly, indirectly, contributorily and/or by inducement infringed and continue to infringe the '13 patent through their manufacture, use, sale, importation and/or offer for sale of unlicensed iPod® accessories.

26. Defendants' infringement of the '213 patent has caused and continues to cause damage to Apple in an amount to be determined at trial. Apple is also entitled to an award of Defendants' profits derived from the infringement pursuant to 35 U.S.C. §289.

27. Defendants' infringement as herein alleged will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

28. Upon information and belief, Defendants' infringement of the '213 patent is willful and deliberate, entitling Apple to increased damages under 35 U.S.C. §284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

FOURTH CLAIM FOR RELIEF

(Infringement of U.S. Patent No. D552,085)

29. Apple incorporates by reference paragraphs 1 through 10 above.

30. On October 2, 2007, United States Patent No. D552,085 ("the '085 patent") was duly and legally issued for an invention entitled: "Dock Insert." Apple is the assignee of the '085 patent and continues to hold all rights and interest in the '085 patent. A copy of the '085 patent is attached hereto as Exhibit D.

31. Defendants have directly, indirectly, contributorily and/or by inducement infringed and continue to infringe the '085 patent through their manufacture, use, sale, importation and/or offer for sale of unlicensed iPod® accessories.

32. Defendants' infringement of the '085 patent has caused and continues to cause damage to Apple in an amount to be determined at trial. Apple is also entitled to an award of Defendants' profits derived from the infringement pursuant to 35 U.S.C. §289.

33. Defendants' infringement as herein alleged will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

34. Upon information and belief, Defendants' infringement of the '085 patent is

willful and deliberate, entitling Apple to increased damages under 35 U.S.C. §284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

FIFTH CLAIM FOR RELIEF

(Infringement of U.S. Patent No. D558,738)

35. Apple incorporates by reference paragraphs 1 through 10 above.

36. On January 1, 2008, United States Patent No. D558,738 ("the '738 patent") was duly and legally issued for an invention entitled: "Docking Station." Apple is the assignee of the '738 patent and continues to hold all rights and interest in the '738 patent. A copy of the '738 patent is attached hereto as Exhibit E.

37. Defendants have directly, indirectly, contributorily and/or by inducement infringed and continue to infringe the '738 patent through their manufacture, use, sale, importation and/or offer for sale of unlicensed iPod® accessories.

38. Defendants' infringement of the '738 patent has caused and continues to cause damage to Apple in an amount to be determined at trial. Apple is also entitled to an award of Defendants' profits derived from the infringement pursuant to 35 U.S.C. §289.

39. Defendants' infringement as herein alleged will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

40. Upon information and belief, Defendants' infringement of the '738 patent is willful and deliberate, entitling Apple to increased damages under 35 U.S.C. §284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

SIXTH CLAIM FOR RELIEF

(Trademark Infringement)

41. Apple incorporates by reference paragraphs 1 through 10 above.

42. Apple owns various registered trademarks pertaining to the iPod®, including: the Made for iPod® mark and design (U.S. Reg. No. 3,341,286); the iPod® design (U.S. Reg. No.

3,341,214); and the iPod® mark (U.S. Reg. Nos. 2,835,698; 3,089,360; 3,341,191) (collectively “the Apple trademarks”).

43. Without Apple's consent, Defendants have used the Apple trademarks in connection with the sale, offer for sale, distribution, marketing, and/or advertising of Defendants' iPod® accessories.

44. These acts of trademark infringement have been committed with the intent to cause and are likely to cause confusion, mistake or deception, and are in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

45. Defendants' infringement as herein alleged has and will continue to cause immediate and irreparable harm to Apple for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

46. Upon information and belief, Apple alleges that Defendants' infringement of the Apple trademarks as alleged herein is intentional and exceptional, entitling Apple to an award of Defendants' profits, Apple's damages, costs and attorneys' fees, pursuant to 15 U.S.C. §1117(a).

SEVENTH CLAIM FOR RELIEF

(Unfair Competition Under Federal Law)

47. Apple incorporates by reference paragraphs 1 through 10 and 42 through 46 above.

48. Defendants' use in commerce of marks identical and/or confusingly similar to the iPod® mark and the Apple trademarks constitutes false designation of origin and misleading representations of fact that are likely to cause confusion, mistake, and/or deceive as to the affiliation, connection or association with Apple and/or its goods and services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

49. As a direct and proximate result of Defendants' activities, Apple has suffered damages and, unless Defendants are enjoined, Apple will continue to suffer monetary loss and irreparable injury to its business, reputation and goodwill.

50. Upon information and belief, Apple alleges that Defendants' unfair competition as alleged herein is an exceptional case and intentional. Accordingly, Apple is entitled to an award of Defendants' profits, Apple's damages, costs and attorneys' fees, pursuant to 15 U.S.C. §1117(a) and as otherwise provided by law.

PRAYER FOR RELIEF

WHEREFORE, Apple prays for the following relief:

1. That judgment be entered in favor of Apple that the '506, '212, '213, '085, and '738 Patents are infringed by Defendants in violation of 35 U.S.C. §271;
2. That judgment be entered in favor of Apple that Defendants' have infringed and are infringing the Apple trademarks;
3. That Apple be granted an accounting of all damages sustained as a result of Defendants' infringement of Apple's patents as herein alleged;
4. That Apple be awarded actual damages with prejudgment interest according to proof, and enhanced damages pursuant to 35 U.S.C. §284;
5. That a permanent injunction be issued pursuant to 35 U.S.C. §283 enjoining Defendants, their officers, agents, servants, employees and all other persons acting in concert or participation with them from further infringement of the '506, '212, '213, '085 and '738 Patents;
6. That a permanent injunction be issued pursuant to 15 U.S.C. §1116 enjoining Defendants, their officers, agents, servants, employees and all other persons acting in concert or participation with them from using, including but not limited to selling, or otherwise exploiting or attempting to exploit, Apple's trademarks listed herein for and/or in connection with any business involving the offer or sale of goods or serves, or for any other purpose;
7. That this case be decreed an "exceptional case" within the meaning of 35 U.S.C. §285, and that reasonable attorneys' fees and costs be awarded to Apple;
8. That this case be decreed an "exceptional case" pursuant to 15 U.S.C. §1117(a), and that Apple recover Defendants' profits, together with its damages, trebled, costs of the action

and reasonable attorneys' fees; and

9. That Apple be awarded such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Apple hereby demands a jury trial as to all issues triable to a jury.

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