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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERNATIONAL ELECTRONICS, INC.,

Plaintiff,

v.

HUMAN ELECTRONICS, INC.,

Defendant.

NO. C04-5021 RBL

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff International Electronics, Inc. ("International Electronics"), through its undersigned attorneys, hereby states its Amended Complaint against Defendant Human Electronics, Inc. ("Human Electronics") as follows.

PARTIES

1. International Electronics is a corporation organized under the laws of the State of Washington, and maintains its principal place of business at 5913 N.E. 127th Avenue, Suite 800, Vancouver, WA 98682.

2. Human Electronics is a corporation organized under the laws of the State of New York, and maintains its principal place of business at 157 Genesee Street, Utica, New York 13501.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367.

1 4. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

2 5. The Court is the proper venue for this action under 28 U.S.C. § 1391.

3
4 **BACKGROUND**

5 6. International Electronics manufactures and sells a product line called Catch-A-
6 Call, which allows customers to receive phone calls and faxes while on the Internet,
7 without the need for a second phone line.

8 7. Human Electronics manufactures, advertises and sells a competing product line
9 in interstate commerce, including over the Internet.

10 8. Human Electronics is the purported owner of record of U.S. Patent No. 6,067,353
11 (“the ‘353 patent”).

12
13 **COUNT ONE – BREACH OF CONTRACT**

14 9. International Electronics realleges and incorporates by reference paragraphs 1
15 through 8 of the Amended Complaint.

16 10. In or about April 2003, International Electronics and Human Electronics entered
17 into a contract pursuant to which, among other terms, Human Electronics agreed to
18 assign all right, title and interest in the ‘353 patent to International Electronics for
19 \$25,000.

20
21 11. Despite this contract, Human Electronics has failed and refused to assign the
22 ‘353 patent to International Electronics.

23 12. International Electronics has performed and remains ready, willing and able to
24 perform its obligations pursuant to this contract.

1 13. International Electronics has performed all conditions required to be performed
2 by it, or the performance of such conditions has been excused by Human Electronics'
3 conduct.

4 14. International Electronics is entitled to specific performance of the aforesaid
5 contract with Human Electronics.

6 15. International Electronics has been damaged by Human Electronics' failure to
7 perform its obligations under the contract, in an amount to be proved at trial.

8
9 **COUNT TWO - LANHAM ACT VIOLATION**

10 16. International Electronics realleges and incorporates by reference paragraphs 1
11 through 15 of the Amended Complaint.

12 17. On or about October 30, 2003, Human Electronics falsely accused International
13 Electronics of infringing the '353 patent.

14 18. In or after October 2003, Human Electronics disparaged International Electronics'
15 Catch-a-Call product line by falsely reporting to certain of International Electronics'
16 customers that said product line infringed the '353 patent.

17 19. Human Electronics caused the false accusation to enter interstate commerce.

18 20. Human Electronics' false accusation has deceived and/or is likely to deceive
19 International Electronics' customers.

20 21. Human Electronics' false accusation is material in that it has influenced and/or is
21 likely to influence the purchasing decisions of International Electronics' customers.

22 22. On information and belief, Human Electronics acted in bad faith because it knew,
23 should have known, or acted in reckless disregard of the falsity of its accusation of
24 infringement against International Electronics.
25
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1 23. International Electronics has been and/or will likely be harmed by Human
2 Electronics' false accusation in terms of lost sales, and/or eroded goodwill, and/or in
3 other ways, in an amount to be proved at trial.

4 24. In addition, International Electronics has suffered and/or will likely suffer
5 irreparable harm caused by Human Electronics' false accusation.

6 25. Human Electronics' conduct as alleged above is in violation of Section 43(a) of
7 the Lanham Act.

8
9 **COUNT THREE – DECLARATORY JUDGMENT REGARDING '353 PATENT**

10 26. International Electronics realleges and incorporates by reference paragraphs 1
11 through 25 of the Amended Complaint.

12 27. International Electronics has not infringed and does not infringe, directly or
13 indirectly, contributorily or by active inducement, any valid and enforceable claim of the
14 '353 patent.

15
16 **COUNT FOUR – INTENTIONAL INTERFERENCE WITH CONTRACTUAL**
17 **RELATIONS AND/OR BUSINESS EXPECTANCIES**

18 28. International Electronics realleges and incorporates by reference paragraphs 1-
19 27 of the Amended Complaint.

20 29. International Electronics has valid contractual relations and/or business
21 expectancies with several customers who distribute the Catch-A-Call product line,
22 including major chain stores.

23 30. On information and belief, Human Electronics has known of these contractual
24 relations and/or business expectancies since at least the latter part of 2003 .
25
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1 31. Beginning in about October 2003, Human Electronics intentionally interfered with
2 these contractual relations and/or business expectancies by falsely reporting to certain
3 of International Electronics' customers that the Catch-A-Call product line infringed the
4 '353 patent.
5

6 32. Human Electronics' interference with International Electronics' contractual
7 relations and/or business expectancies induced or caused a breach or termination of
8 certain of these relations and/or expectancies.

9 33. On information and belief, Human Electronics interfered with International
10 Electronics' contractual relations and/or business expectancies in bad faith and for an
11 improper purpose and/or using improper means because Human Electronics knew,
12 should have known, or acted in reckless disregard of the falsity of its accusation of
13 infringement.
14

15 34. Human Electronics' interference with International Electronics' contractual
16 relations and/or business expectancies has damaged International Electronics in terms
17 of lost sales, and/or eroded goodwill, and/or in other ways, in an amount to be proved at
18 trial.
19

20 **COUNT FIVE – VIOLATION OF THE WASHINGTON**

21 **CONSUMER PROTECTION ACT (“WCPA”)**

22 35. International Electronics realleges and incorporates by reference paragraphs 1-
23 34 of the Amended Complaint.

24 36. Human Electronics engaged in an unfair or deceptive act or practice by falsely
25 reporting to certain of International Electronics' customers that the Catch-A-Call product
26 line infringed the '353 patent.

1 37. On information and belief, Human Electronics engaged in this unfair or deceptive
2 act or practice in bad faith because it knew, should have known, or acted in reckless
3 disregard of the falsity of its accusation of infringement.

4 38. Human Electronics' unfair or deceptive act or practice occurred in trade or
5 commerce.

6 39. Human Electronics' unfair or deceptive act or practice impacted the public
7 interest by influencing the purchasing decisions of certain of International Electronics'
8 customers who provide the Catch-A-Call product line to the public.

9 40. Human Electronics' unfair or deceptive act or practice has caused damage to
10 International Electronics in terms of lost sales, and/or eroded goodwill, and/or in other
11 ways, in an amount to be proved at trial.

12 41. Human Electronics' conduct as alleged above is in violation of the Washington
13 Consumer Protection Act.

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, International Electronics respectfully prays that this Court:

18 1. Enter a judgment (1) finding that Human Electronics breached a contract
19 to assign the '353 patent to International Electronics, (2) awarding International
20 Electronics appropriate damages arising from Human Electronics' breach, (3) ordering
21 specific performance of the assignment contract, and (4) adjudging International
22 Electronics to be the owner of all right, title and interest in the '353 patent;

23 2. Enter a judgment finding that Human Electronics has violated Section
24 43(a) of the Lanham Act and awarding International Electronics appropriate damages,
25 including enhanced or multiplied damages as may be permitted by the Lanham Act;
26

1 3. Issue a preliminary and permanent injunction, enjoining and prohibiting
2 Human Electronics and its agents, servants, employees, officers, attorneys, successors
3 and assigns from:

4 Communicating by any means or in any manner whatsoever, whether directly
5 or indirectly, its false accusation that International Electronics has infringed
6 the '353 patent to any past, present or future customers or competitors of
7 International Electronics, or to anyone else;

8
9 4. Enter a judgment granting International Electronics the following additional
10 equitable relief:

11 For each and every customer or competitor of International Electronics to
12 whom Human Electronics has communicated its false accusation that
13 International Electronics infringed the '353 patent, ordering Human
14 Electronics to send a corrective written notice in a form to be approved by the
15 Court;

16
17 5. Enter a judgment pursuant to 28 U.S.C. § 2201 declaring that International
18 Electronics has not infringed or does not infringe, directly or indirectly, contributorily or
19 by active inducement, any valid and enforceable claim of the '353 patent;

20
21 6. Enter a judgment finding that Human Electronics has intentionally
22 interfered with International Electronics' contractual relations and/or business
23 expectancies and awarding International Electronics appropriate damages;

24 7. Enter a judgment finding that Human Electronics has violated the
25 Washington Consumer Protection Act and awarding International Electronics
26 appropriate damages;

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 6th day of February, 2004, I caused a true copy of the FIRST AMENDED COMPLAINT to be served on the following individual(s) by mailing a copy thereof in a sealed, first-class postage prepaid envelope, and deposited in the U.S. mail at Vancouver Washington, addressed to:

Michael D. Pinnisi
Wall Marjama & Bilinski, LLP
101 South Salina Street, Suite 400
Syracuse, New York 13202

DATED at Vancouver, Washington this 6th day of February, 2004.

/s/ Gregory J. Dennis

GREGORY J. DENNIS, WSB 8413
Of Attorneys for Plaintiff