

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

Randall S. Asher, D.D.S., M.S.,

Plaintiff,

v.

Target Corporation,
a Minnesota corporation;

Defendant.

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Randall S. Asher, D.D.S., M.S., by and through his counsel, FISCHER & FISCHER, LLP, asserts the following Complaint against the above-named Defendant, stating as follows:

JURISDICTION AND VENUE

1. Plaintiff, Randall S. Asher, D.D.S., M.S., ("Plaintiff"), is an individual residing in Highlands Ranch, Colorado, and engaging in the practice of dentistry in Englewood, Colorado.
2. Defendant, Target Corporation ("Defendant Target"), is incorporated in the state of Minnesota and, upon information and belief, has its United States headquarters and principal place of business at 1000 Nicollet Mall, TPN-0945, Minneapolis, Minnesota 55043.
3. Defendant, and/or through its agents, subsidiaries and affiliates, upon information and belief, have had employees and regular and established places of business and have conducted business in the state of Colorado in the past and have continued to do so. Defendant has also committed acts of infringement in the state of Colorado.

4. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1338.

5. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. §1400 since the Defendant has committed acts of infringement and conducted business in the State of Colorado and this judicial district.

GENERAL ALLEGATIONS

6. Plaintiff created, designed and invented a plaque removing toothbrush and was issued United States Patent No. 5,735,011 on or about April 7, 1998 ("Plaintiff's Patent"). A copy of Plaintiff's Patent is attached hereto as "Exhibit 1" and incorporated herein. Oversimplified, the primary purpose of Plaintiff's Patent was to create a better toothbrush that removes plaque by adding one or more plaque removing members (preferably composed of a mixture of an elastomeric component and an abrasive component) placed among the conventional toothbrush bristles.

7. Defendant, itself and through its respective divisions, subsidiaries and/or agents is engaged, *inter alia*, in the business of manufacturing, marketing, distributing and selling toothbrushes, which Defendant has purportedly trademarked in some fashion.

FIRST CLAIM FOR RELIEF

Patent Infringement

8. Plaintiff incorporates and restates the foregoing allegations as set forth above as though fully set forth herein.

9. Since at least 2007, Defendant, and/or its agents, were manufacturing, distributing, marketing and selling Target Toothbrushes, Item Nos. 25213 and 23301 ("Target

Toothbrushes”), via its distribution channels throughout various portions of the United States, including in the state of Colorado.

10. The Target Toothbrushes implement “plaque removing members” placed among the toothbrush bristles. Upon information and belief, the “plaque removing members” are composed of an elastomeric component and an abrasive component.

11. The Target Toothbrushes are literally the same and/or similar and/or equivalent in design, use and/or effect to Plaintiff’s Patent.

12. Defendant continues to make, distribute, advertise, market and sell the Target Toothbrushes that infringe upon Plaintiff’s Patent.

13. Defendant is infringing upon Plaintiff’s Patent by, *inter alia*, manufacturing, distributing, advertising, marketing and selling the Target Toothbrushes. Such infringement is deliberate, willful, intentional and with full knowledge of the existence and validity of Plaintiff’s Patent.

14. Upon information and belief, Defendant has been infringing upon Plaintiff’s Patent since at least 2007. Defendant’s infringement continues to date and will continue unless Defendant is enjoined by the Court.

15. As a direct and proximate result of Defendant’s actions, Plaintiff has suffered damages in the state of Colorado in an amount to be ascertained but in excess of \$75,000.00.

SECOND CLAIM FOR RELIEF

Injunction

16. Plaintiff incorporates and restates the allegations set forth above as though fully set forth herein.

17. As a direct and proximate result of Defendant's actions of infringing upon Plaintiff's Patent, Plaintiff has suffered, and will continue to suffer, irreparable harm.

18. Plaintiff has no adequate remedy at law if Defendant continues to infringe upon Plaintiff's Patent.

19. Plaintiff has suffered, and will continue to suffer, irreparable harm and damage unless preliminary and final injunctions are issued enjoining Defendant from infringing upon Plaintiff's Patent.

20. Plaintiff will likely prevail on the merits of this case at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Adjudging that Plaintiff's Patent has been infringed upon by Defendant;
- B. Awarding Plaintiff a preliminary and permanent final injunction against the continued infringements;
- C. Ordering an accounting of Defendant's sales, profits, cost of goods sold and other relevant financial information as it relates to Defendant's toothbrushes as specified in this Complaint;
- D. Awarding Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff for that Defendant's infringement, and not less than amount a reasonable royalty, together with interest and costs, in an amount to be ascertained but in excess of seventy-five thousand dollars (\$75,000.00);
- E. Awarding Plaintiff an additional sum on account of the willful, intentional and deliberate character of Defendant's infringing acts pursuant to 35 U.S.C. 284;
- F. Awarding Plaintiff reasonable attorney fees and costs against Defendant; and

G. Granting Plaintiff all other legal and equitable relief for which Plaintiff is entitled.

PLAINTIFF DEMANDS A JURY OF 12.

Dated this 23rd day of February, 2009.

s/ Erik G. Fischer

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