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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RANDY'S RING & PINION SERVICE INC., Plaintiff, v. ARB CORPORATION LTD., Defendant.	Civil Action No. CV9 586 RSM COMPLAINT FOR DECLARATORY JUDGMENT OF NO PATENT INFRINGEMENT AND NO TRADE DRESS INFRINGEMENT

Randy's Ring and Pinion ("RR&P") brings this complaint against ARB Corporation Ltd. ("ARB"), seeking a declaratory judgment that RR&P does not infringe any patents or any trade dress owned or controlled by ARB.

PARTIES TO THIS ACTION

1. RR&P is in the business of developing and selling aftermarket differential products, including ring & pinions, axles, lockers, positractions, and related parts for automotive use. RR&P is a Washington corporation having a principal place of business at 10411 Airport Road SE, Everett, WA 98204.

09-CV-00586-CMP

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2. ARB Corporation Ltd. is an Australian company having a principal place of business at 42-44 Garden St, Kilsyth, VIC 3137, Australia. ARB is also in the business of making and selling aftermarket differential products.

3. ARB operates its business in the United States through its subsidiary, Air Locker, Inc. Air Locker, Inc. does business under the name ARB 4x4 Accessories, through its offices located at 720 SW 34th Street, Renton, WA, 98057. Air Locker, Inc. sells products manufactured by ARB, including products that ARB contends to be covered by the patents or trade dress rights asserted by ARB to be at issue in this action. Upon information and belief, Air Locker, Inc. is a wholly-owned subsidiary of ARB Corporation, Ltd.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202, the U.S. Patent statutes, 35 U.S.C. § 101, *et seq.*, and the Lanham Act, including 15 U.S.C. § 1051 *et seq.*

5. As a claim arising under the federal patent and trademark statutes, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over ARB because it continuously and systematically transacts business within this district, including by the regular sale of automotive products of the type at issue in this action to consumers within this district. In addition, ARB owns a subsidiary, Air Locker, Inc., that maintains its offices within this judicial district for the purpose of selling the ARB products at issue in this action. ARB is therefore subject to general jurisdiction in this district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

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FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT OF NO PATENT INFRINGEMENT

8. On April 20, 2009, ARB sent a letter to RR&P directly accusing RR&P of infringing at least one of ARB's patents by selling RR&P's Ziplocker 2 product. ARB suggested that the Ziplocker 2 may infringe additional patents owned by ARB.

9. ARB is believed to be the owner of record of U.S. Patent No. 5,591,098 (the '098 patent) and U.S. Patent No. 6,394,927 (the '927 patent). Although the ARB letter of April 20 did not identify which patent or patents were at issue, upon information and belief ARB is referring to one or both of the '098 patent and the '927 patent.

10. RR&P believes that neither its Ziplocker 2 product, nor any other differential product made and sold by RR&P, infringes any patents owned or controlled by ARB, including at least the '098 patent and the '927 patent.

11. Accordingly, a case of actual controversy exists among the parties concerning whether any RR&P differential product infringes any patent owned or controlled by ARB.

12. No RR&P products infringe any patents owned or controlled by ARB.

13. Because the RR&P products do not infringe any patents owned by ARB, RR&P is entitled to a declaration of noninfringement of any such patents, including the '098 patent and the '927 patent.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT OF NO TRADE DRESS INFRINGEMENT

14. In its letter of April 20, 2009, ARB further alleged that the RR&P products were "direct copies" of ARB products and that because they were direct copies "there will be confusion in the market place" as a result of RR&P's advertising and sale of its products. In making such an allegation, ARB was asserting that it enjoyed trade dress protection in its products and that the RR&P products infringed ARB's trade dress rights.

15. ARB has no proper basis to allege that any RR&P products were direct copies of any ARB products.

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16. Any features of the RR&P products that may be considered to be similar to the ARB products are functional, and therefore not eligible for trade dress protection.

17. Any features of the RR&P products that may be considered to be similar to the ARB products are not inherently distinctive and have not acquired secondary meaning.

18. There is no likelihood of confusion by consumers as to any affiliation, association, or sponsorship between RR&P and ARB concerning the sale of RR&P products.

19. RR&P has not infringed any trade dress rights of ARB under the Lanham Act or any other applicable law.

20. RR&P is entitled to a declaratory judgment that ARB has no trade dress in its applicable differential products, and that RR&P has not infringed any trade dress or other intellectual property right owned by ARB.

REQUEST FOR RELIEF

WHEREFORE, RR&P requests the following relief:

1. A declaration that RR&P does not infringe the '098 patent, the '927 patent, or any other patent owned or controlled by ARB;

2. A declaration that RR&P has not infringed any trade dress rights owned by ARB;

3. An award of attorneys' fees and costs under the applicable provisions of the Patent Statutes, the Lanham Act, or other applicable laws; and

4. Such other and further relief as the Court may deem just and proper.

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DATED this 29th day of April, 2009.

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