

FILED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

2009 MAY -8 A 11: 56
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Erik B. Cherdak
149 Thurgood Street
Gaithersburg, Maryland 20878
v. (240) 418.3341
f. (240) 235.7128
e. efunds@yahoo.com

Plaintiff,

v.

Vida Shoes International, Inc.
29 W 56th St.
New York, NY 10019-3902
(212)246-1900, f. (212)581-9609
<http://www.vidagroup.com>

SERVE ON:

Vida Shoes International, Inc.
ATTN: VICTOR DABAH, PRESIDENT
29 WEST 56TH STREET, 5TH FLOOR
NEW YORK, NEW YORK, 10019

-and-

**KOHL'S CORPORATION /aka and/or trading as
and/or doing business as/ Kohl's Illinois, Inc.,
KOHL'S DEPARTMENT STORES, INC.,
KOHL'S**
17000 Ridgewood Drive,
Menomonee Falls, WI 53051
Phone: (262) 703-1440

SERVE ON:

CT CORPORATION SYSTEM
4701 COX RD STE 301
GLEN ALLEN, VA 23060-6802

Defendants.

Civil Action No. 2:09cv213

Judge: RBS/FBS

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Erik B. Cherdak, Plaintiff, *Pro Se*¹, and commences this civil action for Patent Infringement under the U.S. Patent Act, 35 USC § 1, *et seq.*, against Vida Shoes International, Inc. and KOHL'S Corporation, Defendants. The Plaintiff hereby Complains as follows:

PARTIES

1. The Plaintiff, Erik B. Cherdak, is an individual citizen of the U.S. who resides at 149 Thurgood Street, Gaithersburg, Maryland 20878 (USA).
2. On information and belief, Defendant Vida Shoes International, Inc. ("Vida") is a private, New York Corporation having a principal place of business at the address specified in the caption of this action. Defendant Vida regularly conducts business in this judicial district and places its goods in commerce with the specific intention of being sold in commerce in this Judicial District in violation of the rights Plaintiff has in and to said patents placed in suit by the instant action.
3. On information and belief, Defendant KOHL'S CORPORATION ("KOHL'S") is a publicly traded, Wisconsin Corporation having a principal place of business at the address specified in the caption of this action. Defendant regularly conducts business in this judicial district and regularly conducts business with the citizens of this judicial district including, but not limited to, the retail sale of infringing products sourced from Defendant Vida to citizens of Virginia. Defendant KOHL'S operates at least eight (8) retail stores in Virginia and operates a online

¹ Although not licensed in Virginia, Plaintiff is a registered patent attorney (USPTO Reg. No. 39,936).

website at www.kohls.com which is open for business for commerce with the citizens of this judicial district 24/7 and 365 days per year.

JURISDICTION & VENUE

4. This is an action for patent infringement under the laws of the United States and, in particular, under Title 35 of the United States Code (Patents) (35 USC § 1, *et seq.*). Jurisdiction and venue are proper in this judicial district and in this Honorable Court based on Sections 1338(a), 1391(b) and (c), and/or 1400(b) of Title 28 of the United States Code. Jurisdiction also is proper under 28 USC section 1332 based on the diversity of citizenship between the Plaintiff and the Defendants and given the fact that the amount in controversy far exceeds \$75,000.00.
5. At all times relevant herein, Mr. Cherdak has been and is the named inventor and owner of U.S. Patent Nos. 5,343,445 (“the ‘445 patent”) and 5,452,269 (“the ‘269 patent”) (hereinafter collectively referred to as the “Cherdak Patents”), which were duly and properly issued by the U.S. Patent and Trademark Office (USPTO) on August 30, 1994, and September 19, 1995, respectively. Thereafter, the USPTO reexamined both of the Cherdak Patents and issued corresponding Re-examination Certificates confirming, *inter alia*, the claims of the Cherdak Patents in November, 2007, and January, 2008, respectively. Also during said reexamination proceedings, the USPTO adopted as both reasonable and proper claim constructions proffered by Plaintiff in other litigation. *See* Official Reexamination Proceedings before the USPTO in connection with USPTO Reexamination Proceedings identified with USPTO Serial Nos. 90/008,246 and

90/008,269. True and accurate copies of the Cherdak Patents and Re-Examination Certificates are attached hereto at EXHIBITS 1-4.

6. At all times relevant herein Defendant Vida manufactures, imports and distributes shoes to retailers such as KOHL'S Department Stores operated in this Judicial District. As such, Defendant Vida actively seeks and engages in business from the citizens of Virginia, USA. Defendant Vida's website is available to and solicits business from citizens of this judicial district at www.vidagroup.com.
7. At all times relevant herein Defendant KOHL'S markets and sells infringing shoes including, but not limited to, shoes manufactured by or on behalf of Defendant Vida to the citizens of this Judicial district through its retail establishments stores and its online website (www.kohls.com).

FACTUAL ALLEGATIONS

8. Paragraphs 1-7 are hereby incorporated by reference.
9. On July 6, 1993, Plaintiff filed a patent application entitled "Athletic Shoe With Timing Device" that resulted in the official issuance of U.S. Patent No. 5,343,445 on August 30, 1994. On August 29, 1994, as a continuation application of the application forming the basis of the '445 patent, Plaintiff filed a patent application also entitled "Athletic Shoe With Timing Device" that resulted in the issuance of U.S. Patent 5,452,269 on September 19, 1995. The Cherdak patents are directed to shoe products and, more particularly, shoes containing lighting systems which illuminate, *inter alia*, to indicate that said shoes are moving such as during jumps by people who wear such infringing shoes (e.g., the shoes illuminate to provide

visual indications of the amount time that the shoes are off the ground and in the air during a jump, etc.).

10. In November 2007 and in January 2008, the USPTO issued reexamination certificates confirming, *inter alia*, the patentability of many of the claims of the Cherdak patents without amendment. Said reexamination certificates are attached hereto at EXHIBITS 3 and 4.
11. Defendants have collectively and/or independently in the past imported, made, distributed, sold and offered for sale and continue to collectively and/or independently import, make, distribute, sell and offer for sale, infringing light-up shoes such as those bearing the brand identifier "CARTER'S." Such infringing light-up shoes are sold by the Defendants throughout their respective sales channels for ultimate sale by Department and other stores including, but not limited to, Defendant KOHL'S Department Stores which are operated in this judicial district and elsewhere in the United States. Such infringing shoes have typical retail selling prices (e.g., MSRP) of between approximately \$20.00 (USD) and \$30.00 (USD) per pair. See EXHIBIT 5 (a website printout from www.kohls.com illustrating Defendant KOHL'S actual marketing of infringing shoes manufactured by Defendant Vida).
12. A sample exemplary lighted shoe marketed and sold by Defendant KOHL'S and which is manufactured by Defendant Vida and which also infringes the Cherdak Patents is the CARTER'S branded shoe having tag-identifiers "CHERISH-K," "C-SKU 137-40-46." This lighted shoe product specified herein is merely exemplary of the shoes sold by Defendants. Discovery in this case may reveal

other shoes which are manufactured, imported, marketed and sold by Defendants including, but not limited to, in this judicial district.

13. PLAINTIFF HEREBY NOTIFIES DEFENDANTS THAT THIS COMPLAINT AND THE INSTANT LAWSUIT COMMENCED HEREBY DO NOT CONTEMPLATE AND PLAINTIFF SEEKS NO DAMAGES IN CONNECTION WITH SALES OF LIGHTED SHOES BY DEFENDANTS WHERE SUCH SHOES HAVE BEEN SOURCED FROM BBC INTERNATIONAL, STRIDERITE CORPORATION, ESO ORIGINALS, INC., CHAMELEON, INC. (WALMART'S SUPPLIER OF LIGHTING MODULES), AND TARGET CORPORATION.

14. In addition to the fact that the exemplary lighted shoe product specified in Paragraph 12, *supra*, infringes the patents in suit, said exemplary lighted shoe product (and possibly others manufactured, imported, marketed, and sold by Defendants which Plaintiff becomes aware of after due and proper discovery in the instant action) is actually marketed for an infringing purposes such as "bright stepper light ups!" Such shoes include an upper member mounted to a sole member; the sole member further includes a cavity formed therein in which a lighting module is maintained; the lighting module includes a battery, a pressure responsive switch configured to respond to pressure imparted to the shoe during movement such as, *inter alia*, during a jump by a person wearing said shoe, an arrangement of light emitting diodes (LEDs) configured to emit light during the time when the shoe is off the ground and in the air during said jump (i.e., during movement realized during said jump) to provide a visual indication of the time

that said shoe is in the air during said jump, and a controller for controlling the illumination of said LEDs. Such illumination is controlled by causing the LEDs to become energized in a timed sequence during a jump, for example.

COUNT I – PATENT INFRINGEMENT – U.S. Pat. 5,343,445

15. Paragraphs 1-14 are hereby incorporated by reference.
16. Defendants alone and/or together have imported, made, distributed, sold and offered for sale lighted shoe products which infringe U.S. Patent No. 5,343,445 to Cherdak (as reexamined by the USPTO) in violation of 35 USC § 271.
17. In particular, Defendants alone and/or together have infringed, contributed to the infringement of and/or has induced the infringement of U.S. Patent No. 5,343,445 in violation of 35 USC § 271 (a), (b) and (c) by Defendants' manufacture, importation, distribution, sales and offers for sale of infringing light up shoe products including, but not limited to, the exemplary light up shoe products of the type specified in this Complaint.
18. Defendants alone and/or together have further violated section 271 of Title 35 of the United States Code by having induced its distributors, customers and or retailer outlets to infringe U.S. Patent No. 5,343,445 under 35 USC § 271(b).
19. Because of Defendants' infringing activities, Plaintiff has suffered pecuniary losses and is at least entitled to damages as set forth in the U.S. Patent Act (35 USC § 1, *et seq.*).
20. Because of the subjectively willful nature of Defendant's infringing activities in violation of 35 USC § 271, Plaintiff is entitled to enhanced damages as permitted by the U.S. Patent Act (35 USC § 1, *et seq.*).

COUNT II – PATENT INFRINGEMENT – U.S. Pat. 5,452,269

21. Paragraphs 1-20 are hereby incorporated by reference.
22. Defendants alone and/or together have imported, made, distributed, sold and offered for sale lighted shoe products which infringe U.S. Patent No. 5,452,269 to Cherdak (as reexamined by the USPTO) in violation of 35 USC § 271.
23. In particular, Defendants alone and/or together have infringed, contributed to the infringement of and/or has induced the infringement of U.S. Patent No. 5,452,269 in violation of 35 USC § 271 (a), (b) and (c) by Defendants' manufacture, importation, distribution, sales and offers for sale of infringing light up shoe products including, but not limited to, the exemplary light up shoe products specified in this Complaint.
24. Defendants have alone and/or together further violated section 271 of Title 35 of the United States Code by having induced its distributors, customers and or retailer outlets to infringe U.S. Patent No. 5,452,269 under 35 USC § 271(b).
25. Because of Defendants' infringing activities, Plaintiff has suffered pecuniary losses and is at least entitled to damages as set forth in the U.S. Patent Act (35 USC § 1, *et seq.*).
26. Because of the subjectively willful nature of Defendants' infringing activities in violation of 35 USC § 271, Plaintiff is entitled to enhanced damages as permitted by the U.S. Patent Act (35 USC § 1, *et seq.*).

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PRAYER FOR RELIEF

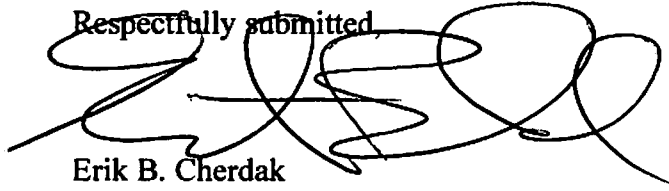
WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

- A. For a judgment that the Cherdak patents are valid and infringed by Defendants including, but not limited to, their subsidiaries, predecessors-in-interest and business units however and wherever formed;
- B. For a permanent injunction to be issued to stop continued infringement the Cherdak patents by Defendants and their respective parents, subsidiaries, officers, directors, employees, affiliates, representatives and agents, and all those acting in concert with or through Defendants, directly or indirectly, including, but not limited to, distributors, customers and retailers;
- C. For an accounting to be ordered so that damages caused to Plaintiff by Defendants' infringement of the Cherdak Patents, together with pre-judgment and post-judgment interest; and
- D. Such other relief that this Honorable Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury on all issues so triable.

Respectfully submitted,


Erik B. Cherdak
Plaintiff, *Pro Se*

Date: 5/8/09

EXHIBITS:

1. U.S. Patent No. 5,343,445 to Cherdak
2. U.S. Patent No. 5,452,269 to Cherdak
3. USPTO Re-Examination Certificate No. 5,343,445 C1 to Cherdak
4. USPTO Re-Examination Certificate No. 5,452,269 C1 to Cherdak
5. Web-Site Printout from www.kohls.com showing a CARTER's infringing light-up shoe