

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

GOJO INDUSTRIES, INC.)	
One GOJO Plaza, Suite 500)	Civil Action No.
Akron, Ohio 44311)	
)	Judge:
Plaintiff,)	
)	
v.)	
)	COMPLAINT
DYNAMIC SALES USA, LLC,)	(Jury Demand Endorsed Hereon)
55 Union Road, Suite 203)	
Spring Valley, New York 10977)	

JURISDICTION AND VENUE

1. This action arises under (a) the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284 and 285 (patent infringement), and (b) the trademark laws of the United States, including 15 U.S.C. § 1125 (trade dress infringement and false advertising).
2. Venue is appropriate in this district under 28 U.S.C. §§ 1400(b) and 1391(c) as defendant is subject to personal jurisdiction in this district; and under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to at least certain of the claims against defendant occurred in this district.

THE PARTIES

3. Plaintiff GOJO Industries, Inc. (“GOJO”) is an Ohio corporation with its principal office and place of business at One GOJO Plaza, Suite 500, Akron, Ohio 44311.
4. Upon information and belief, Defendant Dynamic Sales USA, LLC (“Dynamic”) is a New York limited liability company with its principal office and place of business at 55 Union Road, Suite 203, Spring Valley, New York 10977.

5. Upon information and belief, Dynamic is doing business under the names “Dynamic Sales USA, Inc.,” “Pure Jell, Inc.” and “Purejell Industries.”

COUNT I - PATENT INFRINGEMENT

6. GOJO restates the allegations set forth in paragraphs 1 through 5 as if fully rewritten.

7. GOJO is the exclusive licensee of the following U.S. Letters Patent Numbers duly and lawfully issued on the respective dates indicated: 6,216,916 for “Compact Fluid Pump”, April 17, 2001 (“the ‘916 patent”) (Exhibit 1); D432,547 for “Pump for Flowable Material,” October 24, 2000 (“the ‘547 patent”) (Exhibit 2); D495, 398 for “Nozzle for Dispensing Fluids,” August 31, 2004 (“the ‘398 patent”) (Exhibit 3); and D504,492 for “Nozzle for Dispensing Fluids,” April 26, 2005 (“the ‘492 patent) (Exhibit 4) (collectively, “patents-in-suit”).

8. GOJO has given notice to the public that apparatus made and sold under the patents-in-suit is patented by marking such apparatus in accordance with the provisions of 35 U.S.C. §287.

9. Upon information and belief, Dynamic has been and is importing, selling and offering for sale throughout the United States, including within the district of this Court, on the website www.purejell.com and otherwise, a cartridge having a compact fluid pump, such cartridge said to contain hand sanitizing and disinfecting preparation having anti-bacterial properties, the same being shown in Exhibit 5 (hereinafter “the cartridge”).

10. The cartridge imported, sold and offered for sale by Dynamic infringes at least claim 13 of the ‘916 patent.

11. The cartridge imported, sold and offered for sale by Dynamic infringes the claim of the ‘547 patent.

12. The cartridge imported, sold and offered for sale by Dynamic infringes the claim of the '398 patent.

13. The cartridge imported, sold and offered for sale by Dynamic infringes the claim of the '492 patent.

14. Dynamic's sales activities regarding the cartridge shown in Exhibit 5 are without leave or license of GOJO, and violate GOJO's rights.

15. Dynamic's infringement of said patents of GOJO has deprived GOJO of sales which it otherwise would have made.

16. Dynamic will continue its acts of patent infringement unless enjoined by the Court.

COUNT II - FEDERAL TRADE DRESS INFRINGEMENT

17. GOJO restates the allegations set forth in paragraphs 1 through 16 as if fully rewritten.

18. Prior to advertising and selling its hand sanitizer, GOJO developed a distinctive, nonfunctional trade dress through the unique combination of elements for the presentation and sale of the same. As shown in Exhibit 6, this trade dress consists of at least the following: use of clear plastic packaging through which the clear product can be seen; said packaging having a glossy white label with rounded corners on which the "PURELL" trademark is positioned at the top right section, and the caption "INSTANT HAND SANITIZER WITH MOISTURIZERS AND VITAMINE E" is positioned directly below, said caption consisting of capitalized letters of distinctive font presented in a distinctive layout; and on which "drug facts" are listed along the left in distinctive font of dark blue color, and layout with section headings; and the fluid volume is positioned at the bottom of the label.

19. Because of long use and extensive sales, the trade dress of GOJO has acquired secondary meaning among the relevant trade and public as a symbol identifying GOJO and the source of GOJO's hand sanitizer.

20. Subsequent to GOJO's acquisition of secondary meaning in its trade dress and without GOJO's consent, upon information and belief, Dynamic adopted and began using a trade dress substantially and confusingly similar to GOJO's trade dress in commerce in connection with its sales of the compact fluid pump said to contain hand sanitizing and disinfecting preparation having anti-bacterial properties. (Exhibit 5.)

21. Dynamic's use of infringing trade dress that imitates or simulates GOJO's distinctive trade dress has in the past and will continue to cause confusion, mistake or deception among the public.

22. Dynamic's use of infringing trade dress is likely to cause members of the public to mistakenly believe that Dynamic's services originate from, or are rendered by, or are in affiliation with, or under license from, or with the approval of GOJO.

23. Dynamic's use of confusingly similar trade dress is likely to and does permit Dynamic to misappropriate and unfairly trade on the valuable good will and reputation of GOJO and will subject that good will and reputation in GOJO's distinctive trade dress to hazards and perils attendant upon Dynamic's business activities, over which GOJO has no control.

24. Dynamic's use of infringing trade dress has caused and, unless restrained, will continue to cause injury to GOJO's business reputation and dilution of the distinctive quality of GOJO's trade dress.

25. Dynamic's use of infringing trade dress has deprived GOJO of sales which it otherwise would have made.

COUNT III - FEDERAL FALSE ADVERTISING

26. GOJO restates the allegations set forth in paragraphs 1 through 25 as if fully rewritten.

27. Upon information and belief, Dynamic is deliberately, and with the intent of deceiving or misleading the public, using the statutory notice symbol ® in connection with its mark “PUREJELL” with the knowledge that it is not now and has never been federally registered.

28. Dynamic’s deliberate and intentional use of the statutory notice symbol ® in connection with its mark “PUREJELL” constitutes false advertising in violation of 15 U.S.C. § 1125(a).

29. Dynamic’s false advertising has deprived GOJO of sales which it otherwise would have made and has in other respects injured GOJO, and will cause GOJO added injury and loss of profits unless enjoined by the Court.

WHEREFORE, GOJO prays for judgment as follows:

With respect to Count I:

(A) A finding that Dynamic has infringed at least claim 13 of the ‘916 patent, and the claim of each of the ‘547, ‘398 and ‘492 patents;

(B) An Order preliminarily and permanently enjoining Dynamic, its officers, agents, servants, employees, representatives, successors, and assigns, and all persons, firms, corporations, or entities acting under its direction, authority or control, and all persons acting directly or indirectly in concert or participation with any of them, from further infringing any of the claims of the ‘916 patent, and the claim of each of the ‘547, ‘398 and ‘492 patents; and

(C) An Order for an accounting for damages adequate to compensate GOJO for the patent infringement, but not less than a reasonable royalty, such damages to be trebled because of the willful and deliberate character of the infringement;

(D) A finding that this is an exceptional case under 35 U.S.C. § 235;

With respect to Counts II and III:

(E) A finding that Dynamic has: (a) infringed the trade dress rights of GOJO; and (b) deliberately and falsely advertised with the intent of deceiving the public;

(F) An Order preliminarily and permanently enjoining Dynamic, its officers, agents, servants, employees, representatives, successors, and assigns, and all persons, firms, corporations, or entities acting under its direction, authority or control, and all persons acting directly or indirectly in concert or participation with any of them, from: (a) using in commerce the trade dress of Exhibit 5 or any other trade dress confusingly or deceptively similar to GOJO's trade dress as shown in Exhibit 6 in connection with the manufacture, distribution, license, sale, promotion or other exploitation of hand sanitizers and related products; and (b) using the statutory notice symbol ® in connection with its mark "PUREJELL" or otherwise falsely advertising its hand sanitizers and related products;

(G) An Order (1) for an accounting of Dynamic's profits, (2) awarding GOJO actual damages as the result of the acts of Dynamic, and (3) trebling said damages;

(H) An Order pursuant to 15 U.S.C. § 1118 that all material associated with the violation of rights as enumerated in Counts II and III be delivered up to be destroyed;

With respect to all Counts:

(J) Exemplary and punitive damages;

(K) Reasonable attorney fees;

(L) The costs of this action; and

(M) Such other and further relief as the Court may deem proper.

Jury Demand

GOJO Industries, Inc. requests a jury trial herein.

Respectfully submitted,

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