

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED
March 11, 2008 TG
08cv1455
Judge KENDALL
Magistrate Judge NOLAN

RABBIT TANAKA CORPORATION, USA, a)
a Texas Corporation, and RABBIT TANAKA)
CORP., LTD., a Hong Kong, Corporation,)

Plaintiffs)

v.)

WALGREEN CO., an Illinois Corporation,)
and TRADEWINDS INTERNATIONAL)
INTERNATIONAL ENTERPRISES, INC.,)
a California Corporation,)

Defendants.)

Civil Action No.

**COMPLAINT FOR PATENT INFRINGEMENT,
TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiffs, Rabbit Tanaka Corporation, USA, and Rabbit Tanaka Corp., Ltd., complain of the Defendants Walgreen Co. and Tradewinds International Enterprises, Inc., as follows:

1. Plaintiff, Rabbit Tanaka Corporation, USA, is a corporation of Texas, with its principal place of business at 5925 Lovell Avenue, Ft. Worth, Texas 76107. It is doing business in this district and generally throughout the United States by the sale and distribution of its products under the Rabbit Tanaka name.

2. Plaintiff, Rabbit Tanaka Corp., Ltd., is a corporation of Hong Kong, with its principal place of business at 7th Floor, Block A, MP Industrial Centre, 18 Ka Yip Street, Siu Sai Wan, Hong Kong.

3. Defendant Walgreen Co. is a corporation of Illinois, with its headquarters and its principal place of business at 200 Wilmont Road, Deerfield, Illinois 60015. Walgreen Co. has many retail locations within this state and within this district.

4. Defendant Tradewinds International Enterprises, Inc., ("Tradewinds") is a corporation of California, with its principal place of business at 432 North Canal Street, Suite 2, South San Francisco, California 94080.

5. The Defendant Walgreen Co. sells Tradewinds products through Walgreen's retail stores throughout the United States, in Illinois and in this district.

6. This Court has jurisdiction of this civil action under 28 USC § 1331, under the Patent Laws of the United States, 35 USC §§ 1 et seq..

7. Venue is proper in this Court under 28 USC § 1391, as the Defendant Walgreen has its headquarters in this District, and the Defendants have here committed acts of patent infringement in this district. Venue is most appropriate in this district under 28 USC § 1404(a) as this is the most convenient forum for this dispute.

COUNT I: US PATENT INFRINGEMENT

8. On November 11, 1997, United States Patent No. 5,685,097 (the '097 patent) was duly and legally issued for "Illuminated Colored Display Device". The '097 patent is exclusively licensed to Plaintiffs, together with the right to sue for past infringements. Attached as Exhibit A.

9. Prior to the commencement of this action, the Defendants have infringed the '097 patent, within this District and elsewhere, within the provisions of 35 USC § 271, by making, selling, offering for sale, and/or using illuminated, colored, display devices, in the form of a virtual aquarium, including its "Animated Ocean Lamp" (Exhibit B), which embody an equivalent structure to the patented invention as set forth in Claim 1 and other claims of that patent, and it will continue to do so unless enjoined by this Court .

10. Plaintiffs make and sell the original "Virtual Vision" (Exhibit C) illuminated, colored, virtual aquarium of which Defendants' product is a slavish copy. Plaintiffs' products are

the original, maintenance free “Aquarium” and are marked with the '097 patent number. Plaintiffs have licensed others only to settle past infringement claims and not for on-going sales, and their licensing/settlement program is being jeopardized and irreparably damaged by the Defendants’ continuing infringing sales. Plaintiffs will suffer additional irreparable damage from the Defendants’ actions unless this Court enjoins the Defendants from continuing its infringement.

11. Defendants have known of the ‘097 patent yet have, without reasonable and well-founded belief that it is entitled to make and sell its accused product, deliberately and willfully infringed and continue to infringe the '097 patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 USC § 284, and the award of attorney fees pursuant to 35 USC § 285.

12. The Plaintiffs and the Defendants are in direct competition in connection with sales of the accused products of Defendants and the patented product of Plaintiffs.

13. Many large retailers, including Target, Kohl's, Holmes and others have respected the '097 patent and paid substantial settlement amounts as damages for sales of infringing products.

COUNT II: TRADE DRESS INFRINGEMENT

14. Plaintiffs incorporate and reallege the matters of paragraphs 1 through 13, above.

15. Plaintiffs have imported and sold their distinctive line of “Virtual Vision” aquariums under the Virtual Vision mark in this country since at least January, 2000, and the product line was known abroad prior to that. A photograph of Plaintiffs' Virtual Vision product, showing the distinctive trade dress of the cabinets and packaging, is attached as Exhibit B. Plaintiffs' product is distinctive in appearance and has acquired secondary meaning identifying each of its products as originating from Plaintiffs.

16. Long after the successful introduction and popular recognition of Plaintiffs' “Virtual Vision” aquariums, the Defendants have introduced their “Animated Ocean Lamp” aquarium in a cabinet and packaging (Exhibit B) that is a direct copy of Plaintiffs' “Virtual Vision” aquarium, with only insignificant variations. (Exhibit C.) On information and belief, many

customers, upon seeing the Defendants' "Animated Ocean Lamp", have been confused as to the source, believing that product to be from Plaintiffs. Defendants have the hope and expectation that persons knowing Plaintiffs' "Virtual Vision" product will buy Defendants' "Animated Ocean Lamp" by mistake.

17. Defendants will continue to promote and sell their "Animated Ocean Lamp" with the infringing trade dress without right or license from the Plaintiffs unless enjoined by the Court. Plaintiffs have been and are being irreparably injured by these acts committed by Defendants.

COUNT III: FEDERAL AND STATE UNFAIR COMPETITION

18. Plaintiffs incorporate and reallege the matters set forth in paragraphs 1 through 14, above.

19. Defendants have produced, promoted and sold their copy of Plaintiffs' "Virtual Vision" aquarium as if it were Defendants' own, and because of Defendants' product's inferior quality, are able to sell the copied devices at a comparatively low price. The inferior quality has irreparably injured the Plaintiffs' reputation.

20. Defendants have produced, promoted and sold their "Animated Ocean Lamp" aquarium by copying Plaintiffs' "Virtual Vision" without incurring any of the research and development or other expenses associated with the development of such product. According to published reports, Walgreen's gross margins have increased 16%, which is due in part to the lower costs of inferior products such as the "Animated Ocean Lamp".

21. Defendants' "Animated Ocean Lamp" aquarium is of vastly inferior quality and has not been tested and approved by Underwriters Laboratories (UL) as Plaintiffs' has been. Many United States' municipalities have laws, codes or regulations which require a product to be tested by a nationally recognized testing laboratory before it can be sold. Although UL listing is not mandatory throughout the entire United States, a product is usually considered unsafe if it does not comply to the UL standard.

22. The Defendants have violated federal and state unfair competition laws, including Illinois Deceptive Trade Practices Act (815 ILCS 510/1 et seq.) and engaged in unfair methods of competition and deceptive acts. Defendants are offering their copied product without acknowledging the origin of the product appearance with Plaintiffs. Those acts have caused a likelihood of confusion and a misunderstanding as to the source and qualities of the products offered by Plaintiffs and by Defendants, irreparably harming Plaintiffs.

23. By reason of Defendants' acts complained of herein, Defendants have created a likelihood of confusion among the public, competed unfairly, and committed unfair and deceptive acts in the conduct of their trade and commerce in violation of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/1 et seq., irreparably harming Plaintiffs.

WHEREFORE, PLAINTIFFS PRAY THAT:

a. Temporary and Preliminary Restraining Orders be issued from this Court, barring the Defendants and their privies from pursuing any declaration judgment action against Plaintiffs.

b. Temporary, preliminary, and permanent injunctions be issued from this Court, barring the Defendants and their privies from any further making, importation, sale, offering for sale, and use of their product so as to infringe Plaintiffs' '097 patent and Plaintiffs' trade dress, and to cease their acts of unfair competition.

c. Preliminary, and permanent injunctions be issued from this Court, directing that the Defendants immediately destroy, or turn over to Plaintiffs for destruction or disposal, all remaining products in its or their possession at all stores and warehouses of Defendants, in transit among places of business of Defendants, and coming into possession of Defendants in the import trade.

d. An Order be entered awarding Plaintiffs their lost profits, increased damages, attorneys' fees, and costs and expenses in this matter, and

e. Such further and other relief be granted, including costs of suit, as may be just and equitable in the circumstances.

Respectfully submitted,

March 11, 2008

s/ Robert J. Schneider _____
Robert J. Schneider
John R. Crossan
COUNSEL FOR PLAINTIFF,
RABBIT TANAKA CORPORATION, USA
CHAPMAN AND CUTLER LLP
111. W. Monroe St.
Chicago, IL 60603
(312) 845-3919
Fax: 312/803-5299