

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GIFT CARD IMPRESSIONS, LLC
14717 Farley Street
Overland Park, Kansas

Plaintiff

Case No. 09-CV-2608 KHV/GLR

v.

CLEGG INDUSTRIES, INC.

Serve:

Registered Agent:

Timothy Clegg
Clegg Industries, Inc.
19220 S. Normandie Avenue
Torrance, California 90502

**COMPLAINT FOR DECLARATORY
JUDGMENT, TORTIOUS
INTERFERENCE AND INJUNCTION**

AMERICHIP, INC.

Serve:

Registered Agent:

Kevin Clegg
Americhip, Inc.
19032 S. Vermont Avenue
Gardena, California 90248

DEMAND FOR JURY TRIAL

TIMOTHY CLEGG

Clegg Industries, Inc.
19220 S. Normandie Avenue
Torrance, California 90502

and

KEVIN CLEGG

Americhip, Inc.
19032 S. Vermont Avenue
Gardena, California 90248

Defendants.

Pursuant to Fed. R. Civ. P. 15, Gift Card Impressions, LLC., (“GCI”) alleges for its Complaint against Clegg Industries, Inc., (“Clegg”), Americhip, Inc., (“Americhip”), Timothy Clegg and Kevin Clegg as follows:

PARTIES

1. GCI is a corporation organized and existing under the laws of the state of Kansas, with its principal place of business at 14717 Farley Street, Overland Park, Kansas.

2. On information and belief, Clegg is a corporation organized and existing under the laws of the state of California, with a place of business located at 19220 S. Normandie Avenue, Torrance, California.

3. On information and belief, Americhip is a corporation organized and existing under the laws of California, with a place of business located at 19032 South Vermont Avenue, Gardena, California.

4. On information and belief, Timothy Clegg is the CEO of Americhip and the owner of Clegg and can be served at 19220 S. Normandie Avenue, Torrance, California.

5. On information and belief, Kevin Clegg is the president of Americhip and can be served at 19032 S. Vermont Avenue, Gardena, California.

JURISDICTION AND VENUE

6. This action seeks declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § § 2201 and 2202. It presents an actual case and controversy under Article III of the United States Constitution and serves a useful purpose in clarifying and settling the legal rights at issue.

7. On information and belief, Clegg is the assignee of U.S. Patent No. 5,275,285 (“the '285 patent”), entitled “business card holder with sound generating microchip,” a true and correct copy of which is attached hereto as “Exhibit A.”

8. On information and belief, Americhip has an interest in and may be a co-assignee of the '285 patent.

9. Defendants have explicitly charged GCI with infringement of the '285 patent by correspondence sent to GCI's business address in Kansas via regular mail and electronic means.

10. GCI seeks a judgment against the Defendants that GCI's products have not infringed and do not infringe the '285 patent and/or that the '285 patent is invalid.

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § § 1331, 1338(a), 2201 and 35 U.S.C. § 1 et seq. This Court has supplemental jurisdiction over the state law claims asserted herein under 28 U.S.C. § 1367.

12. This Court has personal jurisdiction over Defendants because Defendants have transacted business in Kansas as they market their products and/or services to Kansas individuals and/or businesses, deliver their products to individuals and/or businesses in Kansas, such as Wal-Mart stores, have made personal contact with GCI in Kansas for purposes of transacting business and alleging infringement and asserting that a license must be taken for '285 patent under threat of infringement litigation and this cause of action arises from the doing of such acts in this State.

13. Venue is proper in this District under 28 U.S.C. § 1391(b) and/or (c) because a substantial part of the events or omissions giving rise to the action occurred in the District of Kansas and Defendants are subject to personal jurisdiction in the District of Kansas pursuant to the Kansas Long-Arm Statute, Kan. Stat. Ann. § 60-308.

FACTS

14. GCI manufactures and sells gift card carriers that incorporate sound effects.

15. On November 20, 2009, Defendants' attorney sent a letter to GCI alleging that GCI is infringing the '285 patent, including a product manufactured and sold by GCI to American Express.¹ Despite GCI's communication on November 24, 2009, that there is no evidence of infringement, Defendants' again communicated on November 24, 2009, and

¹ The letter was not received by mail but was received via an email from Kevin Clegg to Brett Glass, president of GCI, on November 24, 2009.

November 30, 2009, that GCI has and is infringing the '285 patent. A copy of the November 20, 2009 letter is attached hereto as "Exhibit B." A copy of the November 24, 2009, and November 30, 2009, emails are attached hereto as "Exhibit C."

16. GCI is not liable for infringing any claims of the '285 patent because each such claim is invalid, and/or the accused GCI products have not infringed and do not infringe any valid claims of the '285 patent.

17. Accordingly, there is an actual, substantial and continuing justiciable controversy between GCI Card and Defendants regarding the validity of the '285 patent and regarding alleged infringement of the '285 patent by GCI or by the use of GCI products.

18. Further, GCI has entered into a business relationship with American Express Company for the sale of gift card carriers manufactured and sold by GCI specifically for American Express.

19. Upon information and belief, Defendants Timothy Clegg and/or Kevin Clegg, acting in their individual capacity and/or on behalf of Clegg and/or Americhip, contacted American Express with allegations of infringement of the '285 patent. As a result of these contacts, the business relationship between GCI and American Express has been interfered with for no purpose other than to deprive GCI of this relationship to its detriment and to the benefit of Defendants.

20. Defendants contacted American Express claiming an infringement by GCI to purposefully interfere with GCI's relationship with American Express and claiming they were the sole source for that type of gift card product.

FIRST CLAIM FOR RELIEF

(Declaratory Relief - the '285 Patent)

21. GCI incorporates by reference each and every allegation set forth in paragraphs 1-20 as if fully set forth herein.

22. GCI has not directly or indirectly infringed and is not directly or indirectly infringing any claim of the '285 patent.

23. One or more of the claims of the '285 patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code, including without limitation, § § 102, 103 and/or 112.

24. GCI is entitled to a declaratory judgment that it has not infringed and is not infringing the '285 patent and/or that the claims of the '285 patent are invalid.

SECOND CLAIM FOR RELIEF

(Tortious Interference with a Business Relationship)

25. GCI incorporates by reference each and every allegation set forth in paragraphs 1-24 as if fully set forth herein.

26. The elements of tortious interference with a business relationship are (1) the existence of a business relationship or expectancy with the probability of future economic benefit to the plaintiff; (2) knowledge of the relationship or expectancy by the defendant; (3) that, except for the conduct of the defendant, plaintiff was reasonably certain to have continued the relationship or realized the expectancy; (4) intentional misconduct by defendant; and (5) damages suffered by plaintiff as a direct or proximate result of defendants misconduct. Turner v. Halliburton Co., 722 P.2d 1106, 1115 (Kan. 1986).

27. At the time Defendants contacted American Express regarding allegations of infringement of the '285 patent, a business relationship existed between GCI and American Express.

28. Defendants had knowledge of the business relationship between GCI and American Express.

29. GCI is reasonably certain that the business relationship with American Express would have continued without interruption but for the interference by Defendants.

30. Defendants' intentionally interfered with the relationship between GCI and American Express in order to deprive GCI of its relationship with American Express and to benefit Defendants at the expense of GCI.

31. GCI has and continues to sustain damages as a direct result of Defendants' misconduct in alleging infringement of the '285 patent.

THIRD CLAIM FOR RELIEF

(Preliminary Injunction)

32. GCI incorporates by reference each and every allegation set forth in paragraphs 1-31 as if fully set forth herein.

33. Defendants have intentionally communicated to customers of GCI that the customer needs to order products similar to GCI's products from Defendants rather than from GCI.

34. Defendants have communicated to customers of GCI that GCI is infringing on a patent owned by Defendants.

35. Upon information and belief, Defendant has gone beyond merely communicating the existence of the '285 patent to at least one company in a relationship with GCI and is purposefully and intentionally seeking to deprive GCI of its business relationship.

36. The factors to consider in granting a preliminary injunction are (1) that the party is likely to succeed on the merits, (2) that the party is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the parties favor, and (4) that an injunction is in the public interest. Winter v. Natural Resource Defense Council, 129 S. Ct. 365, 374 (2008); Titan Tire Corp. v. Case New Holland, Inc., No. 2008-1078 (Fed. Cir. June 3, 2009),

37. GCI is likely to succeed on the merits of this case by (1) showing evidence that will render Defendants' patent anticipated and/or obvious in view of prior art and by (2) showing that its product does not infringe the '285 patent.

38. GCI is suffering and will continue to suffer irreparable harm without an order enjoining Defendants from interfering with its business relationships.

39. GCI has produced and manufactured specific gift cards for individual customers, including American Express, expending money and resources to fulfill obligations arising out of its business relationships. GCI and its customers would be detrimentally harmed by permitting the continued interference during the pendency of this dispute. The burden is on the Defendants' to establish the infringement by GCI.

40. It is in the public interest to permit business obligations and relationships to continue during the pendency of patent litigation.

WHEREFORE, GCI requests the Court to enter a judgment in its favor and against the Defendants as follows:

a. An order entering declaratory judgment in favor of GCI and against the Defendants;

b. An order declaring GCI has not directly or indirectly infringed, and is not directly or indirectly infringing, any claim of the '285 patent;

- c. An order declaring the claims of the '285 patent to be invalid;
- d. An order awarding GCI its costs including expert fees, disbursements, and reasonable attorneys' fees incurred in this action, pursuant to 35 U.S.C. § 285;
- e. An order entering judgment in favor of GCI and against the Defendants for tortious interference with a business relationship;
- f. An order awarding GCI damages for the tortious interference with a business relationship;
- g. An order granting a preliminary injunction enjoining Defendants' from engaging in communications with customers of GCI for purposes of terminating the business relationship; and
- h. An order granting such further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), GCI demands a trial by jury for all issues so triable.

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Kansas as the place of trial.

DATED: December 1, 2009

POLSINELI SHUGHART, P.C.,

/s/ G. Edgar James

G. EDGAR JAMES KS# 22407

RICHARD STITT KS #14268

RUSSELL S. JONES, JR. KS #70214

Twelve Wyandotte Plaza; 120 W. 12th Street

Kansas City, MO 64105

Phone: (816) 421-3355; Fax: (816) 374-0509

rjones@polsinelli.com

rstitt@polsinelli.com

ejames@polsinelli.com

ATTORNEYS FOR PLAINTIFF