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Attorneys for Plaintiff Telebrands Corp.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Telebrands Corp.,

Plaintiff,

v.

Rob Yaeger,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Telebrands Corp. (“Telebrands”), having an address of 79 Two Bridges Road, Fairfield, NJ 07004, as and for its complaint against Defendant Rob Yaeger (“Yaeger”), having an address of 18255 197th Street, Big Lake, MN 55309, through its attorneys, states the following:

NATURE OF THE ACTION

1. In this action, Telebrands seeks a declaratory judgment that U.S. Patent No. 6,626,555 (“the ‘555 Patent” or “patent-in-suit”) is invalid and not infringed.

SUBJECT MATTER JURISDICTION

2. This Complaint seeks declaratory relief and arises under the Declaratory Judgment Act, 28 U.S.C. §§2201(a) and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

3. This Court has subject matter jurisdiction of the claim by virtue of 28 U.S.C. §§ 1331 and 1338(a).

PARTIES

4. Telebrands is a corporation organized and existing under the laws of the State of New Jersey and maintains its principal place of business at 79 Two Bridges Road, Fairfield, NJ 07004. Telebrands has conducted and is conducting business in interstate commerce and in this judicial district.

5. On information and belief, defendant Yeager is an individual residing at 18255 197th Street, Big Lake, MN 55309. Yeager purports to be the sole assignee of the ‘555 Patent entitled “Portable Illumination Device,” which issued on September 30, 2003.

EXISTENCE OF AN ACTUAL AND JUDICIAL CONTROVERSY

6. There is an actual controversy between the parties within the jurisdiction of this Court under 28 U.S.C. §§2201 and 2202 concerning the validity and infringement, of the ‘555 Patent.

FACTS COMMON TO ALL CLAIMS

7. Telebrands sells a portable light product known as “StickUp Bulb” in this Judicial District and elsewhere in the United States.

8. On May 8, 2007, Yaeger, through his counsel, wrote a letter to Telebrands addressed to Mr. A.J. Khubani, President of Telebrands at the principal office of Telebrands in Fairfield, New Jersey. In his May 8, 2007 letter, Yaeger identified the `555 Patent, enclosed with the letter a copy of the `555 Patent, and stated that he had become aware of Telebrands’ “StickUp Bulb” product. Yaeger further stated that he had an “interest in establishing communication with Telebrands regarding the ‘StickUp Bulb’ product and the `555 Patent.” Yaeger requested a “substantive response” to the May 8, 2007 letter “by no later than May 31, 2007.”

9. On June 8, 2007, Yaeger, through his counsel, again wrote to Mr. Khubani of Telebrands at the principal office of Telebrands in Fairfield, New Jersey stating “we now seek to obtain your substantive response to our client’s inquiry regarding the ‘StickUp Bulb’ product marketed by Telebrands Corp. in view of the” `555 Patent. Yaeger further stated that “[a]t this juncture,” he “wishes to discuss amicable resolutions to this issue with Telebrands Corporation.” Yaeger further stated that he “now request[s] that you provide us with your position in this matter.”

10. On June 27, 2007, Telebrands’ counsel in New York advised Yaeger’s counsel that the matter concerning the `555 Patent was being reviewed.

11. On August 2, 2007, Yaeger, through his counsel, wrote to counsel for Telebrands in New York stating “[i]t has now been over one month since the date of your letter, and nearly three months since the date of our original letter to Telebrands Corporation regarding our client’s

patent. Accordingly, please provide us with your response to our letters by no later than August 10, 2007.”

12. Considered together, the foregoing letters from Yaeger’s counsel constitute allegations that Telebrands’ “StickUp Bulb” infringes Yaeger’s `555 Patent, and give rise to a reasonable belief that litigation for patent infringement would be instituted by Yaeger against Telebrands if Telebrands did not provide its “response” or its “position” regarding Telebrands’ “StickUp Bulb” product and the `555 Patent by the deadlines set forth in such letters.

13. The foregoing facts give rise to a definite and concrete dispute, touching the legal relations of the parties who have adverse legal interests.

14. The dispute is real and substantial and admits of specific relief through a decree of non-infringement of the `555 Patent by Telebrands’ “StickUp Bulb” product, and invalidity of the `555 Patent.

15. The facts set forth above show that there is a substantial controversy between Yaeger and Telebrands who have adverse legal interests, which controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

16. It is a reasonable inference and belief from the foregoing that Yaeger has taken a position that puts Telebrands in the position of either pursuing arguably illegal behavior or abandoning that which Telebrands claims it has a right to do.

17. An actual, valid and justiciable controversy has arisen and now exists between Yaeger and Telebrands with respect to the Yaeger `555 Patent and Telebrands’ “StickUp Bulb” product.

18. Telebrands hereby seeks a judicial determination of the foregoing controversy.

COUNT I
(DECLARATORY JUDGMENT OF INVALIDITY)

19. Telebrands repeats and reasserts all allegations in paragraph 1-18 above as if they are stated in full herein.

20. The '555 Patent is invalid as a result of Yaeger's failure to comply with one or more provisions of Title 35 of the United States Code related to patentability of an invention, including but not limited to §§ 102, 103, 112, and 132.

21. Telebrands is entitled to a declaratory judgment that the '555 Patent is invalid.

22. Absent a declaration by this Court, Yaeger has and will continue to wrongfully assert the '555 Patent against Telebrands and thereby cause Telebrands irreparable injury and damage.

COUNT II
(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

23. Telebrands repeats and reasserts all allegations in paragraph 1-18 above as if they are stated in full herein.

24. Telebrands has not infringed any valid claim of the '555 Patent.

25. Telebrands has not induced, nor does it now induce, infringement of any valid claim of the '555 Patent.

26. Telebrands has not contributorily infringed, nor does it now contributorily infringe, any valid claim of the '555 Patent.

27. Telebrands is entitled to a declaratory judgment that it has not directly, contributorily, or by inducement, infringed any valid claim of the '555 Patent.

28. Absent a declaration by this Court, Yaeger has and will continue to wrongfully assert the '555 Patent against Telebrands and thereby cause Telebrands irreparable injury and damage.

REQUEST FOR RELIEF

WHEREFORE, Telebrands respectfully requests that judgment be entered in its favor as follows:

1. Declaring that each of the claims of the '555 Patent is invalid and/or not infringed by Telebrands' "StickUp Bulb" product;
2. Declaring that Telebrands has not contributorily infringed the '555 Patent, and has not induced others to infringe the '555 Patent;
3. Finding that this is an exceptional case pursuant to 35 U.S.C. §285 and awarding attorneys' fees, costs and expenses to Telebrands in connection with this case; and
4. Awarding such further and additional relief as the Court deems just and proper.

Dated: August 10, 2007

Respectfully submitted,

/s/ Stephen M. Plotnick

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CERTIFICATION PURSUANT TO L. Civ. R. 11.2

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: August 10, 2007

/s/ Stephen M. Plotnick

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