

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 01 2001

JAMES W. McCORMACK, CLERK
By: _____

PLAINTIFF

WEATHERVANE CAPITOL, INC.

V.

NO. 4-01-CV-00258 SWW

HOMIER DISTRIBUTING COMPANY, INC.

DEFENDANTS

COMPLAINT

This case assigned to District Judge _____
and to Magistrate Judge _____

Plaintiff Weathervane Capitol, Inc. ("Weathervane") for its Complaint against Homier

Distributing Company, Inc., states and alleges:

1. This is an action for damages that is filed because Defendant has improperly infringed upon a design patent belonging to Weathervane. This action arises under the provisions of the Patent Act of the United States, as amended, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Weathervane is an Arkansas corporation with its principal place of business in Greenbrier, Faulkner County, Arkansas. Weathervane designs, manufactures, and sells original artwork, including an ornamental article of manufacture known as a "Rod and Reel Holder." Weathervane is the owner of Design Patent Number Des. 426,282, issued June 6, 2000, for the Rod and Reel Holder. See Exhibit A, Design Patent Des. 426,282.

3. Homier Distributing Company, Inc., is a corporation organized under the laws of the State of Indiana and is believed to have its principal place of business located in Huntington, Indiana, and not the State of Arkansas.

JURISDICTION AND VENUE

4. Defendant has willfully and deliberately taken wrongful actions that they knew or

should have known would have consequences in Arkansas for Plaintiff Weathervane.

5. Defendant sells fishing pole holders that infringe upon Design Patent Des. 426,282 owned by Weathervane. Homier has sold these infringing items in the State of Arkansas on at least two occasions. On April 13 and 14, 2001, Homier sold these infringing items at Selby Ross National Guard Armory in Conway, Arkansas. See Exhibit B, Homier Advertisement. On April 16 and 17, 2001, Homier sold these infringing items at the National Guard Armory located in Searcy, Arkansas. See Exhibit C, Homier Advertisement.

6. This Court has personal jurisdiction over Defendants because they are subject to service of process under the Arkansas long-arm statute and the Fourteenth Amendment of the United States Constitution.

7. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is an action for damages and injunctive relief for infringement of Design Patent Des. 426,282.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(a) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district, Defendant is a corporation that is subject to personal jurisdiction in this district, and Plaintiff resides in this district.

FACTS

9. On October 4, 1999, Jack H. Harmon filed a design patent application with the United States Patent and Trademark Office for an ornate article of manufacture called a "Rod and Reel Holder." (Ex. A). The United States Patent and Trademark Office granted Jack H. Harmon a Design Patent on June 6, 2000, Patent Number Des. 426,282 (hereafter "Patent 282") (Ex. A). Jack H. Harmon assigned Patent 282 to Plaintiff, Weathervane Capitol, Inc. (Ex. A).

10. Patent 282 consists of a single claim, namely the ornamental design for a Rod and Reel Holder. The description consists of four (4) figures that are a part of Patent 282. (Ex. A.).

11. Patent 282 describes an ornamental design for an article of manufacture, namely a Rod and Reel Holder, that is novel, original, and nonobvious. Because the United States Patent and Trademark Office has granted Patent 282 to Weathervane, the patent enjoys a statutory presumption of validity. See 35 U.S.C. § 282.

12. Defendant sells an item referred to as a fishing pole holder that infringes upon Patent 282. Homier has sold infringing fishing pole holders in the State of Arkansas on at least two occasions. On April 13 and 14, 2001, Homier sold them at Selby Ross National Guard Armory in Conway, Arkansas. See Exhibit B, Homier Advertisement. On April 16 and 17, 2001, Homier sold them at the National Guard Armory in Searcy, Arkansas. See Exhibit C, Homier Advertisement.

13. Upon information and belief Defendant sells infringing fishing pole holders at other locations throughout the United States.

Infringement of Design Patent

14. Weathervane incorporates and alleges herein each and every allegation set forth above in the preceding paragraphs.

15. Defendant is selling fishing pole holders that infringe upon Patent 282 owned by Weathervane. The patented design of Patent 282, as a whole, is substantially similar in appearance to the infringing fishing pole holders sold by Defendant. Defendant's infringing fishing pole holders also appropriate the novelty of Weathervane's patented Rod and Reel Holder that distinguishes it from the prior art.

16. The activities of Defendant complained of herein are continuing, constitute willful

and intentional infringement of Weathervane's Patent 282, are in total disregard of Plaintiff's rights, and have occurred without the consent of Weathervane.

17. Weathervane is suffering irreparable harm as a result of the acts of Defendant.

18. Defendant's wrongful distribution and sale of infringing fishing pole holders violates Weathervane's intellectual property rights under the Patent Act of the United States, as amended, 35 U.S.C. § 1 *et seq.*

19. Weathervane requests trial by jury.

WHEREFORE, Weathervane Capitol, Inc. prays that this Court:

1. Award damages adequate to compensate for the infringement, and to increase the damages to three times the amount found or assessed pursuant to 35 U.S.C. § 284.

2. Direct that Defendant be required to account for and relinquish to Weathervane all gains, profits, and advantages derived by Defendant in its infringement of Weathervane's patent pursuant to 35 U.S.C. § 289.

3. Award Weathervane the costs and reasonable attorney's fees pursuant to 35 U.S.C. § 285.

4. Grant Weathervane permanent and preliminary injunctive relief barring Defendant, and all those acting with, through or in concert with Defendant from importing, displaying, marketing, advertising, distributing, offering for sale, and selling infringing fishing pole holders in the United States and its territories.

5. Award Weathervane such other relief as the Court may deem just and proper.

Respectfully submitted,

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VERIFICATION

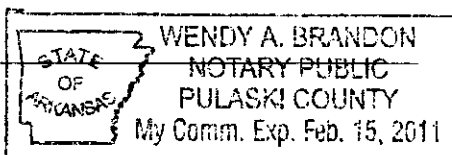
The undersigned, having been duly sworn hereby states that the allegations set forth in the foregoing Petition for Temporary Restraining are true and correct to the best of my knowledge, information, and belief.

Lynda Harmon
Lynda Harmon, President
Weathervane Capitol, Inc.

SUBSCRIBED AND SWORN to me, a Notary Public, this 26th day of April, 2001.

Wendy A. Brandon
Notary Public

My Commission Expires:



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

*Exhibits Attached
to Original
Document in
Court's Case File*