

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

RENATA MARCINKOWSKA

Plaintiff

Civil Action No. 0:07-1214-JFA-BM

v.

IMG WORLDWIDE, INC., an Ohio
corporation, and DEL CAMPO
SAATCHI & SAATCHI, an Argentine
company,

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Defendants.

Plaintiff Renata Marcinkowska (“Ms. Marcinkowska”) files this her First Amended Complaint against Defendants IMG Worldwide, Inc. (“IMG”) and Del Campo Saatchi & Saatchi (“DCSS”).

NATURE OF THE ACTION

1. This is an action for patent infringement as well as unfair trade practices under both federal and state law. This action arises out of Defendant IMG’s and Defendant DCSS’s staging of an exhibition tennis match in Mallorca, Spain known as the “Battle of the Surfaces” between Roger Federer and Rafael Nadal. While the exhibition match may have been played in Spain, Defendants entered into an illegal scheme through which they—both jointly and individually—knowingly and willfully induced others to perform acts within the United States that infringed Plaintiff’s U.S. patent. Moreover, Defendants have affirmatively misrepresented in interstate commerce the facts and circumstances surrounding the conception of the exhibition match, in essence illegally claiming that Ms. Marcinkowska idea was their own.

THE PARTIES

2. Plaintiff Renata Marcinkowska is a resident of Rock Hill, South Carolina.

3. Defendant IMG is a corporation organized and existing under the laws of the state of Ohio. IMG claims to be the world's premier and most diversified sports, entertainment and media company. Upon information and belief, IMG does and has done business in South Carolina, by, among other things, representing Lou Holtz, the former football coach of the University of South Carolina, and through the operations of its wholly-owned subsidiary, Collegiate Licensing Company in representing the University of South Carolina.

4. Defendant Del Campo Saatchi & Saatchi (“DCSS”) is, upon information and belief, a company organized and existing under the laws of Argentina. DCSS claims to provide advertising and marketing services throughout the world. Upon information and belief, DCSS participated in the illegal scheme to induce the infringement of Ms. Marcinkowska’s intellectual property rights by, among other things, misrepresenting the facts and circumstances surrounding the conception of the “Battle of the Surfaces” match to residents of the United States, including individuals within South Carolina and other actions more fully described below.

JURISDICTION AND VENUE

5. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338, 1367.

6. This Court has personal jurisdiction over the defendants pursuant to S.C. CODE ANN. §36-2-803 (1976).

7. Venue is proper in the Rock Hill Division of the Court.

OPERATIVE FACTS

8. Ms. Marcinkowska is a world class tennis player and inventor. On April 16, 2003, Ms. Marcinkowska applied for a patent on a hybrid tennis court composed of a single type of surface (*e.g.*, clay, grass, or asphalt) on one side of the net and a different type of surface on the other side.

9. On November 9, 2004, the U.S. Patent and Trademark Office issued U.S. Pat. No. 6,814,669 (the “‘669 Patent”) entitled Dual Surface for Sport Event or Game to Ms. Marcinkowska. [A true and correct copy of the ‘669 Patent is attached hereto as Exhibit 1].

10. Shortly after obtaining the Patent, Ms. Marcinkowska contacted Defendant IMG to attempt to license IMG rights under the Patent. Among other things, Ms. Marcinkowska sent emails, had telephone conversations, and had at least one personal meeting with representatives of Defendant IMG to discuss the sale of the ‘669 Patent. Part of Ms. Marcinkowska's sales pitch to Defendant IMG involved the concept of having the two best players in the world play an exhibition match on a hybrid court.

11. Defendant IMG did not express an interest in acquiring any rights in the ‘669 Patent at that time.

12. From 2004 to the present, Ms. Marcinkowska has continued to market rights under the ‘669 Patent to third parties. For at least the last two years, Ms. Marcinkowska has marketed such rights with the idea of having Roger Federer (ranked number 1 in the world) play Rafael Nadal (ranked number 2 in the world) on a hybrid court.

13. Roger Federer, among other things, is renowned as the best grass court tennis player in the world. Rafael Nadal, among other things, is renowned as the best clay court player in the world. According to IMG’s website, IMG provides management services to both

Nadal and Federer. IMG's website further explains that "[m]any of the world's most celebrated tennis players partner with IMG to extend their careers and build personal brands through licensing, endorsements, broadcasting and speaking [sic] oportunities."

14. In February 2007, Ms. Marcinkowska again met with Defendant IMG to discuss the Patent and the idea of a Federer/Nadal match on the hybrid court composed of clay and grass surfaces.

15. Defendant IMG, however, again affirmatively stated to Ms. Marcinkowska that Defendant IMG had no interest in either the '669 Patent or Ms. Marcinkowska's Federer/Nadal match concept.

16. Upon information and belief, at or about that same time, Defendants IMG and DCSS devised a scheme (the "Exhibition Scheme") to stage an exhibition match between Roger Federer and Rafael Nadal on a hybrid court comprised of a clay surface and a grass surface. IMG and, upon information and belief, DCSS entered into the Exhibition Scheme with full knowledge of the '669 Patent and, as part of the Exhibition Scheme, took various affirmative steps in an unsuccessful effort to avoid liability for infringement of the '669 Patent.

17. Upon information and belief, these steps included, but were not limited to, choosing to hold the exhibition match in Spain, having one or more principals of DCSS and/or IMG affirmatively misrepresent the facts and circumstances surrounding the conception of the exhibition match, and by misrepresenting to Ms. Marcinkowska IMG's purported lack of interest in holding an exhibition match between Messrs. Federer and Nadal on a hybrid court.

18. Ms. Marcinkowska learned of the scheduled exhibition match on or about April 18, 2007, and notified IMG and DCSS of her objections and concerns. Among other things, Ms. Marcinkowska made numerous phone calls to IMG and sent emails to IMG

reminding IMG of the existence of the '669 Patent and of her belief that the planned exhibition would infringe her intellectual property rights.

19. Defendants apparently ignored Ms. Marcinkowska's objections.

20. The Exhibition Scheme culminated in an exhibition match, advertised as the "Battle of the Surfaces," that was played on May 2, 2007, in Mallorca, Spain. The event had its own website (www.thebattleofsurfaces.com) (the "Website"), upon which promotional information regarding IMG and DCSS appear.

21. Among other things, the Website falsely stated that the idea for the hybrid court "began with an idea by Pablo Del Campo, president of Del Campo Saatchi & Saatchi." This statement was false, as IMG and, upon information and belief, DCSS were aware that Ms. Marcinkowska was the originator of the idea for the hybrid court.

22. The Battle of the Surfaces event offered tickets for sale throughout the world, including within the United States.

23. The Battle of the Surfaces event sold tickets to at least seven thousand fans throughout the world, including, upon information and belief, to fans within the United States.

24. The Battle of the Surfaces event was televised worldwide, including within the United States.

25. While the exhibition match may have been played in Spain, IMG and, upon information and belief, DCSS induced infringement or contributed to the infringement of at least claims 1 and 5 of the '669 Patent by providing the players, marketing services (including the marketing of the exhibition match within the United States utilizing the invention of at least claims 1 and 5 of the '669 Patent), and various other elements necessary for the exhibition match to occur with full knowledge of the '669 Patent.

26. Upon information and belief, Defendants IMG and DCSS knew that the exhibition match, utilizing the invention of at least claims 1 and 5 of the '669 Patent, would be broadcast within the United States.

27. Upon information and belief, Defendants IMG and DCSS received compensation that was attributable, in some part, to the fees paid for the rights to televise the match, including the rights to televise the match within the United States.

CLAIM ONE
(PATENT INFRINGEMENT BY IMG)

28. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

29. By reason of some or all of the foregoing, IMG has directly infringed claims 1 and 5 of the '669 Patent.

30. By reason of some or all of the foregoing, IMG has committed contributory infringement of or induced the infringement of claims 1 and 5 of the '669 Patent.

31. IMG's infringement of the claims of the '669 Patent has been willful.

32. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant IMG's infringement of the claims of the '669 Patent.

CLAIM TWO
(PATENT INFRINGEMENT BY DCSS)

33. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

34. By reason of some or all of the foregoing, DCSS has directly infringed claims 1 and 5 of the '669 Patent.

35. By reason of some or all of the foregoing, DCSS has committed contributory infringement of or induced the infringement of claims 1 and 5 of the '669 Patent.

36. DCSS's infringement of the claims of the '669 Patent has been willful.

37. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant DCSS's infringement of the claims of the '669 Patent.

CLAIM THREE
(VIOLATION OF LANHAM ACT BY IMG)

38. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

39. By reason of some or all of the foregoing, IMG has made materials misrepresentations in interstate commerce in furtherance of the Exhibition Scheme.

40. Such misrepresentations violate the Lanham Act, 15 U.S.C. § 1125, *et seq.*

41. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant IMG's violations of the Lanham Act.

CLAIM FOUR
(VIOLATION OF LANHAM ACT BY DCSS)

42. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

43. By reason of some or all of the foregoing, DCSS has made materials misrepresentations in interstate commerce in furtherance of the Exhibition Scheme.

44. Such misrepresentations violate the Lanham Act, 15 U.S.C. § 1125, *et seq.*

45. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant DCSS's violations of the Lanham Act.

CLAIM FIVE
(VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT BY IMG)

46. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

47. By reason of some or all of the foregoing, IMG has engaged in unfair trade practices in violation of South Carolina law, S.C. CODE ANN. §39-5-10, *et seq.* (1976).

48. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant IMG's unfair trade practices.

49. Defendant IMG's actions were willful and/or knowing violations of the South Carolina Unfair Trade Practices Act.

CLAIM SIX
(VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT BY DCSS)

50. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

51. By reason of some or all of the foregoing, DCSS has engaged in unfair trade practices in violation of South Carolina law, S.C. CODE ANN. §39-5-10, *et seq.* (1976).

52. Ms. Macinkowska has suffered damages as a direct and proximate result of Defendant DCSS's unfair trade practices.

53. Defendant DCSS's actions were willful and/or knowing violations of the South Carolina Unfair Trade Practices Act.

CLAIM SEVEN
(CIVIL CONSPIRACY BY AND BETWEEN IMG AND DCSS)

54. Ms. Marcinkowska incorporates by reference as if fully set forth herein the averments and allegations set forth in paragraphs 1 through 27, above.

55. By reason of some or all of the foregoing, IMG and DCSS entered into a conspiracy to infringe Ms. Marcinkowska's intellectual property rights and violate the Lanham Act.

56. Ms. Marcinkowska has suffered damages as a direct and proximate result of the conspiracy between IMG and DCSS.

WHEREFORE, Ms. Marcinkowska prays that this Court:

- (1) Enter judgment in favor of Ms. Marcinkowska and against Defendant IMG for infringement of claims 1 and 5 of the '669 Patent;
- (2) Enter judgment in favor of Ms. Marcinkowska and against Defendant DCSS for infringement of claims 1 and 5 of the '669 Patent;
- (3) Award damages to Ms. Marcinkowska in an amount to be proven at trial for infringement of claims 1 and 5 of the '669 Patent, pursuant to 35 U.S.C. § 284;
- (4) Increase Ms. Marcinkowska's damages three-fold in light of Defendants' willful infringement, pursuant to 35 U.S.C. § 284;
- (5) Find this action to be an exceptional case and require Defendants to pay to Ms. Marcinkowska the costs of this action and her reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;
- (6) Enjoin Defendants and all agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, from manufacturing, using, selling, or offering to sell articles that infringe claims 1 and 5 of the '669 Patent, pursuant to 35 U.S.C. § 283;
- (7) Order Defendants to deliver up for destruction all articles manufactured, used, or offered for sale by Defendants that infringe claims 1 and 5 of the '669 Patent;
- (8) Enter an Order providing that Defendants and all agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, be enjoined from:

- (a) Representing that the concept for the hybrid court was conceived by any person other than Ms. Marcinkowska; and
 - (b) Passing off, palming off, or assisting in passing off or palming off, Ms. Marcinkowska's invention as those of Defendants, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint.
- (9) Defendants be compelled to account to Ms. Marcinkowska for any and all profits derived by Defendants, and for all damages caused to Ms. Marcinkowska under 15 U.S.C. § 1117(b), and the common law, and that Ms. Marcinkowska's award be trebled as provided for by 15 U.S.C. § 1117(b);
- (10) Ms. Marcinkowska be awarded her actual damages suffered as a result of Defendants' violations of S.C. CODE ANN. §39-5-10, *et seq.* (1976) and that this award be trebled as provided for by S.C. CODE ANN. §39-5-140, *et seq.* (1976);
- (11) Ms. Marcinkowska be awarded her attorneys' fees and costs as provided for by S.C. CODE ANN. §39-5-140, *et seq.* (1976);
- (12) This case be tried before a jury; and
- (13) Ms. Marcinkowska have such other and further relief as the Court deems appropriate, just, and proper, premises considered.

Respectfully submitted,

s/ Frank S. Holleman III
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