

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

Otter Products, LLC,
a Colorado limited liability company,

Plaintiff,

v.

SKB Corporation,
a California corporation,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Otter Products, LLC, by and through its counsel, FISCHER & FISCHER, LLP, asserts the following Complaint against the above named Defendants stating as follows:

JURISDICTION AND VENUE

1. Plaintiff Otter Products, LLC, is a Colorado limited liability company authorized to do business at 1 Old Town Square, Suite 303, Fort Collins, Colorado.
2. Defendant, SKB Corporation, a California corporation, is authorized to do business at 434 West Lebers Place, Orange, California 92867.
3. Defendant and its agents sell products, including the infringing product, over the internet and through various retail companies doing business in the state of Colorado and throughout the United States.
4. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1338.

5. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. §1400 since Defendant has committed acts of infringement and conducted business in the state of Colorado and this judicial district.

GENERAL ALLEGATIONS

6. Plaintiff created, designed and invented a water-tight container and was issued United States Patent No. 7,158,376 B2 dated January 2, 2007 ("Patent").

7. Defendant, itself, and through its divisions, subsidiaries and/or agents, is engaged, *inter alia*, in the business of manufacturing, marketing, distributing and selling a product identified as the "DryPod." The DryPod is a waterproof case designed to house iPods and other MP-3 players in a waterproof environment for use by various consumers.

8. The DryPod literally infringes on Plaintiff's Patent and currently being manufactured, marketed and sold both in Colorado and throughout the United States.

9. Defendant is aware that its product infringes upon Plaintiff's Patent, yet it continues to make, distribute, advertise, market and sell the DryPod.

10. Defendant's acts of marketing, distributing and otherwise infringing Plaintiff's Patent has occurred within the state of Colorado through Defendant or its agents, authorizing this Court to extend the long-arm jurisdiction pursuant to § 13-1-124, C.R.S.

FIRST CLAIM FOR RELIEF

(Patent Infringement)

11. Plaintiff incorporates and restates the allegations set forth above as though fully set forth herein.

12. Defendant is infringing Plaintiff's Patent by *inter alia* manufacturing, distributing, advertising, marketing and selling the DryPod. Such infringement is deliberate, willful, intentional and with full knowledge of the existence and validity of Plaintiff's Patent.

13. Upon information and belief, Defendant has been infringing Plaintiff's Patent for a significant period.. Defendant's infringement has continued to date and will continue unless Defendant is enjoined by the Court.

14. As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages in the state of Colorado in an amount to be ascertained.

SECOND CLAIM FOR RELIEF

(Injunction)

15. Plaintiff incorporates and restates the allegations set forth above as though fully set forth herein.

16. As a direct and proximate result of Defendant's acts of infringing Plaintiff's Patent, Plaintiff has suffered, and will continue to suffer, irreparable harm.

17. Plaintiff has no adequate remedy at law if Defendant continues to infringe Plaintiff's Patent.

18. Plaintiff has suffered, and will continue to suffer, irreparable harm and damage unless a preliminary and final injunction are issued enjoining Defendant from infringing Plaintiff's Patent.

19. Plaintiff will likely prevail on the merits of the case at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. That it be adjudged that Plaintiff's Patent has been infringed by Defendant;
- B. That Plaintiff be awarded a preliminary and permanent final injunction against Defendant for the continued infringement;
- C. That the Court order an accounting of Defendant's sales, profits, cost of goods sold and other relevant financial information as it relates to the DryPod;
- D. That Plaintiff be awarded damages against Defendant in an amount adequate to compensate Plaintiff for such infringement and not less than all profits of Defendant, together with interest and costs, in an amount to be ascertained;
- E. That Plaintiff be awarded an additional sum on account of the willful, intentional and deliberate character of Defendant's infringing acts pursuant to 35 U.S.C. 284.
- F. That Plaintiff be awarded reasonable attorney fees and costs against Defendant; and
- G. That Plaintiff be granted all other legal and equitable relief for which Plaintiff is entitled.

PLAINTIFF DEMANDS A JURY OF 12.

Dated this _____ day of January, 2007.

Respectfully submitted,

Fischer & Fischer, LLP

s/ Erik G. Fischer

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