



4. This is an action for a Declaratory Judgment that United States Patent No. 6,789,395 is invalid and/or unenforceable and/or not infringed by ACN. This action arises under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a), 2201 and 2202. Venue is proper under 28 U.S.C. § 1391. A copy of United States Patent No. 6,789,395 (hereinafter the “‘395 patent”) is attached hereto as **Exhibit A**.

### **COUNT I - DECLARATORY JUDGMENT**

5. Upon information and belief, Molino Jewelers is the assignee of the ‘395 patent which issued on September 14, 2004. The ‘395 patent is a utility patent which issued from Application Serial No. 10/456,188. The ‘395 patent purports to claim convertible pendant jewelry. **Exhibit A**.

6. The plaintiff, ACN, sells and offers for sale jewelry, including convertible pendant jewelry, in competition with the defendant.

7. By letter dated April 29, 2005, counsel for the defendant, Molino, wrote to ACN accusing ACN of infringing the ‘395 patent, threatening legal action. Such letter is attached as **Exhibit B**. By letter dated May 25, 2005, a copy of which is attached as **Exhibit C**, counsel for the plaintiff, ACN, responded to Molino’s claim by denying that the ‘395 patent had been infringed by ACN, but inviting any additional information which might shed light on Molino’s claim. No response or additional information was forthcoming. Then after a delay of some five months, by letter dated October 25, 2005, counsel for the defendant, Molino, again wrote to ACN accusing ACN of infringing the ‘395 patent, and threatening legal action. Such letter is attached as **Exhibit D**.

8. As a result of the aforementioned letters, and Molino’s threat of litigation, an actual justiciable controversy therefore exists between the parties.

9. ACN has not infringed, and is not infringing, the '395 patent, either directly or contributorily, and ACN has not induced, and is not inducing, the infringement of the '395 patent.

10. The '395 patent is invalid and of no force and effect as to any claim thereof for failure to meet the requirements of the patent laws of the United States, including the requirements of 35 U.S.C. §§ 102, 103 and 112.

11. The allegations of Molino that ACN has infringed the '395 patent are frivolous and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling ACN to an award of its attorney fees and costs of this litigation.

WHEREFORE, America's Collectibles Network prays:

- (1) That the Court enter an Order preliminarily and permanently enjoining Molino Jewelers, and its partners, officers, agents, servants, subcontractors, suppliers, and employees and others controlled by Molino Jewelers, from making further allegations or claims that plaintiff has infringed the '395 patent;
- (2) that U.S. Patent No. 6,789,395 be declared invalid and/or unenforceable, and declared not infringed by any product of ACN;
- (3) that alternative to prayer (2) above, the Court declare that ACN has not infringed and is not infringing the '395 patent, either directly or contributorily, and that ACN has not induced and is not inducing the infringement of the '395 patent;
- (4) that the Court award ACN its attorney fees and cost of the action;
- (5) for such other and further relief as the Court may deem just and equitable; and
- (6) all other and further relief as justice requires.

Respectfully submitted,

AMERICA'S COLLECTIBLES NETWORK, INC.

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