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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VENDIO SERVICES, INC., a Delaware
corporation,

Plaintiff,

v.

P.S. PRODUCTS, INC., an Arkansas
corporation, and BILLY PENNINGTON, an
individual,

Defendants.

Case No. 5:10-cv-04455-JW

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT NONINFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Vendio Services, Inc. (“Vendio”) for its First Amended Complaint for
Declaratory Judgment against Defendants P.S. Products, Inc. and Billy Pennington (collectively,
“P.S. Products” or “Defendants”) aver the following:

NATURE OF THE ACTION

1. This action is based on the patent laws of the United States, Title 35 of the United
States Code. Defendants have asserted rights under U.S. Patent Nos. D561,294 S (“the ‘294
patent) and D576,246 S (“the ‘246 patent”) (collectively, “the Patents-in-Suit”) based on certain
ongoing activity by Vendio. Vendio contends that it has the right to engage in the accused
activity without license. True and correct copies of the Patents-in-Suit are attached hereto as
Exhibits A and B. Vendio thus seeks a declaration that it does not infringe the Patents-in-Suit.

THE PARTIES

2. Vendio is a Delaware corporation with its principal place of business at 2800 Campus Drive, Suite 150, San Mateo, CA 94403.

3. On information and belief, P.S. Products is an Arkansas company with its principal place of business at 414 S. Pulaski Street, Little Rock, AR 72201.

4. On information and belief, Billy Pennington is an Arkansas resident and the President of P.S. Products.

JURISDICTION AND VENUE

5. This is a civil action regarding allegations of patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, in which Vendio seeks declaratory relief under the Declaratory Judgment Act. Thus, the court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

6. An actual controversy exists between Vendio and Defendants by virtue of Defendants' assertion of rights under the Patents-in-Suit based on certain ongoing activity by Vendio.

7. Vendio contends that it has a right to operate its websites including, but not limited to www.vendio.com and provide related services without license from Defendants.

8. The Court has personal jurisdiction over Defendants because Defendants have purposely directed their activities relating to the Patents-in-Suit, which is the subject matter of this action, into the Northern District of California. On August 24, 2010, Defendants sent a cease and desist letter to Vendio claiming that Vendio was infringing the '294 and '246 patents and threatening to file a lawsuit.

9. Defendants have purposely directed their enforcement campaign at other California entities as well, including sending at least five more cease and desist letters asserting Defendants' patent rights, against iOffer, Inc. (located in San Francisco, CA), StrikeBack Protection Products (located in Patterson, CA), Arc Angel, Inc. (located in Northridge, CA) and Alibaba.com, Inc. (located in Santa Clara, CA). Three of these letters claimed that the recipient

1 was infringing Defendants' '294 and '246 patents. One letter claims that U.S. Patent No.
2 D611,114S, another patent that Defendants purport to own, was being infringed.

3 10. Defendants also systematically and continuously direct their marketing efforts
4 towards California residents. Defendants operate a website – www.psproducts.com – that can be
5 viewed by residents of California. This website prominently displays Defendants' patents,
6 including the '294 patent, and displays information about the relevant laws governing stun guns
7 and other self-defense products sold by Defendants, including the laws of the state of California.

8 11. Further, upon information and belief, Defendants solicit and conduct business in
9 and within this jurisdiction and sell their products here. Defendants have directly sold their
10 products to residents of the state of California, amounting to nearly \$400,000 in revenue since
11 2006.

12 12. Additionally, Defendants' products are available for purchase by residents of the
13 state of California on numerous websites including: www.sportsmansguide.com,
14 www.cabelas.com, www.cheaperthandirt.com, www.heartlandamerica.com, www.budk.com,
15 www.pantherstunguns.com, www.selfdefensesupply.com, www.varietyproducts.com,
16 www.atlantacutlery.com, www.thehomesecuritysuperstore.com, www.stungunscheaper.com,
17 www.beststungun.com, www.onlinestores.com, and www.tvtimedirect.com.

18 13. Upon information and belief, Defendants' products are also available for purchase
19 on www.amazon.com, www.budsgunshop.com, www.sportsmans-depot.com,
20 www.antaespro.com, www.gunforall.com, www.tacticalgunarmory.com,
21 www.midwesthuntersoutlet.com, and www.area51tactical.com.

22 14. Upon information and belief, Defendants' products are also sold by three entities
23 located in the state of California: Special Forces Gear, based in Gardenia, California; Milestone
24 Safety, based in Sunnyvale, California; and Spynuts.com, based in Rosemead, California.

25 15. Accordingly, Defendants have established the requisite minimum contacts with
26 this District, and exercise of jurisdiction here would comport with traditional notions of
27 substantial justice and fair play.
28

1 16. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because Defendants are
2 subject to personal jurisdiction in this district. Venue is also proper pursuant to 28 U.S.C.
3 § 1391(b) because the events which give rise to the remedy requested herein occurred in this
4 district.

5 **INTRADISTRICT ASSIGNMENT**

6 17. This is an Intellectual Property Action subject to district-wide assignment under
7 Local Rule 3-2(c).

8 **FACTUAL BACKGROUND**

9 18. Vendio is a multi-channel ecommerce solution that provides third party sellers
10 with a free online storefront and simplifies users' selling on other web-based marketplaces such
11 as eBay and Amazon.com. Vendio does not, however, manufacture, own, control or take
12 possession of any of the products listed or sold after use of its platform or services.

13 19. On information and belief, P.S. Products is a manufacturer and distributor of stun
14 guns and other personal security devices.

15 20. The '294 patent is entitled Stun Gun. The '294 patents states on its face that its
16 inventor is Billy Pennington and that it was issued on February 5, 2008.

17 21. The '246 patent is entitled Stun Gun. The '246 patents states on its face that its
18 inventor is Billy Pennington and that it was issued on September 2, 2008.

19 22. On August 24, 2010, Vendio received a letter from Defendants accusing it of
20 infringing the '294 and '246 patents.

21 23. Vendio has not infringed and does not infringe the Patents-in-Suit. Accordingly,
22 an actual controversy exists between Vendio and Defendants as to whether Vendio's activities
23 infringe any claim of the Patents-in-Suit. Absent a declaration of non-infringement, Defendants
24 will continue to wrongly assert the Patents-in-Suit against Vendio, and thereby cause Vendio
25 irreparable harm.

FIRST CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '294 Patent)

24. Vendio hereby incorporates by reference its allegations contained in paragraphs 1 through 23 of this First Amended Complaint as though fully set forth herein.

25. Defendants contend that Vendio infringes the '294 patent.

26. Vendio denies Defendants' contentions and alleges that Vendio does not directly or indirectly infringe the '294 patent.

27. An actual controversy thus exists between Vendio and Defendants as to whether Vendio infringes the '294 patent.

28. Accordingly, Vendio seeks and is entitled to a judgment against Defendants that Vendio does not infringe and has not infringed, directly or indirectly, contributorily or by inducement, the '294 patent.

SECOND CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '246 Patent)

29. Vendio hereby incorporates by reference its allegations contained in paragraphs 1 through 28 of this First Amended Complaint as though fully set forth herein.

30. Defendants contend that Vendio infringes the '246 patent.

31. Vendio denies Defendants' contentions and alleges that it does not directly or indirectly infringe the '246 patent.

32. An actual controversy thus exists between Vendio and Defendants as to whether Vendio infringes the '246 patent.

33. Accordingly, Vendio seeks and is entitled to a judgment against Defendants that Vendio does not infringe and has not infringed, directly or indirectly, contributorily or by inducement, the '246 patent.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff Vendio demands a jury trial as to all matters triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a declaratory judgment against Defendants as follows:

A. Judgment against Defendants declaring that the '294 and '246 patents are not infringed by Vendio;

B. A declaration that Vendio's case against Defendants is an exceptional case within the meaning of 35 U.S.C. § 285;

C. An award of costs and attorneys' fees to Vendio; and

D. Such other and further relief as the Court deems just and reasonable.

Dated: January 5, 2010

FENWICK & WEST LLP

By: /s/ Darryl M. Woo
Darryl M. Woo

Attorneys for Plaintiff
Vendio Services, Inc.

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