

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Complaint for Damages

Jury Demand Endorsed

DENMEL HOLDINGS,)
LLC, a Utah limited liability) CASE No. 3:11-cv-414
company, and MELANIE)
REAH, an individual)
) JURY TRIAL DEMANDED
Plaintiffs,)
)
vs.)
) Judge
Christmas Tree Shops, Inc., a)
Massachusetts corporation,)
and DOES 1-5) Magistrate Judge
)
Defendants.)

COMPLAINT

Plaintiffs, Denmel Holdings, LLC and Melanie Reah (“Plaintiffs” or “Denmel”), hereby complain against Defendant, the Christmas Tree Shops, Inc. and Does 1-5 (each a “Defendant” and collectively the “Defendants”), and allege as follows:

PARTIES

1. Plaintiff, Melanie Reah, is an individual that resides in Amanzimtoti, South Africa.

2. Plaintiff, Denmel Holdings, LLC, is a limited liability company organized under the laws of the State of Utah.

3. Defendant, Christmas Tree Shops, Inc. is a corporation organized and existing under the laws of the State of Massachusetts, having a business address in Dayton, Ohio.

4. On information and belief, DOES 1-5 are business entities and individuals who have participated in the acts alleged herein and have infringed Plaintiffs' patent by making, using, selling, offering for sale, or importing infringing products in the United States, and/or inducing or contributing to infringement of United States Patent No. 6,982,542 ("the '542 Patent").

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. §§ 271, 281, and 283, among others. This Court has jurisdiction over the patent claims under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district by virtue of 28 U.S.C. §§ 1391 and 1400 because, on information and belief, Defendants' acts of infringement took place and, on information and belief, are taking place within this jurisdiction and because Defendants either reside in this District, can be found in this District or are otherwise subject to personal jurisdiction in this District by making, using, selling, offering for sale, or

importing infringing product in this district, and/or inducing and contributing to infringement in this district.

GENERAL ALLEGATIONS

7. On January 3, 2006, the '542 Patent entitled, "Accessory for Use with Mobile Telephones" was issued to Denis Reah, the sole inventor named therein. A true and correct copy of the '542 Patent is attached hereto as Exhibit A and expressly incorporated herein.

8. On November 9, 2009, Denis Reah passed away.

9. Upon his death, the estate of Denis Reah owned all right, title and interest in the '542 Patent.

10. On February 17, 2010, the estate of Denis Reah assigned ownership of the '542 Patent to Plaintiff, Melanie Reah.

11. Plaintiff, Denmel Holdings, LLC, has been granted an exclusive license to make, use, sell, offer for sale, import, or otherwise benefit from the rights granted by the '542 Patent in the United States, including the right to sublicense the '542 Patent.

12. Plaintiffs have granted sublicenses to third parties ("sublicensees") under the '542 Patent, including rights to make, use, sell, offer for sale, and import products that come within the scope of the '542 Patent.

13. The subject matter of the '542 Patent relates to charging stations/ valets ("Charging Valets") for mobile telephones, PDAs, or other electronic devices.

14. The scope of the claims of the '542 Patent encompass Charging Valets which have structures to hold multiple mobile telephones, PDAs, or other electronic devices and their respective charging cables. Charging Valets covered by the scope of

the '542 Patent include a socket arrangement located in the Charging Valets for plugging in the charging cables. The socket arrangement located in the Charging Valets can then be connected to an electrical power supply to recharge the electronic devices' batteries.

15. The '542 Patent is valid and enforceable.

16. Defendants have infringed and, on information and belief, continue to infringe, directly, contributorily, and/or through the inducement of others, by manufacturing, selling, offering for sale, and/or importing Charging Valets that come within the scope of one or more claims of the '542 Patent thereby infringing the '542 Patent, including at least independent claims 1 and 16 of the '542 Patent, or which are taught to be used in accordance with one or more claims of the '542 Patent, without authority or license from Plaintiffs.

17. The presence of infringing Charging Valets in the United States interferes with the ability of Denmel Holdings, LLC to enter into the United States market for Charging Valets, and interferes with the rights granted to Plaintiffs' sublicensees.

18. On information and belief, Defendants have sold or offered for sale at least one of the infringing Charging Valets in Ohio, or placed infringing Charging Valets in the stream of commerce with the expectation that they would be purchased by residents of Ohio.

FIRST CLAIM FOR RELIEF

DIRECT INFRINGEMENT OF PATENT 35 U.S.C. § 271(a)

19. Plaintiffs incorporate herein each and every allegation of paragraphs 1 through 18 of this Complaint as if fully set forth herein and further allege as follows:

20. The '542 Patent has at all times subsequent to its issue date been valid and fully enforceable.

21. Plaintiff, Melanie Reah, is the owner of all rights, title and interest in the '542 Patent.

22. Plaintiff, Denmel Holdings, LLC has been granted an exclusive U.S. license to make, use, sell, offer for sale, import, or otherwise benefit from the rights granted by the '542 Patent, including the right to grant sublicenses.

23. On information and belief, Defendants made, used, sold, offered for sale, and/or imported infringing Charging Valets that come within the scope of one or more claims of the '542 Patent.

24. On information and belief, Defendants make, use, sell, offer for sale, and/or import infringing Charging Valets that come within the scope of one or more claims of the '542 Patent.

25. Defendants' actions have interfered with Plaintiffs' ability to enter the U.S. market or otherwise profit from Charging Valets made in accordance with the '542 patent.

26. All making, using, selling, sale offerings, and/or importing of infringing Charging Valets by Defendants has been without authority or license from Plaintiffs and in violation of Plaintiffs' rights, thereby infringing the '542 Patent.

27. The amount of money damages which Plaintiffs have suffered due to Defendants' acts of infringement cannot be determined without an accounting, but Plaintiffs are entitled to at least a reasonable royalty for all infringing Charging Valets made, used, sold, offered for sale, and/or imported by Defendants.

28. Further, harm to Plaintiffs arising from Defendants' acts of infringement is not fully compensable by money damages. Rather, Plaintiffs have suffered, and continue to suffer, irreparable harm for which there is no adequate remedy at law and which will continue until Defendants' conduct is enjoined.

SECOND CLAIM FOR RELIEF

INDUCEMENT OF PATENT INFRINGEMENT 35 U.S.C. § 271(b)

29. Plaintiffs incorporate herein each and every allegation of paragraphs 1 through 28 of this Complaint as if fully set forth herein and further allege as follows:

30. On information and belief, Defendants have actively induced, and are now inducing others to make or use infringing Charging Valets that come within the scope of one or more claims of the '542 Patent.

31. On information and belief, the Defendants have induced others to make or use infringing Charging Valets in violation of Plaintiffs' rights under the '542 Patent.

32. On information and belief, Defendants are aware of the '542 patent and have induced infringement in deliberate disregard for the rights of Plaintiffs.

33. On information and belief, Defendants have unlawfully derived, and continue to unlawfully derive income and profits by inducing others to infringe the '542 Patent.

34. On information and belief, Plaintiffs have suffered and continue to suffer damages as a result of Defendants' inducement to infringe the '542 Patent.

35. The amount of money damages which Plaintiffs have suffered due to Defendants inducing others to infringe the '542 Patent cannot be determined without an accounting, but Plaintiffs are entitled to at least a reasonable royalty.

36. On information and belief, Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law because of Defendants' inducement of others to make and use products that infringe the '542 Patent, and will continued to be harmed unless Defendants are enjoined from further acts of inducement.

THIRD CLAIM FOR RELIEF

CONTRIBUTORY PATENT INFRINGEMENT 35 U.S.C. § 271(c)

37. Plaintiffs incorporate herein each and every allegation of paragraphs 1 through 36 of this Complaint as if fully set forth herein and further allege as follows:

38. On information and belief, Defendants have sold, or have offered to sell within the United States, components of one or more claims of the '542 Patent which constitute a material component of the invention.

39. On information and belief, Defendants knew that such components were especially made or adapted for use in infringing one or more claims of the '542 Patent.

40. On information and belief, Plaintiffs have suffered and continue to suffer damages as a result of Defendants' contributory infringement of the '542 Patent.

41. The amount of money damages which Plaintiffs have suffered due to Defendants' contributory infringement of the '542 Patent cannot be determined without an accounting, but Plaintiffs are entitled to at least a reasonable royalty.

42. On information and belief, Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law because of Defendants' contribution to others who make and use products that infringe the '542 Patent, and will continue to be harmed unless Defendants are enjoined from further such acts.

FOURTH CLAIM FOR RELIEF

INJUNCTIVE RELIEF 35 U.S.C. § 283

43. Plaintiffs incorporate herein each and every allegation of paragraphs 1 through 42 of this Complaint as if fully set forth herein and further allege as follows:

44. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer irreparable harm, including loss of goodwill and the loss of customers.

45. Moreover, Defendants' actions have interfered with Plaintiffs ability to enter the United States market and will continue to cause irreparable injury unless enjoined.

46. Furthermore, Defendants' actions interfere with the rights granted to Plaintiffs' sublicensees.

47. The injury to Plaintiffs and Plaintiffs' sublicensees outweighs the harm an injunction may cause to Defendants.

48. The order and injunction will not be adverse to the public interest.

49. There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying claims, because the infringing Charging Valets meet each element of at least one claim of the '542 Patent and the '542 Patent is valid and enforceable.

FIFTH CLAIM FOR RELIEF

WILLFUL INFRINGEMENT 35 U.S.C. § 284

50. Plaintiffs incorporate herein each and every allegation of paragraphs 1 through 49 of this Complaint as if fully set forth herein and further allege as follows:

51. On information and belief, Defendants are aware of the '542 Patent and continue to make, use, sell, offer for sale, or import infringing Charging Valets, and/or induce or contribute to infringement of the '542 Patent.

52. On information and belief, Defendants knew or should have known their acts infringed the '542 Patent.

53. On information and belief, Defendants have disregarded Plaintiffs' rights in the '542 Patent and continue to make, use, sell, offer for sale, and/or import infringing Charging Valets, and/or induce or contribute to others making or using infringing Charging Valets without authority or license from Plaintiffs.

54. Defendants' willful infringement of the '542 Patent makes this an exceptional case, entitling Plaintiffs to receive treble damages and its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for an Order, Judgment, and Injunction as follows:

A. On each of the Claims for Relief, for a judgment in favor of Plaintiffs and against Defendants, including an award of damages and injunctive relief as determined at trial or by the Court, including punitive or other exemplary damages, along with additional interest, costs, and attorney fees.

B. Judgment that United States Patent No. 6,982,542 is valid and infringed by Defendants, and

i. For damages for patent infringement in an amount to be determined at trial, such damages being not less than a reasonable royalty;

ii. A finding that Defendants acted willfully in their infringement of the '542 Patent and for an award of treble damages pursuant to 35 U.S.C. §284;

iii. That Defendants, their agents, servants, employees, directors, and those persons in active concert or participation with them, individually and/or jointly, be enjoined under 35 U.S.C. §283 from further violation of Plaintiffs' patent rights or such terms as the Court deems reasonable, including, without limitation, that Defendants cease making, selling, offering for sell, or distributing the infringing Charging Valets and any other products which infringe the '542 Patent;

iv. That Defendants be ordered to file with this Court and serve on Plaintiffs within thirty (30) days after service on Defendants of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction and order of the Court;

v. That Defendants be ordered to pay Plaintiffs' attorneys' fees and costs and disbursements for this action under 35 U.S.C. §285; and

vi. That Defendants be required to pay pre-judgment and post-judgment interest until such awards are paid.

C. That Defendants cease using all marketing or advertising materials reflecting the infringing Charging Valets.

D. That Defendants destroy all materials using or containing the infringing Charging Valets and all advertisements in their possession or control.

E. That Defendants recall all labels, signs, prints, packages, advertisements, promotional and/or marketing materials that reflect the infringing Charging Valets.

F. That Defendants shall notify all affiliates which market or sell the infringing Charging Valets of this Court's order.

G. That Defendants place a corrective statement in each venue, and through each form of media, where Defendants made or promulgated advertisements reflecting the infringing Charging Valets.

H. That Defendants provide a copy of the Order of this Court to all consumers identified through reasonable efforts who received infringing Charging Valets.

I. That Defendants are prohibited from continuing the unlawful conduct as set forth above in this Complaint.

J. That Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert of participation with them, who receive actual notice of the Court's injunction by personal service or otherwise, be first preliminarily, and thereafter permanently, enjoined and restrained, as requested above.

K. Plaintiffs further pray for all other damages to which it is entitled for any of their claims, including without limitation actual damages, exemplary damages, consequential damages, incidental damages, punitive damages, lost profits, and damages for intangible injuries as this Court deems to be just and proper.

Dated: November 23, 2011

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JURY DEMAND

Plaintiff hereby demands trial by jury on all issues triable to a jury.

Dated: November 23, 2011

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CERTIFICATE OF SERVICE

I hereby certify that this "Complaint" has been filed with the Clerk of the Court, United States District Court for the Southern District of Ohio on the 23rd day of November, 2011, and is being personally served on all Defendants.

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