

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Crux Retail, Inc.,

Plaintiff,

v.

Midway Displays, Inc.,

Defendant.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT AND INVALIDITY**

Plaintiff, Crux Retail, Inc. (“Crux”) for its Complaint against Defendant, Midway Displays, Inc. (“Defendant”) alleges as follows:

INTRODUCTION

1. This is a declaratory judgment action pursuant to 28 U.S.C. §§ 2201 and 2202 seeking (i) a determination that Crux does not infringe any valid or enforceable claim of U.S. Patent No. D479,059 (“the ‘059 Patent”) under 35 U.S.C. § 271 and (ii) a determination that the ‘059 Patent is invalid under 35 U.S.C. §§ 102 and/or 103.

THE PARTIES

2. Plaintiff, Crux, is a Georgia Corporation having a principal place of business at 630 Kennesaw Due West Road, Kennesaw, Georgia 30152.

3. On information and belief, Defendant Midway is an Illinois Corporation, with a principal place of business located at 6554 S. Austin Avenue, Bedford Park, Illinois 60638.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

5. This Court has personal jurisdiction over the Defendant as: (i) the Defendant maintains its website at www.midwaydisplays.com through which it has regular and systematic business contacts with the State of Georgia and within this judicial district and division; (ii) the Defendant purposely, regularly, and continuously conducts business in the State of Georgia and within this judicial district and division; (iii) the Defendant purposefully directs its activities at residents of the State of Georgia; (iv) the cause of action set forth herein arises out of or relates to the Defendant's activities in the State of Georgia; and (v) the exercise of jurisdiction over the Defendant will not offend the traditional notions of fair play and substantial justice.

6. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§ 1331, 1338(a), 1391(b) and 1391(c).

THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES

7. Crux realleges and incorporates herein the allegations of paragraphs 1 through 6 of this Complaint as if fully set forth herein.

8. On information and belief, Midway is the owner by assignment of the '059 Patent, which is a design patent entitled "Modular And Collapsible Merchandise Display Rack," and which issued September 2, 2003. A true copy of the '059 Patent is attached hereto as Exhibit A.

9. On April 9, 2012, the law firm of Leydig, Voit & Mayer sent, on behalf of Defendant, a letter to Crux identifying the '059 Patent and identifying "the collapsible racks" covered by the '059 Patent as important to Defendant's business. A true copy of the April 9, 2012 letter is attached hereto as Exhibit B.

10. The April 9, 2012 letter also warns that Defendant "will vigorously take necessary and available steps to protect its rights against infringers" and accuses certain "modular racks Crux Retail commissioned and has already received" of infringing the '059 Patent.

11. The April 9, 2012 letter concludes that due to the alleged infringement, a license to the '059 Patent is required. The April 9, 2012 letter

further requests a response within fifteen days from receipt of the letter. Counsel for Defendant granted a one week extension to this deadline at the request of Crux's counsel.

COUNT ONE

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

12. Crux realleges and incorporates herein the allegations of paragraphs 1 through 11 of this Complaint as if fully set forth herein.

13. Crux's modular racks identified in the April 9, 2012 letter from Defendant's counsel do not infringe the '059 Patent and no license to the '059 Patent is required.

14. However, as a result of the acts described in the foregoing paragraphs Defendant has created a cloud over Crux's ability to sell its modular racks and there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

15. A judicial declaration is necessary and appropriate so that Crux may ascertain its rights regarding the '059 Patent.

16. Crux is entitled to a declaratory judgment that it has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '059 Patent.

COUNT TWO

(DECLARATORY JUDGMENT OF INVALIDITY)

17. Crux realleges and incorporates herein the allegations of paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. On information and belief, the '059 Patent is invalid for at least the reason that under 35 U.S.C. §§ 102 and/or 103, the '059 Patent is anticipated or rendered obvious by fixed-arm display racks sold or offered for sale by third parties, including Ridge Manufacturing Company, for more than a year prior to the '059 Patent's filing date.

19. As a result of the acts described in the foregoing paragraphs, a substantial controversy exists of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

20. A judicial declaration is necessary and appropriate so that Crux may ascertain its rights regarding Defendant's ability to enforce the '059 Patent.

21. Crux is entitled to a declaratory judgment that the '059 Patent is not valid and may not be enforced against Crux.

PRAYER FOR RELIEF

WHEREFORE, Crux seeks the following relief:

- a. A declaration that Crux has not infringed, either directly or indirectly, any valid and enforceable claim of the '059 Patent;
- b. A declaration that the '059 Patent is invalid and may not be enforced against Crux;
- c. An order declaring that Crux is a prevailing party and that this is an exceptional case awarding Crux its costs, expenses, disbursements, and reasonable attorney's fees under 35 U.S.C. § 285, and all other statutes, rules, and common law;
- d. That Defendant be ordered to pay all costs associated with this action;
and
- e. That Crux be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Crux demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted, this 3rd day of May 2012.

/s/ Robert B. Dulaney III
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