

4. On information and belief, Declaratory Defendant Joe M. Sample (hereinafter “Sample”) is an individual having a residence at 7020 N. Skyline Drive, Spokane, Washington, 99208.

JURISDICTION AND VENUE

5. This is a Complaint for Declaratory Judgment that neither of the products shown in Exhibits A and B infringe U.S. Patent No. 8,141,281 (hereinafter “‘281 Patent”) or U.S. Copyright Registration No. VA 1-750-485 (hereinafter “‘485 Registration”), and that the ‘281 Patent and ‘485 Registration are invalid. A copy of the ‘281 Patent is attached hereto as Exhibit C. A copy of the ‘485 Registration (not including the accompanying deposit material, which is not currently available to CBS and which was not supplied by the Declaratory Defendants) is attached hereto as Exhibit D.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a).

7. This Court has jurisdiction over this Declaratory Judgment action pursuant to 28 U.S.C. §§ 2201 and 2202.

8. This Court has supplemental jurisdiction over the Pennsylvania state law claim(s) pleaded herein pursuant to 28 U.S.C. § 1367, because these claims are so related to claims in the action within the Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in, and a substantial part of the property that is the subject of the action is situated in, this District.

ALLEGATIONS COMMON TO ALL COUNTS

10. On March 19, 2012, BrettHand and De Felice, through their counsel, sent a letter to CBS (hereinafter “March 19 Letter;” see Exhibit E).

11. The March 19 Letter posited that CBS was “unlawfully infringing on [BrettHand and De Felice’s] intellectual property and trade secret rights.”

12. The March 19 Letter identified the ‘485 Registration and “Patent No. 8141281,” and demanded that CBS “[c]ease any and all manufacturing, marketing, distribution or any other unauthorized use of the ‘281 Patent” and “[a]gree not to use the ‘281 Patent in any manner in the future, unless expressly authorized to do so by the rightful owners.”

13. The March 19 Letter stated that “if you fail to comply with the terms of this demand, we will seek full legal redress, including injunctive relief, money damages, and attorneys’ fees.”

14. On March 26, 2012, CBS, through its counsel, sent a response letter to counsel for BrettHand and De Felice. A copy of this response letter is attached hereto as Exhibit F.

15. On March 27, 2012, BrettHand and De Felice, through their counsel, sent a follow-up letter to CBS (hereinafter “March 27 Letter;” see Exhibit G).

16. The March 27 Letter again accused CBS of infringing the ‘281 Patent, demanded that CBS cease and desist from marketing the Discontinued Fan Fist, and stated that “[i]f we do not receive an adequate response by **April 3, 2012**, we will seek full legal redress against your client” (emphasis in original).

17. As demonstrated by the communications referenced in paragraphs 10 through 16, CBS has legal interests adverse to the defendants and a substantial controversy exists between the parties of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18. U.S. Patent No. 8,141,281 (see Exhibit C) did not issue until March 27, 2012.

19. Sample and De Felice are the named co-inventors on the '281 Patent.

20. Sample and De Felice are the named co-authors on the '485 Registration.

21. CBS began offering for sale a version of its Fan Fist™ beverage holder having a bendable index finger (hereinafter "Discontinued Fan Fist") at least as early as August 2009. Photographs of the Discontinued Fan Fist are attached hereto as Exhibit A.

22. The Discontinued Fan Fist was last shown at a trade show in Fall 2010, CBS liquidated its remaining inventory no later than March 2011, and has not ordered or made any additional units of the Discontinued Fan Fist since Fall 2010.

23. CBS began offering for sale its current version of the Fan Fist™ beverage holder (hereinafter "Current Fan Fist") in Fall 2010 and has continued to offer the Current Fan Fist for sale as of the date of this complaint. Photographs of the Current Fan Fist are attached hereto as Exhibit B.

24. The Current Fan Fist has an index finger that is permanently in its bent position and is not extendable.

25. Neither the Discontinued Fan Fist nor the Current Fan Fist has any removable components.

26. An actual controversy exists between the parties as to whether CBS has infringed the '281 Patent and the '485 Registration and whether the '281 Patent and '485 Registration are invalid.

CAUSES OF ACTION FOR DECLARATORY JUDGMENTS

COUNT I – DECLARATION OF NON-INFRINGEMENT OF THE '281 PATENT

27. CBS incorporates paragraphs 1-26 herein as if fully set forth.

28. The Discontinued Fan Fist does not literally infringe any of the claims of the '281 patent.

29. The Discontinued Fan Fist does not infringe any of the claims of the '281 patent under the doctrine of equivalents.

30. The Current Fan Fist does not literally infringe any of the claims of the '281 patent.

31. The Current Fan Fist does not infringe any of the claims of the '281 patent under the doctrine of equivalents.

32. All of the claims of the '281 patent require an apparatus having a display body and a display cover that is configured for repeated removal from and replacement on the display body (see Exhibit C).

33. The Discontinued Fan Fist does not include a display cover that is configured for repeated removal from and replacement on a display body.

34. The Current Fan Fist does not include a display cover that is configured for repeated removal from and replacement on a display body.

35. On information and belief, neither any of the Defendants nor their counsel are in possession or control of any samples or depictions of the Discontinued Fan Fist which show a display cover that is configured for repeated removal from and replacement on a display body.

36. On information and belief, neither any of the Defendants nor their counsel are in possession or control of any samples or depictions of the Current Fan Fist which show a display cover that is configured for repeated removal from and replacement on a display body.

37. On information and belief, neither any of the Defendants nor their counsel have any information or documents that indicate that the Discontinued Fan Fist is sold or offered by

CBS with a display cover that is configured for repeated removal from and replacement on a display body.

38. On information and belief, neither any of the Defendants nor their counsel have any information or documents that indicate that the Current Fan Fist is sold or offered for sale with a display cover that is configured for repeated removal from and replacement on a display body.

39. Based upon the allegations made in paragraphs 27 through 38, CBS is entitled to a declaratory judgment that the Discontinued Fan Fist and the Current Fan Fist do not infringe the '281 Patent.

COUNT II – DECLARATION OF INVALIDITY OF THE '281 PATENT

40. CBS incorporates paragraphs 1-39 herein as if fully set forth.

41. On information and belief, the '281 Patent is invalid for Applicants' failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112.

42. None of the claims of the '281 Patent are entitled to the benefit of a filing date prior to July 16, 2010.

43. None of the patent applications from which the '281 Patent claims priority under 35 U.S.C. §120 disclose, in the manner provided in 35 U.S.C. §112, the subject matter of any of the claims of the '281 Patent.

44. None of the patent applications from which the '281 Patent claims priority under 35 U.S.C. §120 disclose a display cover that is configured for repeated removal from and replacement on a display body.

45. Based upon the allegations made in paragraphs 40 through 44, CBS is entitled to a declaratory judgment that the '281 Patent is invalid.

**COUNT III – DECLARATION OF NON-INFRINGEMENT
OF THE ‘485 REGISTRATION**

46. CBS incorporates paragraphs 1-45 herein as if fully set forth.

47. On information and belief, CBS did not copy any protectable portion of the work comprising the ‘485 Registration.

48. On information and belief, CBS introduced the Discontinued Fan Fist before date of first publication of the work comprising the ‘485 Registration (see Exhibit D).

49. On information and belief, CBS did not have access to the work comprising the ‘485 Registration prior to the introduction of the Discontinued Fan Fist.

50. On information and belief, CBS did not have access to the work comprising the ‘485 Registration prior to the introduction of the Current Fan Fist.

51. On information and belief, the Discontinued Fan Fist is not substantially similar to the work comprising the ‘485 Registration.

52. On information and belief, the Current Fan Fist is not substantially similar to the work comprising the ‘485 Registration.

53. Based upon the allegations made in paragraphs 46 through 52, CBS is entitled to a declaratory judgment that the Discontinued Fan Fist and the Current Fan Fist do not infringe the ‘485 Registration.

COUNT IV – DECLARATION OF INVALIDITY OF THE ‘485 REGISTRATION

54. CBS incorporates paragraphs 1-53 herein as if fully set forth.

55. On information and belief, the work that is the subject matter of the ‘485 Registration does not constitute copyrightable subject matter under 17 U.S.C. §§102 et seq.

56. On information and belief, the copyright claimant for the ‘485 Registration failed to meet the legal and/or formal requirements for registration under 17 U.S.C. §§408 et seq.

57. On information and belief, the work comprising the '485 Registration consists entirely of common property and does not contain original authorship sufficient to entitle it to copyright protection.

58. Based upon the allegation made in paragraphs 54 through 57, CBS is entitled to a declaratory judgment that the '485 Registration is invalid.

**COUNT V – DECLARATION OF UNENFORCEABILITY
OF THE '281 PATENT BASED ON PATENT MISUSE
AND/OR THE EQUITABLE DOCTRINE OF UNCLEAN HANDS**

59. CBS incorporates paragraphs 1-58 herein as if fully set forth.

60. In the March 19 Letter (see Exhibit E), BrettHand and De Felice, through their counsel, impermissibly attempted to expand the temporal scope of their patent rights by attempting to enforce the '281 Patent prior to its issue date.

61. In the March 19 Letter, BrettHand and De Felice, through their counsel, impermissibly attempted to broaden the physical scope of the their patent rights by attempting to assert the claims of the '281 Patent against CBS without having performed an analysis of whether the Discontinued Fan Fist or Current Fan Fist includes each of the limitations of any of the claims of the '281 Patent.

62. On information and belief, the actions described in paragraphs 60 and 61 were intended to have an anti-competitive effect against CBS.

63. Based on the allegations made in paragraphs 59 through 62, CBS is entitled to a declaratory judgment that the '281 Patent is unenforceable against the Discontinued Fan Fist and the Current Fan Fist based on patent misuse and/or the equitable doctrine of unclean hands.

COUNT VI – COMMON LAW UNFAIR COMPETITION

64. CBS incorporates paragraphs 1-63 herein as if fully set forth.

65. The conduct, practices, and activities of BrettHand, De Felice, and Sample set forth in this Complaint constitute unfair competition in violation of the common law of Pennsylvania and other states.

66. CBS has been damaged and/or is likely to be damaged by the conduct alleged in paragraphs 64 through 65.

PRAYER FOR RELIEF

WHEREFORE, Declaratory Plaintiff Coopersburg Associates, Inc. d/b/a/ Coopersburg Sports respectfully requests judgment as follows:

a. An Order declaring that the Discontinued Fan Fist and the Current Fan Fist do not infringe U.S. Patent No. 8,141,281;

b. An Order declaring that U.S. Patent No. 8,141,281 is invalid, and certification of that Order to the Director of the United States Patent and Trademark Office with instructions to make appropriate entry thereof upon the records of the Office;

c. An Order declaring that the Discontinued Fan Fist and the Current Fan Fist do not infringe U.S. Copyright Registration No. VA 1-750-485;

d. An Order declaring that U.S. Copyright Registration No. VA 1-750-485 is invalid, and certification of that Order to the Register of Copyrights of the United States Copyright Office with instructions to make appropriate entry thereof upon the records of the Office;

e. An Order declaring that U.S. Patent No. 8,141,281 is unenforceable against the Discontinued Fan Fist and the Current Fan Fist based on patent misuse and/or the equitable doctrine of unclean hands;

f. An Order declaring that the conduct, practices, and activities of BrettHand, De Felice, and Sample constitute unfair competition in violation of the common law of Pennsylvania and other states;

g. A permanent injunction enjoining BrettHand, De Felice, and Sample, or officers, employees, agents, representatives, and assigns thereof or counsel therefor, as well as those in active concert and participation with any of them, from making an accusation against CBS, its officers, employees, agents, representatives, and assigns thereof or counsel therefor, as well as those in active concert and participation with any of them, that the Discontinued Fan Fist or Current Fan Fist infringes U.S. Patent No. 8,141,281 or U.S. Copyright Registration No. VA 1-750-485.

h. A determination that this case is an exceptional one based on BrettHand, De Felice, and Sample's failure to conduct a reasonable investigation prior to their accusations of patent and copyright infringement;

i. An award to CBS to recover the costs of suit;

j. An award of reasonable attorney's fees to CBS pursuant to 35 U.S.C. § 285; and

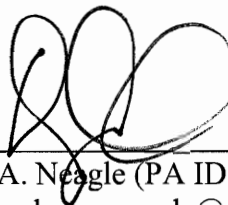
k. CBS be granted such additional relief as the Court determines may be just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the 7th Amendment to the Constitution of the United States, CBS hereby demands a trial by jury of all issues triable as of right by jury in the above action.

Respectfully submitted,

DESIGN IP, P.C.



Date: August 1, 2012

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