

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

HANESBRANDS INC.,)	
and)	Civil Action No. 11-cv-917
HBI BRANDED APPAREL)	
ENTERPRISES, LLC,)	
)	COMPLAINT FOR DECLARATORY
Plaintiffs,)	JUDGMENT
)	
v.)	JURY TRIAL DEMANDED
)	
ROCK FIT, LLC.,)	
)	
Defendant.)	

Through counsel, Plaintiffs Hanesbrands Inc. and HBI Branded Apparel Enterprises, LLC (collectively “PLAINTIFFS”) bring this lawsuit against Defendant Rock Fit, LLC (“Rock Fit” or “Defendant”), and alleges as follows:

THE PARTIES

1. Hanesbrands Inc. is a corporation organized under the laws of the State of Maryland with its principal place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina, 27105.

2. HBI Branded apparel Enterprises, LLC is a Delaware limited liability company with a principal place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina, 27105.

3. On information and belief, Plaintiff Rock Fit is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 6017 Randolph Street, Commerce, California, 90040.

4. Upon information and belief, Rock Fit sells women's apparel products over the internet and at various retail stores under various brands, including MARIKA, FAM, AERODYNAMICS, ELASTA-TIGHT, and DIRECT CONTROL.

JURISDICTION AND VENUE

5. Plaintiffs bring their claims pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. §§2201 and 2202, and pursuant to the patent laws of the United States, including, but not limited to, 35 U.S.C. §§271, 281, 284, and 285.

6. Subject matter jurisdiction exists pursuant to 28 U.S.C. §§1331 and 1338(a).

7. Upon information and belief, this Court has personal jurisdiction over Rock Fit under at least N.C. GEN. STAT. §1-75.4, as Rock Fit has sufficient contacts with North Carolina under the parameters of that statute. Upon information and belief, Rock Fit has purposefully advertised, sold, and distributed its products to customers in North Carolina and in this judicial district through its interactive website and retail stores. Upon further information and belief, Rock fit has also advertised, sold and distributed its products through retail stores throughout North Carolina and in this judicial district. Upon further information and belief, Rock Fit has also advertised, sold and distributed its products into the stream of commerce in the United States with the reasonable belief and expectation

that such products would periodically flow into North Carolina and into this judicial district.

8. Pursuant to 28 U.S.C. §§ 1391 and 1400(b), the United States District Court for the Middle District of North Carolina is the appropriate venue for this action, as Hanesbrands' principal place of business is in this district, and, upon information and belief, a substantial portion of the acts giving rise to the claims at issue in this litigation occurred in this district.

ROCK FIT'S CLAIMS THAT PLAINTIFFS INFRINGE THE '135 PATENT

9. Rock Fit claims to be the sole owner of United States Patent No. D641,135 (the "'135 Design Patent").

10. Rock Fit recently accused PLAINTIFFS of infringing the '135 Patent, and on August 3, 2011, filed suit against PLAINTIFFS in the United States District Court for the Central District of California, *Rock Fit, LLC v. PLAINTIFFS Branded Apparel Enterprises, LLC et al.*, No. 11-cv-06376 (C.D. Cal.) (the "California Action"), alleging that PLAINTIFFS have infringed and are infringing the '135 Design Patent by selling "Champion SHAPE" and other pants. (Exhibit A, California Complaint).

11. On October 12, 2011, Rock Fit voluntarily dismissed without prejudice its complaint against PLAINTIFFS in the California Action. (Exhibit B, California Dismissal). Rock Fit, however, did not dismiss its infringement claims with prejudice, and otherwise has failed to provide adequate assurances that it will not in the future pursue claims against PLAINTIFFS for alleged infringement of the '135 Design Patent.

12. Upon information and belief, Plaintiffs do not infringe the '135 Design Patent.

13. Upon information and belief, the '135 Design Patent is invalid for failure to meet the requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112, in view of, but not limited to, material prior art and other information that indicates that those patents were anticipated or would have been obvious to a person of ordinary skill in the art at the time the inventions were made.

14. Due to Rock Fit's assertions of the '135 Design Patent against PLAINTIFFS, there is an actual and justiciable controversy between the parties concerning the infringement and validity of that patent arising under the Patent Act (title 35 U.S.C. §§ 1 *et seq*).

15. PLAINTIFFS are entitled to have the alleged infringement issue resolved by virtue of a declaratory judgment of non-infringement and/or invalidity in order to clear the uncertainty created by Rock Fit's assertions of infringement.

COUNT ONE

Declaratory Judgment of Non-Infringement of U.S. Patent No. D641,135

16. PLAINTIFFS restate and incorporate by reference the allegations in Paragraphs 1 through 14 of the Complaint.

17. Rock Fit has asserted that PLAINTIFFS have infringed and are infringing the '135 Design Patent by selling "Champion SHAPE" and other pants.

18. PLAINTIFFS have not and do not infringe, any valid claim of the '135 Design Patent.

19. Due to Rock Fit's assertions of the '135 Design Patent against PLAINTIFFS, there is an actual and justiciable controversy between the parties concerning the infringement that patent arising under the Patent Act (title 35 U.S.C. §§ 1 *et seq*).

20. A judicial declaration is necessary and appropriate so that PLAINTIFFS may ascertain their rights with respect to the '135 Design Patent.

21. PLAINTIFFS request that the Court enter a declaratory judgment that PLAINTIFFS have not infringed and are not infringing any valid claim of the '135 Design Patent.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. D641,135

22. PLAINTIFFS restate and incorporates by reference the allegations in paragraphs 1 through 20 of the Complaint.

23. Rock Fit has asserted that PLAINTIFFS have infringed and are infringing the '135 Design Patent by selling "Champion SHAPE" and other pants.

24. PLAINTIFFS have not and do not infringe, any valid claim of the '135 Design Patent.

25. The '135 Design Patent is invalid for failure to comply with the requirements of 35 U.S.C. §§101, 102, 103, 112, and/or other applicable provisions of the

Patent Laws.

26. Due to Rock Fit's assertions of the '135 Design Patent against PLAINTIFFS, there is an actual and justiciable controversy between the parties concerning the validity of that patent arising under the Patent Act (title 35 U.S.C. §§ 1 *et seq.*).

27. An actual case or controversy therefore exists between PLAINTIFFS and Rock Fit as to whether the '135 Design Patent is invalid.

28. PLAINTIFFS request that the Court enter a declaratory judgment that the '135 Design Patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS respectfully request the following relief:

- a. that this Court declare that PLAINTIFFS have not infringed, directly or indirectly, the '135 Design Patent;
- b. that this Court declare the '135 Design Patent invalid and thus unenforceable;
- c. for an injunction permanently restraining Rock Fit and its employees and agents from asserting that PLAINTIFFS have infringed or are infringing the '135 Design Patent;
- d. that this Court award PLAINTIFFS their costs and attorneys' fees associated with this action; and

e. that this Court grant such other and further relief to PLAINTIFFS as this Court may deem just and equitable and as the Court deems appropriate.

REQUEST FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure, PLAINTIFFS respectfully request a jury trial on all issues triable to a jury in this action.

This 27th day of October, 2011.

/s/ John F. Morrow, Jr.
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