

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-61293-CIV
JORDAN/BROWN

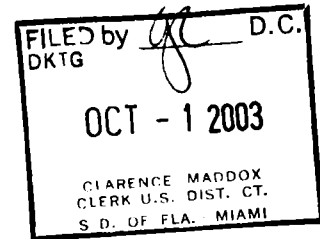
JOHN FRANCAVILLA and
JOHN'S BALL WORLD, LLC,
a Florida limited liability corporation,

Plaintiffs,

VS.

E&B GIFTWARE, LLC,
a New York limited liability corporation,

Defendant.



SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

The Plaintiffs, JOHN FRANCAVILLA and JOHN'S BALL WORLD, LLC, sue the Defendant, E&B GIFTWARE, LLC, and complain as follows:

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction of this cause, under the patent laws of the United States, pursuant to 28 U.S.C. § 1338(a) and 35 U.S.C. § 271 et. seq.
2. This court has personal jurisdiction over the Defendant, pursuant to F.S. 48.193(1)(a) & (b).
3. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b).

THE PARTIES

4. The Plaintiff, JOHN FRANCAVILLA, is a citizen of Florida, whose address is 2325 Desota Drive, Ft. Lauderdale, Florida 33301. He is the inventor of the exercise apparatus disclosed

20/03

in U.S. Patent No. 6,461,284, and the owner of the '284 patent.

5. JOHN'S BALL WORLD, LLC is a Florida limited liability corporation having its principal place of business at 3275 W. Hillsboro Blvd., Suite 207, Deerfield Beach, Florida. It is the sole licensee of the '284 patent and is engaged in commercializing the invention in the United States.

6. The Defendant, E&B GIFTWARE, LLC, is a New York limited liability corporation, having its principal place of business at 4 Executive Plaza, Yonkers, New York. It also conducts business under the name, SPORTS AND LEISURE TECHNOLOGY CORP., and is in the business of marketing exercise and fitness equipment under the trademark, "BALLY TOTAL FITNESS". Such marketing occurs throughout the United States, including the Southern District of Florida.

COUNT I

PATENT INFRINGEMENT

7. On October 8, 2002, U.S. Letters Patent No. 6,461,284 were duly and legally issued to the Plaintiff for an invention in a Spherical Back Exerciser Apparatus, and since that date, the Plaintiff has been and still is the owner of those Letters Patent (Exhibit "A" attached).

8. Since at least February of 2003, the Defendant has been making, using, selling, or offering to sell a device employing the patented invention, under the term BALL BENCHES, and will continue to do so unless enjoined by this court.

9. The Defendant, E&B GIFTWARE, LLC, has been placed on notice of the patent rights and claims of the Plaintiff by virtue of a certified letter, received by the Defendant on February 14, 2003 (Exhibit "B" attached).

WHEREFORE, the Plaintiff prays that this court:

a. Enter judgment against the Defendant for infringement of the '284 patent;

- b. Permanently enjoin the Defendant, and all others in participation with it, from further acts of infringement;
- c. Award the Plaintiff his damages as a result of the Defendants' infringement;
- d. Such other relief as this court deems appropriate.

Respectfully submitted,

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Edward F. McHale

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail this

29 day of September, 2003 to:

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