

APR 08 2009

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HUBBARD/DOWNING, INC., d/b/a)
HANS PERFORMANCE)
PRODUCTS,)
)
Plaintiff,)
)
v.)
)
INNOVATIVE SAFETY)
TECHNOLOGY, LLC,)
)
Defendant.)
)

Civil Action File No.
1 09-CV-0939
Jury Trial Demanded

WSD

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, HUBBARD/DOWNING, INC., doing business as HANS PERFORMANCE PRODUCTS, alleges the following in support of its Complaint for Patent Infringement and Demand for Jury Trial against Defendant, INNOVATIVE SAFETY TECHNOLOGY, LLC, and states as follows:

NATURE OF ACTION

1.

This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, arising from Defendant's acts of

infringement of United States Patent No. 6,009,566 (the “566 Patent”) through its use, sale, offer to sell, and importation of head and neck supports under, at least but without limitation, the brand name DEFNDER™ G70.

JURISDICTION AND VENUE

2.

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a) as this is a case arising under the patent laws of the United States (35 U.S.C. § 1, *et seq.*, and particularly 35 U.S.C. § 271), as well as pursuant to 28 U.S.C. § 1331, as this matter involves a federal question.

3.

This Court has personal jurisdiction over Defendant because it has continuous and systematic contacts with this judicial district and has, either directly or through agents, used, sold, or offered for sale, or imported into this district head and neck supports that infringe the ‘566 Patent.

4.

Venue is proper in this judicial district under 28 U.S.C. § 1391 and § 1400(b), because the Defendant is subject to personal jurisdiction in this judicial district under the Georgia Long Arm statute, O.C.G.A. § 9-10-91, because it or its agents

2.

have transacted business in Georgia and committed acts of patent infringement in Georgia by acts outside Georgia and also regularly does or solicits business, engages in a persistent course of conduct in this state and derives substantial revenue from goods sold in Georgia.

PARTIES

5.

Plaintiff is a corporation organized and existing under the laws of the State of Georgia, having its principal place of business, at 5096 Peachtree Road, Atlanta, Georgia 30341.

6.

On information and belief, Defendant is a limited liability company organized and existing under the laws of the State of California, having a principal place of business at 10928 Wheatlands Avenue, Suite A, Santee, California 92071. Defendant's registered agent for service of process is Barbara A. Frantz, 9030 Brentwood Boulevard, Suite B, Brentwood, California 94513.

3.

FACTUAL BACKGROUND

7.

On January 4, 2000, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,009,566 (“the ‘566 Patent”), entitled “Head and Neck Support for Racing” and naming Robert P. Hubbard as inventor. Plaintiff is the owner by assignment of all right, title, and interest in and to the ‘566 Patent. A true and correct copy of the ‘566 Patent is attached hereto as Exhibit A.

8.

The ‘566 Patent issued from U.S. Patent Application No. 09/238,274, which was filed January 27, 1999.

9.

The ‘566 Patent relates to a head and neck support device for occupants of high performance vehicles.

10.

Defendant infringes, or contributes to or induces the infringement of, the ‘566 Patent by making, using, selling, or offering for sale, within this judicial district and elsewhere, or importing into the United States, head and neck support devices that are covered by one or more claims of the ‘566 Patent, including, but

4.

not limited to, head and neck support devices marketed by Defendant under the brand name DEFNDER™ G70.

COUNT ONE

INFRINGEMENT OF UNITED STATES PATENT NO. 6,009,566

11.

Plaintiff re-alleges and incorporates by reference the preceding allegations of the Complaint as if they were fully set forth herein. Defendant has infringed, induced others to infringe, or contributed to the infringement of the '566 Patent and continues to do so, by manufacturing, using, offering to sell, selling, or importing into the United States, without permission or authority from Plaintiff, products covered by one or more claims of the '566 Patent, including, but not limited to, the products marketed by Defendant under the brand name DEFNDER™ G70.

12.

Plaintiff has suffered monetary damages and other injuries by Defendant's past and continuing infringement, inducement of infringement, or contributory infringement of the '566 Patent in an amount to be proven at trial.

13.

5.

Plaintiff has been irreparably injured by Defendant's past and continuing infringement, inducement of infringement, or contributory infringement of the '566 Patent, and Defendant's infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

14.

Defendant's infringement, inducement of infringement, or contributory infringement of the '566 Patent has been and continues to be willful and deliberate, and Plaintiff is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 and attorney's fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

WHEREFORE, Plaintiff respectfully requests that the Court:


- a) Enter judgment in favor of Plaintiff and against Defendant;
- b) Award Plaintiff its actual damages, together with prejudgment interest and costs, as a result of Defendant's infringing activities;
- c) Enjoin Defendant from continuing to infringe, induce infringement, or contribute to infringement of the '566 Patent;
- d) Enhance by three times the damages awarded to Plaintiff as a result of Defendant's willful infringement of the '566 Patent;

e) Award Plaintiff its expenses of litigation, including reasonable attorney's fees; and

f) Award Plaintiff such other and further relief as may be just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES TRIABLE BY A JURY IN THIS CASE.

Respectfully submitted, this 8th day of April, 2009.



William H. Needle
GA Bar No. 536400
needlew@ballardspahr.com
Lawrence K. Nodine
GA Bar No. 545250
Robin L. Gentry
GA Bar No. 289899
Charley F. Brown
GA Bar No. 086754
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
999 Peachtree Street, NE, Suite 1000
Atlanta, Georgia 30309-3915
Telephone: (678) 420-9300
Facsimile: (678) 420-9301

ATTORNEYS FOR PLAINTIFF

**HUBBARD/DOWNING, INC., d/b/a
HANS PERFORMANCE PRODUCTS**