

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

_____)	
SOP SERVICES, INC., and)	
BEAR ARCHERY, INC.)	
)	
Plaintiffs,)	Civil Action No. 3:11-cv-00112-RLY-WHG
)	
v.)	
)	DEMAND FOR JURY TRIAL
VITAL HUNTING GEAR, INC.)	
)	
and)	
)	
ABBAS BEN AFSHARI)	
)	
_____)	
Defendants.)	

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT,
DECLARATORY JUDGMENT AND JURY DEMAND**

Plaintiffs, SOP Services, Inc. and Bear Archery, Inc. (collectively hereinafter “Bear Archery”), complain of Defendants, Vital Hunting Gear, Inc. (hereinafter “Vital Gear”) and Abbas Ben Afshari (hereinafter “Afshari”), and allege as follows:

PARTIES

1. Plaintiff, SOP Services, Inc. is a corporation organized under the laws of the State of Nevada and has a principal place of business at 2325-B Renaissance Drive, Suite 10, Las Vegas, Nevada 89119.

2. Plaintiff, Bear Archery, Inc., is a corporation organized under the laws of the State of Florida, and has a principal place of business at P.O. Box 889, 817 Maxwell Avenue, Evansville, IN 47706.

3. On information and belief, Defendant Vital Gear, Inc. is a corporation organized under the laws of the State of Kentucky, and has a principal place of business at 133 Venture Court, Suite 140, Lexington, Kentucky 40511.

4. On information and belief, Defendant Afshari is an individual who resides at 4950 Jennie Kate Lane, Lexington, Kentucky 40510.

JURISDICTION AND VENUE

5. This case arises under the patent laws of the United States, Title 35, United States Code, including, among others, section 271 entitled, “Infringement of Patent.”

6. This case also arises under the trademark laws of the United States, namely Section 39 of the Trademark Act of 1946, 15 U.S.C. §§ 1121 (the “Lanham Act”).

7. This Court has jurisdiction of this Action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201-2202, and 35 U.S.C. § 281.

8. Venue in this district is proper pursuant to the provisions of Title 28, United States Code, Section 1391.

9. This Court has personal jurisdiction over Vital Gear and Afshari because they do business in Indiana.

BACKGROUND FACTS

Bear Archery’s Patents

10. On January 9, 2007, United States Patent No. 7,159,325 (hereinafter “the ‘325 Patent”) was duly and legally issued for an invention titled “Bow Sight With Fiber Optics.” A true and accurate copy of the ‘325 Patent is attached hereto as Exhibit A.

11. On March 18, 2008, United States Patent No. 7,343,686 (hereinafter “the ‘686 Patent”) was duly and legally issued for an invention titled “Bow Sight With Fiber Optics.” A true and accurate copy of the ‘686 Patent is attached hereto as Exhibit B.

12. The ‘325 Patent and the ‘686 Patent (collectively “the Bear Archery Patents”) list Christopher A. Rager as the sole inventor.

13. On February 2, 2007, the ‘325 Patent and the application which resulted in the ‘686 Patent were assigned to Bear Archery.

14. Bear Archery has complied with the patent marking requirements of 35 U.S.C. 287 for products manufactured and sold by Bear Archery covered by the Bear Archery Patents.

Bear Archery’s Trademarks

15. Since at least 1999 and continuously to date, Bear Archery and its predecessor, coined, adopted and used in interstate commerce the WHISKER BISCUIT mark in connection with its arrow rest products.

16. Bear Archery has used the WHISKER BISCUIT mark continuously, notoriously and extensively with respect to and in association with its products and services since their original introduction and further has marked its materials with the appropriate “TM” or “®” legends.

17. Bear Archery has expended a substantial amount of money and effort in advertising and promoting the WHISKER BISCUIT mark. Bear Archery’s WHISKER BISCUIT mark is well known and consumers have come to know, rely upon, and recognize the WHISKER BISCUIT mark as identifying Bear Archery’s innovative arrow rest products. As a result of Bear Archery’s substantial promotional, advertising, publicity, and public relations

activities, the WHISKER BISCUIT mark has acquired substantial goodwill and is a valuable commercial asset.

18. Bear Archery's WHISKER BISCUIT mark is inherently distinctive, serving to identify and indicate the source of Bear Archery's products to the consuming public, and to distinguish Bear Archery products from those of others.

19. The WHISKER BISCUIT arrow rests have been extremely commercially successful and are recognized as "The world's most-used arrow rest."

20. The WHISKER BISCUIT mark is famous.

21. Bear Archery is the owner of United States Registration No. 3,312,392 issued October 16, 2007 for the mark WHISKER BISCUIT® for archery equipment, namely, arrow rest components in the nature of replacement synthetic bristle brushes for encircling an arrow shaft and holding it in alignment. A true copy of registration 3,833,665 is attached as Exhibit D.

22. Bear Archery's WHISKER BISCUIT arrow rest products and components of the products are commonly known as and referred to by the shortened mark "Biscuit" such as a "Biscuit" rest or that Bear Archery sells replacement "Biscuits" for its rests.

23. Consumers solely associate the term BISCUIT when referring to archery rests or components as referring to Bear Archery's WHISKER BISCUIT arrow rest products and components.

Afshari's Threats to Bear Archery

24. Bear Archery first began marketing an arrow rest under the trademark "Revolution" (hereinafter the "Revolution Arrow Rest") in October 2010.

25. Bear Archery first commercially released the Revolution arrow rest shortly thereafter and continues to market and sell the Revolution Arrow Rest today.

26. Afshari purports to own United States Patent No. 6,681,753 (hereinafter “the ‘753 Patent”) entitled “Shaft Clamping Arrow Rest”.

27. Afshari also purports to own United States Patent No. 6,948,488 (hereinafter “the ‘488 Patent”) entitled “Shaft Clamping Arrow Rest”.

28. In December of 2010, Afshari contacted representatives for Bear Archery via telephone and notified them that the Revolution Arrow Rest “violated” his patents, namely the ‘753 Patent and the ‘488 Patent (hereinafter collectively the “Afshari Patents”).

29. During the 2011 Archery Trade Academy Show, held between January 6th and January 11th, in Indianapolis, Indiana, Afshari approached representatives for Bear Archery and reiterated his position that the Revolution Arrow Rest “violated” the Afshari Patents.

30. Thereafter, through the course of dealing between the parties, Afshari has continued to insist to representatives for Bear Archery that it needed to resolve the situation regarding the Afshari Patents as they relate to the Revolution Arrow Rest.

INFRINGEMENT BY VITAL GEAR OF THE BEAR ARCHERY PATENTS

31. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 through 30.

32. Vital Gear is in the business of selling hunting products and accessories, including archery products. Vital Gear competes directly with Bear Archery in the sale of fiber optic sights and arrow rests in the archery industry.

33. Vital Gear has manufactured and continues to manufacture, use, sell, offer to sell and distribute fiber optic sights which infringe certain claims of the Bear Archery Patents (the

“Infringing Sights”). A copy of Vital Gear’s 2011 Product Catalog is attached hereto as Exhibit C.

34. This infringement includes, in part, the manufacture, sale, and offer for sale of its ANGULAR PIN SIGHTS, SINGLE FIXED PIN SIGHTS, SINGLE MOVEABLE PIN SIGHTS, and DEFENDTECH SIGHT SYSTEM fiber optic sights.

35. On information and belief, Vital Gear has acted willfully, intentionally and deliberately in derogation of Plaintiffs’ rights in the Bear Archery Patents.

36. Plaintiffs have been damaged by Vital Gear’s infringement and will suffer irreparable injury unless Vital Gear is permanently enjoined by this Court.

INFRINGEMENT BY AFSHARI OF THE BEAR ARCHERY PATENTS

37. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 through 36.

38. Afshari was, at all relevant times, an owner and the sole officer and/or director of Vital Gear.

39. On information and belief, Vital Gear’s acts of patent infringement were performed, in whole or in part, personally by, under the supervision of, or at the direction and/or instruction of Afshari.

40. Afshari has induced infringement by Vital Gear of the Bear Archery Patents.

41. Afshari has contributed to the infringement of the Bear Archery Patents by Vital Gear.

42. On information and belief, Afshari acted willfully, intentionally and deliberately in derogation of Plaintiffs’ rights in the Bear Archery Patents.

43. Plaintiffs have been damaged by Afhari's infringement and will suffer irreparable injury unless Afshari is permanently enjoined by this Court.

TRADEMARK INFRINGEMENT BY VITAL GEAR

44. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 43.

45. Vital Gear competes with Bear Archery in selling archery equipment, such as bow sights and arrow rests.

46. Vital Gear has introduced an arrow rest under the name TEFLON BISCUIT.

47. Vital Gear's TEFLON BISCUIT arrow rest competes with Bear Archery's WHISKER BISCUIT arrow rest.

48. Vital Gear's TEFLON BISCUIT trademark uses the identical term "BISCUIT" as is used in Bear Archery's WHISKER BISCUIT Trademark.

49. Other than the WHISKER BISCUIT arrow rest and Vital Gear's new TEFLON BISCUIT arrow rest, no archery company marks or sells an arrow rest using the term "Biscuit."

50. The arrow rests offered under Vital Gear's TEFLON BISCUIT mark are identical and/or highly related goods to the arrow rests offered by Bear Archery under the WHISKER BISCUIT trademark.

51. Bear Archery's WHISKER BISCUIT trademark has registered and common law priority over Applicant's TEFLON BISCUIT trademark.

52. Vital Gear's use of the mark "TEFLON BISCUIT" in conjunction with its arrow rest is confusingly similar to Bear Archery's WHISKER BISCUIT mark in conjunction with its competing arrow rest.

53. Vital Gear's use of "TEFLON BISCUIT" is likely to cause confusion or mistake or to deceive consumers into believing that Vital Gear's unauthorized products are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Bear Archery.

54. The acts of Vital Gear complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement in violation of Section 32 and 43(a) of the Lanham Act, 15 U.S.C. § 1114 *et seq.* and the common law.

TRADEMARK INFRINGEMENT BY AFSHARI

55. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 54.

56. On information and belief, Vital Gear's acts of trademark infringement were performed, in whole or in part, personally by, under the supervision of, or at the direction and/or instruction of Afshari.

57. On information and belief, Afshari acted willfully, intentionally and deliberately in derogation of Plaintiffs' rights in the WHISKER BISCUIT trademark.

58. Plaintiffs have been damaged by Afshari's infringement and will suffer irreparable injury unless Afshari is permanently enjoined by this Court.

DECLARATION OF NON-INFRINGEMENT OF THE AFSHARI PATENTS

59. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 58.

60. Afshari has alleged that Bear Archery has infringed and it continuing to infringe the Afshari Patents through the sale of its Revolution Arrow Rest. Bear Archery denies that it has infringed any valid claim of the Afshari Patents.

61. Accordingly, there is an actual, immediate, and justicable controversy between the parties.

62. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Bear Archery requests a declaration by the Court that its Revolution Arrow Rest does not infringe any valid claim of the Afshari Patents.

DECLARATION OF INVALIDITY OF THE AFSHARI PATENTS

63. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 62.

64. Afshari has alleged that Bear Archery's Revolution Arrow Rest has infringed and it continuing to infringe the Afshari Patents. Bear Archery denies these allegations because, among other things, the claims of the Afshari Patent are invalid under the patent laws of the United States, including one or more provisions of 35 U.S.C. §§ 101, 102, 103 and 112.

65. Accordingly, there is an actual, immediate, and justicable controversy between the parties.

66. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Bear Archery requests a declaration by the Court that the claims of the Afshari Patents are invalid under at least Title 35 U.S.C. §§101, 102, 103 and/or 112.

RELIEF

WHEREFORE, Bear Archery prays for judgment as follows:

A. A judgment of infringement of the Bear Archery Patents be entered in favor of Plaintiffs against Defendants Vital Gear and Afshari individually.

B. A judgment that the use of the “TEFLON BISCUIT” mark in Vital Gear’s commercial advertising, marketing, and/or promotion and sales in the United States constitutes and creates a likelihood of confusion, mistake, or deception among relevant consumers and therefore infringes Plaintiff’s “WHISKER BISCUIT” mark.

C. An order permanently restraining Defendants Afshari and Vital Gear or any of its subsidiaries, employees, agents or servants thereof, from further acts of infringement of the Bear Archery Patents.

D. An order permanently restraining Defendants Afshari and Vital Gear or any subsidiaries, employees, agents or servants thereof, from engaging in any form of misleading advertising of products or services bearing or resembling the “WHISKER BISCUIT” mark which have caused actual confusion, mistake or deception of the public or the likelihood thereof as being similar thereto or therewith.

E. An order that all infringing devices in the possession of, or subject to control by Defendants Afshari and Vital Gear or any employees, agents or servants thereof, infringing on any claim of the Bear Archery Patents or the WHISKER BISCUIT® trademark, and all labels, signs, prints, packages, wrappers, receptacles, and advertisements be delivered up and destroyed or altered to eliminate any possibility any further infringement.

F. An award of damages not less than a reasonable royalty, adequate to compensate Plaintiffs for Defendants’ acts of infringement under 35 U.S.C. §284.

- G. An award to Plaintiffs as damages and/or profits from Defendants under 15 U.S.C. § 1117.
- H. An order declaring that the Afshari Patents are invalid.
- I. An order declaring that Bear Archery's Revolution Arrow Rest has not infringed and is not infringing any valid claim of the Afshari Patents.
- J. An order declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and 15 U.S.C. 1117 as a result of Defendants' knowing and willful infringement of the Bear Archery Patents and the WHISKER BISCUIT® trademark, and awarding Plaintiffs their attorneys' fees incurred in bringing this action.
- K. An order that the amounts awarded to Plaintiffs as damages or profits be increased by the maximum amount allowed under 35 U.S.C. §284 and 15 U.S.C. 1117.
- L. An award of Plaintiffs' damages, statutory damages, costs, attorney's fees and/or expenses associated with this action and also including Defendants' wrongful profits from or associated with its patent and or trademark infringements and other violations of Plaintiffs' rights.
- M. An order granting all other relief found necessary, just and proper under the circumstances, including monetary damages to which Plaintiffs may be entitled.

Plaintiffs request a jury for all issues so triable.

Respectfully submitted,

/s/Charles J. Meyer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on the 7th day of May, 2012. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system.

I additionally certify that on the 7th day of May, 2012, a copy of the foregoing was mailed, by first-class U.S. mail, postage pre-paid and properly addressed to the following:

Vital Hunting Gear, Inc.
133 Venture Court - Suite 140
Lexington, Kentucky 40511

/s/Charles J. Meyer _____
Charles J. Meyer

#835587