

EdiZONE, LLC
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Attorney for Plaintiff,
EdiZONE, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

EDIZONE, LLC, a Delaware limited liability company, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> TOMMYCO KNEEPADS, INC., a Canada corporation, TENACIOUS HOLDINGS, INC., a Minnesota corporation, and DOES 1 – 50, <div style="text-align: right;">Defendants.</div>	FIRST AMENDED COMPLAINT AND JURY DEMAND Case No.: 2:12-cv-535-DS Judge David Sam
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EdiZONE, LLC, Plaintiff, hereby alleges and claims against Defendants, TommyCo Kneepads, Inc., Tenacious Holdings, Inc., and Does 1 – 50, as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, EdiZONE, LLC (hereafter “EdiZONE”), is a Delaware limited liability company with its principle place of business in Alpine, Utah. EdiZONE is the current owner of the patent referenced below.

2. On information and belief, EdiZONE believes the following as to each of the Defendants:

a. Defendant TommyCo Kneepads, Inc. (hereafter “TOMMYCO”) is a Canada corporation with its principle place of business in British Columbia. TOMMYCO sells and distributes various products, including a kneepad product with a honeycomb gel cushioning element, throughout the United States of America, including in the State of Utah. TOMMYCO has engaged the services of individuals who are located in and represent TOMMYCO in the United States, including such a sales representative whose territory includes the State of Utah. TOMMYCO also distributes a kneepad product with a honeycomb gel cushioning element to Tenacious Holdings, Inc. in the United States of America for its resale throughout the United States of America, including in the State of Utah.

b. Defendant Tenacious Holdings, Inc. dba ergodyne (hereafter “THI”) is a Minnesota corporation with its principle place of business in St. Paul, Minnesota. THI sells and distributes various products, including a kneepad product with a honeycomb gel cushioning element, throughout the United States of America, including in the State of Utah.

c. Defendants Does 1 – 50 are entities or individuals who have made wholesale purchases of TOMMYCO and/or THI accused kneepad products with a honeycomb gel cushioning element, identified below, for retail sale to consumers within the United States of America, or who are otherwise liable to EdiZONE for patent infringement as alleged herein, and leave will be sought hereafter to bring them into this action as deemed necessary or appropriate and/or their identities become known.

3. On information and belief, Defendants conduct business in the State of Utah and/or otherwise have substantial contacts with Utah and avail themselves of the benefits and protections of Utah law by shipping, distributing and/or selling products in the stream of

commerce with the intent that they are sold to consumers within the State of Utah. Each Defendant has committed patent infringement within the State of Utah in violation of the laws of the United States of America.

4. This Court has personal jurisdiction over the Defendants.

5. Subject matter jurisdiction and venue are founded upon 28 U.S.C. §§ 1331, 1332(a), 1338(a), 1391 and 1400(b).

GENERAL ALLEGATIONS

6. Defendants are selling, or with actual or constructive knowledge are inducing other Defendants to sell, within the United States of America kneepad products that include a honeycomb gel cushioning element, which products are believed to include, but may not be limited to, the following products currently listed on THI's website: ProFlex® 347 Long Cap Honeycomb Gel Knee Pad, ProFlex® 357 Short Cap Honeycomb Gel Knee Pad and ProFlex® 367 Low-Profile Honeycomb Gel Knee Pad" (collectively, the "PRODUCTS").

7. After receiving notice that the PRODUCTS infringe upon a patent owned by EdiZONE, Defendants have refused to cease and desist their unlawful conduct and/or have refused to pay to EdiZONE fair compensation for all past, present and future use of the intellectual property owned by EdiZONE.

8. EdiZONE is forced by Defendants' conduct to seek protection of its patent and appropriate compensation from the Defendants.

CLAIM FOR RELIEF

9. EdiZONE incorporates herein its allegations set forth above in this Complaint.

10. On February 22, 2000, U.S. Patent No. 6,026,527 (the “527 PATENT”) issued and thereafter through various assignments is now legally assigned to and owned by EdiZONE.

11. The honeycomb gel cushioning element of the PRODUCTS read on one or more claims of the 527 PATENT.

12. Defendants have actual notice of the 527 PATENT through notices that have been sent to TOMMYCO and THI and/or, upon information and belief, they have constructive notice through patent markings on other products.

13. Defendants do not have a licensed right to make, have made, use or sell, or with actual or constructive knowledge of the 527 PATENT induce other Defendants to make, use or sell, the PRODUCTS in the United States of America.

14. Accordingly, Defendants are liable for direct infringement and/or for inducing infringement.

15. Upon information and belief, if not enjoined by the Court, Defendants will continue to infringe the 527 PATENT and/or induce infringement of the 527 PATENT.

16. EdiZONE reserves the right to amend this Complaint to allege that Defendants have acted and are acting willfully and with deliberate disregard of EdiZONE’s rights in the 527 PATENT, should there be a basis for such an allegation upon further investigation and discovery.

17. EdiZONE is entitled to recover from Defendants, jointly and severally, monetary damages in an amount not less than a reasonable royalty for all units of PRODUCTS sold. EdiZONE also is entitled to appropriate injunctive relief.

PRAYER

WHEREFORE, EdiZONE prays for the following relief:

1. A monetary judgment to compensate EdiZONE for its damages;
2. Interest, prejudgment and post judgment, on the monetary judgment;
3. Exemplary damages, costs and attorneys' fees as allowed by law;
4. Injunctive relief and any other equitable relief to prevent continuing damages;
5. All such other relief as the Court deems necessary and appropriate.

JURY DEMAND

EdiZONE demands a trial by jury on all issues so triable.

DATED this 11th day of June, 2012.

/s/ Casey K. McGarvey
Casey K. McGarvey
Attorney for EdiZONE, LLC