

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

<p>ICON HEALTH & FITNESS, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SOURCE NETWORK SALES AND MARKETING, INC., a Texas corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. _____</p> <p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">Jury Demanded</p> <p>Honorable Judge _____</p>
---	---

Plaintiff ICON HEALTH & FITNESS, INC. (“ICON” or “Plaintiff”) hereby complains against defendant SOURCE NETWORK SALES AND MARKETING, INC. (“Source Network” or “Defendant”) for the causes of action alleged as follows:

THE PARTIES

1. ICON is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.

2. ICON alleges on information and belief that defendant Source Network is a Texas corporation with its principal place of business located at 4420 Castleglen Drive, Plano, Texas, 75093.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 et seq., which gives rise to the remedies specified under 35 U.S.C. §§ 281, and 283–85.

4. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

5. ICON further alleges on information and belief that Source Network has sold or contracted for the sale of infringing goods within the State of Texas, to ICON's injury, which relates to the claims asserted by ICON, and out of which ICON's claims, in part, arise.

6. On information and belief, Source Network imports into the United States exercise machines and equipment, including dumbbells, under the brand name LifeSmart.

7. On information and belief, Source Network is the owner of the web site located at www.snsam.com, which is available to persons within the State of Texas.

8. On information and belief, Source Network advertises, markets, and provides ordering information for its products through its web site, www.snsam.com, which advertising, marketing, and ordering information are available to the purchasing public in the State of Texas.

9. On information and belief, Source Network also markets, advertises, and sells its products online through various websites, including, but not limited to, www.sears.com, www.amazon.com, and www.target.com which advertising, marketing, and selling are available to the purchasing public in the State of Texas.

10. This Court's exercise of personal jurisdiction over Source Network is consistent with the Constitutions of the United States and the State of Texas.

11. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

FACTUAL BACKGROUND

12. ICON is an award-winning innovator in the field of exercise equipment and markets and sells a variety of consumer products.

13. ICON came to its position of technological leadership through an innovative spirit and substantial investment in research and development. As a result of its endeavors, many of the technological innovations created and owned by ICON are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

14. Many of ICON's technological innovations are protected, *inter alia*, by a portfolio of utility and design patents, including United States Patent No. 6,656,093 ("the '093 Patent"), a true and correct copy of which is attached hereto as Exhibit A, and United States Patent No. 7,223,214 ("the '214 Patent"), a true and correct copy of which is attached hereto as Exhibit B.

15. The inventor and owner of the '093 Patent and the '214 Patent is Paul Chen. These patents are herein referred to as the "Chen Patents."

16. ICON is the exclusive licensee of the Chen Patents in the United States and has the right to bring suit and enforce the Chen Patents.

17. ICON alleges upon information and belief that Source Network imports, makes, uses, sells, and offers for sale within the United States and within the State of Utah, either directly or through established distribution channels, adjustable dumbbells, including dumbbells designated as, *inter alia*, the LifeSmart Adjustable Dumbbell System.

18. On information and belief, Source Network has sold products that infringe the Chen Patents, including, for example, the LifeSmart Adjustable Dumbbell System.

**CAUSE OF ACTION
(Patent Infringement of the Chen Patents)**

19. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

20. ICON alleges on information and belief that Source Network has infringed one or more claims of the Chen Patents by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the Chen Patents, or by contributing to infringement, inducing others to infringe the Chen Patents, or carrying out acts constituting infringement under 35 U.S.C. § 271.

21. The conduct of Source Network as set forth hereinabove gives rise to a cause of action for infringement of the Chen Patents, pursuant to at least 35 U.S.C. §§ 271 and 281.

22. To the extent that Source Network has sold infringing products, including, for example, the LifeSmart Adjustable Dumbbell System, subsequent to receiving notice of ICON's assertions of infringement and despite an objectively high likelihood that its continued actions constitute infringement, Source Network's actions have been both willful and deliberate.

23. By reason of the foregoing, ICON is entitled to monetary relief against Source Network, pursuant to 35 U.S.C. §§ 284–85, as more fully set forth herein below.

PRAYER FOR RELIEF

WHEREFORE, ICON prays for judgment as follows:

A. A judgment finding Source Network liable for infringement of the Chen Patents;

B. An order of this Court temporarily, preliminarily, and permanently enjoining Source Network, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner or contributing in any manner to the infringement of the Chen Patents, pursuant to at least 35 U.S.C. § 283;

C. For injunctive relief enjoining Source Network, its officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them as follows:

- a. from manufacturing any products or providing any services falling within the scope of the claims of the Chen Patents;
- b. from using any product, method or providing services falling within the scope of any of the claims of the Chen Patents;
- c. from selling, offering to sell, licensing or purporting to license any product, method or offering services falling within the scope of any of the claims of the Chen Patents;
- d. from importing any product into the United States which falls within the scope of the Chen Patents;
- e. from actively inducing others to infringe any of the claims of the Chen Patents;
- f. from engaging in acts constituting contributory infringement of any of the claims of the Chen Patents; and
- g. from all other acts of infringement of any of the claims of the Chen Patents;

D. That Source Network be ordered to deliver up for destruction all infringing products in their possession;

E. An award of damages adequate to compensate ICON for infringement of the Chen Patents, in an amount to be proven at trial, including treble damages and other damages allowed by 35 U.S.C. § 284;

F. An award of ICON's costs in bringing this action, pursuant to at least 35 U.S.C. § 284.

G. A declaration that this is an exceptional case and that ICON be awarded its attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285; and

H. For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

ICON demands trial by jury on all claims and issues so triable.

DATED: December 10, 2010.

/s/ Charles W. Goehring, Jr.
LAWRENCE LOUIS GERMER
Texas State Bar No. 07824000
e-mail: llgermer@germer.com

CHARLES W. GOEHRINGER, JR.
Texas State Bar No. 00793817
e-mail: cwgoehring@germer.com

GERMER GERTZ, L.L.P.
550 Fannin, Suite 400
Beaumont, Texas 77701
(409) 654-6700 - Telephone
(409) 835-2115 - Facsimile
e-mail: llgermer@germer.com

Of counsel:

David R. Wright (*pro hac application forthcoming*)

Utah Bar No. 5164

e-mail: dwright@wnlaw.com

H. Craig Hall, Jr. (*previously admitted to the Eastern District of Texas*)

Utah Bar No. 8691

e-mail: chall@wnlaw.com

Cara J. Baldwin (*pro hac application forthcoming*)

Utah Bar No. 11863

e-mail: cbaldwin@wnlaw.com

WORKMAN NYDEGGER

60 East South Temple, Suite 1000

Salt Lake City, Utah 84111

(801) 533-9800 - Telephone

(801) 321-1707 - Facsimile