

DECONCINI McDONALD YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, Arizona 85020

1 Ira M. Schwartz, (SBN 010448)
2 Michael A. Cordier, (SBN 014378)
3 **DeCONCINI McDONALD YETWIN & LACY, P.C.**
4 7310 N. 16th Street, Suite 330
5 Phoenix, Arizona 85020
6 Telephone: (602) 282-0500
7 Facsimile: (602) 282-0520
8 ischwartz@dmylphx.com
9 mcordier@dmylphx.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Ernesto Castro, an individual; and Ergis
Company, LLC., an Arizona limited liability
company,

Plaintiffs,

vs.

Tidwell's Orthotics, LLC, a Florida limited
liability company,

Defendant.

Case No.:

COMPLAINT

(Patent Infringement)

Ernesto Castro, an individual, and Ergis Company, LLC, an Arizona Limited Liability Company, for their Complaint against Defendant Tidwell's Orthotics, LLC, a Florida Limited Liability Company, complain and allege as set forth below.

Parties, Jurisdiction & Venue

1. Ernesto Castro ("Castro") is an individual residing in Mesa, Maricopa County, Arizona.
2. Ergis Company, LLC ("Ergis") is an Arizona limited liability company with its principal place of business in Mesa, Maricopa County, Arizona.

DECONCINI McDONALD YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, Arizona 85020

1 **Count I**

2 **Infringement of '997 Patent**

3 15. Plaintiffs incorporate the allegations of paragraphs 1-14 above by this
4 reference.

5 16. Castro is the owner of the '997 Patent.

6 17. Ergis is the exclusive licensee of the '997 Patent.

7 18. Ergis is in the business of licensing the '997 Patent and related
8 patents. Among others, Ergis has licensed Arizona AFO, Inc., a company that is a leader
9 in the business of manufacturing and selling custom orthotic ankle brace systems which are
10 the subject of the '997 Patent.

11 19. Neither Castro nor Ergis has licensed or authorized Tidwell's to
12 manufacture or sell products under the '997 Patent.

13 20. Castro by and through his licensees has at all relevant times marked its
14 product with an appropriate patent notice.

15 21. Tidwell's has in the past manufactured, used, sold and offered for sale
16 products, including without limitation the Amber AFO ankle brace system, which infringe
17 the '997 Patent and it is currently doing so.

18 22. Tidwell's has sold and offered for sale infringing products, including
19 the Amber AFO ankle brace system, in this District.

20 23. Such actions by Tidwell's have caused and continue to cause
21 immediate and irreparable injury to Plaintiffs.

22 24. Such actions by Tidwell's have caused harm and damage to Plaintiffs
23 in an amount to be proven at trial; but in no event less than a reasonable royalty.

24 25. Plaintiffs have given notice to Tidwell's of its actions of infringement.
25 Despite such notice, Tidwell's continues to infringe upon Plaintiffs' rights in the '997
26 Patent.

DECONCINI McDONALD YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, Arizona 85020

1 26. Tidwell’s actions in continuing to infringe upon the ‘997 Patents are
2 willful.

3 27. Plaintiffs are entitled to recover treble damages pursuant to 35 U.S.C.
4 § 284.

5 28. This action is an exceptional case pursuant to 35 U.S.C. § 285.
6 Plaintiffs are entitled to recover their attorneys fees incurred in this matter.

7
8 WHEREFORE, Plaintiffs request the following relief:

9 A. A preliminary and permanent injunction prohibiting and restraining
10 Tidwell’s, its officers, directors, employees, agents, representatives and all persons in
11 active concert with it from manufacturing, using, selling, offering for sale, or importing
12 into the United States any product which infringes upon the ‘997 Patent, including without
13 limitation its Amber AFO ankle brace system.

14 B. A court order requiring that all infringing products in the possession or
15 control of Defendant be seized pending trial in this matter; and upon final judgment that
16 such items be ordered destroyed.

17 C. Awarding Plaintiffs their actual damages incurred in this matter; but not
18 less than a reasonable royalty.

19 D. Awarding Plaintiffs treble damages pursuant to 35 U.S.C. § 284.

20 E. An award finding this matter to be an exceptional case and awarding
21 Plaintiffs their reasonable attorneys’ fees incurred in this matter.

22 F. Awarding Plaintiffs such further relief as the Court deems just and proper.
23
24
25
26

DATED this 24th day of March, 2008.

DECONCINI MCDONALD YETWIN & LACY, P.C.

By s/Ira M. Schwartz
Ira M. Schwartz
Michael A. Cordier
7310 North 16th Street, Suite 330
Phoenix, Arizona 85020
(602) 282-0500
Attorneys for Plaintiffs

Rev. 3/24/2008 10:36 AM
260628

DECONCINI MCDONALD YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, Arizona 85020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26