

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

BY 
DEPUTY CLERK

AMER SPORTS WINTER & OUTDOOR)
COMPANY, a Delaware Corporation,)
Plaintiff)

v.)

SIDNEY KASTNER,)
Defendant)

Docket No. 1:12-cv-186

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Amer Sports Winter & Outdoor Company (“ASWO”), by its attorneys, Gravel & Shea PC, and for its Complaint against Sidney Kastner (“Kastner”), avers as follows:

Parties

1. ASWO is a Delaware corporation with its principal place of business at 2030 Lincoln Ave., Ogden, Utah.
2. On information and belief, Kastner is an individual who resides at 24 Upper Judson Lane, Stowe, Vermont 05672, and who does business in this District.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over ASWO’s Complaint against Kastner pursuant to 28 U.S.C. §§1331 and 1338(a) in that this Complaint arises under the patent laws of the United States.

4. This Court further has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. §§ 2201, 2202, and 1338 and 35 U.S.C. § 271, et. seq., in that there is a definite and concrete controversy between the parties with regard to non-infringement of United States Patent Nos. 5,634,283 (“the ‘283 Patent”), and 6,915,595 (“the ‘595 Patent”). Defendant or those acting for Defendant have repeatedly threatened a suit for infringement of the ‘283 and ‘595 Patents with respect to ASWO's ability to make, use, or sell at least some of ASWO’s “Salomon” brand products.

5. ASWO is seeking a declaratory judgment that ASWO’s Salomon branded shoe products do not infringe the ‘283 Patent or the ‘595 Patent, and that the ‘283 Patent and ‘595 Patent are limited in scope.

6. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c) and 1400(b), as Kastner has a residence in this district and on information and belief operates a business in this District. Kastner has also submitted to this Court’s jurisdiction in two previous suits.

Facts

7. Upon information and belief, Kastner is the owner of U.S. Patent No. 5,634,283 titled “Resilient, all-surface sole” issued on June 3, 1997.

8. Upon information and belief, defendant is the owner of U.S. Patent No. 6,915,595 entitled “Resilient, all-surface soles for footwear” issued on July 12, 2005.

9. ASWO’s business includes the making and selling of footwear with non-retractable studs and/or cleats.

10. Kastner and/or his agents have repeatedly and persistently threatened litigation in the event that a licensing arrangement could not be agreed upon for the subject patents.

11. These threats have included repeated statements to that effect and references to prior patent litigation against others by Kastner, and a request to accept service of process if a license agreement is not reached.

COUNT I
Declaratory Judgment of
Non-infringement of United States Patent No. 5,634,283

12. ASWO realleges paragraphs 1 through 11 hereof as though fully rewritten herein.

13. ASWO uses, sells and/or imports footwear having cleats and or studs added for traction.

14. ASWO's footwear does not infringe any valid claim of the '283 Patent.

15. ASWO has not infringed, contributorily infringed, nor induced infringement of any valid claim of the '283 Patent.

COUNT II
Declaratory Judgment of
Noninfringement of United States Patent No. 6,915,595

16. ASWO realleges paragraphs 1 through 15 hereof as though fully rewritten herein.

17. ASWO uses, sells and/or imports footwear having cleats and or studs added for traction.

18. ASWO's footwear does not infringe any valid claim of the '595 Patent.

19. ASWO has not infringed, contributorily infringed, nor induced infringement of any valid claim of the '595 Patent.

Claims for Relief

WHEREFORE, Plaintiff prays that judgment be entered in its favor for the following relief:

A. For declaratory judgment against Defendant Sidney Kastner that ASWO has not infringed, contributorily infringed or induced infringement of any valid and enforceable claim of the '283 Patent;

B. For declaratory judgment against Defendant Sidney Kastner that ASWO has not infringed, contributorily infringed or induced infringement of any valid and enforceable claim of the '595 Patent;

C. Declaring that Defendant Sidney Kastner is without the right or authority to threaten or maintain suit against ASWO for the alleged infringement of United States Patent Nos. 5,634,283 and 6,915,595;

D. Enjoining Defendant Sidney Kastner, and those in active concert or participation with Defendant who receive actual notice thereof, from initiating patent infringement litigation against ASWO, or threatening ASWO or any of its customers, dealers, licensees, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of ASWO products, with patent infringement litigation based on United States Patent Nos. 5,634,283 and 6,915,595 or charging any of them either verbally or in writing with infringement of United States Patent Nos. 5,634,283 and 6,915,595;

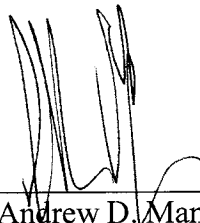
E. For an award of ASWO's reasonable costs, disbursements and attorney fees; and

F. For such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

Dated: Burlington, Vermont
August 15, 2012



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