

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

DAY BY DAY TIMEPIECES LLC,

Plaintiff,

v.

HALLMARK CARDS, INC.,

Defendant

CIVIL ACTION FILE

NO. 3:12-cv-00057-TCB

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff DAY BY DAY TIMEPIECES LLC (“Plaintiff”), by and through its undersigned counsel, files this First Amended Complaint against Defendant as follows:

PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Georgia, and having a principle place of business in Sharpsburg (Coweta County), Georgia. Plaintiff is the assignee of all right, title and interest in and to United States Patent Nos. 5,999,492 (“the ’492 patent”) (copy attached as Ex. 1), and 6,483,779 (“the ’779 patent”) (copy attached as Ex. 2), including the right to sue for past infringement. The application which

became the '492 patent was filed on February 16, 1994, and the '492 patent issued on December 7, 1999, after full and fair examination by the United States Patent Office. The application which became the '779 patent was filed as a continuation-in-part of the '492 patent on September 7, 1999, and the '779 patent issued on November 19, 2002, after full and fair examination by the United States Patent Office. Both patents remain valid and enforceable.

2. Defendant HALLMARK CARDS, INC. (“Hallmark” or “Defendant”), is a Missouri corporation having a principal place of business in Kansas City, Missouri. Hallmark may be served with process in this action by and through its registered agent, Vickie Young, Hallmark Cards, Inc., 2501 McGee Street, Kansas City, MO 64141.

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including, without limitation, 35 U.S.C. §§ 271, 281, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant pursuant to O.C.G.A. § 9-10-91 and federal law on the grounds that, upon information and belief, (i) Defendant transacts business within the State of Georgia; (ii) Defendant

has committed acts of patent infringement within and/or directed toward residents of the State of Georgia; (iii) Defendant's acts of patent infringement have caused injury within the State of Georgia, and Defendant regularly does or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from goods used or consumed or services rendered in this state; (iv) Defendant purposefully directs activities toward residents of the State of Georgia; (v) the cause of action set forth herein arises from or relates to Defendant's activities in the State of Georgia; and/or (vi) the exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice.

5. More specifically, upon information and belief, Defendant, directly and/or through intermediaries, has shipped, distributed, offered for sale, sold, and/or advertised its infringing products and has committed patent infringement in the United States, the State of Georgia, and the Northern District of Georgia.

6. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

7. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-6, above, as if set forth verbatim herein.

8. Defendant has directly infringed the '779 patent in violation of 35 U.S.C. § 271(a) by making, importing, using, selling, or offering for sale in the United States products that embody the patented invention. Defendant's infringing products include, without limitation, "Snoopy's Countdown to Christmas Ornament" by "Seasons from Hallmark," and Hallmark's Santa Countdown to Christmas tabletop decoration and ornament, which infringe at least claim 23 of the '779 patent.

9. Defendant has had actual knowledge of the '492 patent (parent of the '779 patent) since at least January of 2000, when Plaintiff's predecessor in interest and the inventor of the '492 patent, Martin Teixeira, enclosed a copy of the patent with a letter to Defendant dated January 10, 2000, which letter specifically identified "Happy Holidays Ornaments: Ornaments which show how many days remaining to Christmas or other holidays, hanging and tabletop" as products that could be manufactured using the patent. Mr. Teixeira (or his counsel) sent a total of four letters concerning the '492 patent between August 12, 1999 and January 10, 2000. Defendant sent responses to each letter, which responses were dated between September 3, 1999, and February 3, 2000. In Defendant's February 3, 2000 response, Defendant stated that it did "not wish to pursue any 'countdown clock' product concepts," as disclosed and claimed in the '492 patent.

10. In the late fall or winter of 2011, Mr. Teixeira discovered that Defendant was infringing the '492 and/or '779 patents, despite Defendant's earlier statements. Mr. Teixeira notified Defendant of this infringement by letter dated January 4, 2012, which also enclosed a copy of the '492 and '779 patents.

11. Upon information and belief, Plaintiff and its predecessor in interest to the '492 and '779 patent complied with the marking requirements of the patent laws of the United States with respect to products sold by them (if any) embodying the '492 and/or '779 patents, since at least 2010.

12. Defendant's infringing activities are and have been without authority or license from Plaintiff or its predecessors in interest.

13. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with increased damages, interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

14. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '779 patent have been infringed, either literally or under the doctrine of equivalents, by Defendant;
- B. An accounting and an award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- C. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- D. Any further relief that this Court deems just and proper.

This 20th day of August, 2012.

KENT LAW, P.C.

s/Daniel A. Kent

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that I filed the foregoing document with the Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

This 20th day of August, 2012.

KENT LAW, P.C.

s/Daniel A. Kent

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