

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02211-WJM

RANDALL S. ASHER, D.D.S., M.S.,

Plaintiff,

v.

COLGATE-PALMOLIVE COMPANY,
a Delaware corporation,

Defendant.

COMPLAINT WITH AMENDED CASE NUMBER

COMES NOW Plaintiff, Randall S. Asher, D.D.S., M.S., by and through his counsel, the Fischer Law Group, P.C. and Cochran Freund & Young, L.L.C., and asserts the following Complaint against the above-named Defendant, stating as follows:

JURISDICTION AND VENUE

1. Plaintiff, Randall S. Asher, D.D.S., M.S., is an individual residing in Highlands Ranch, Colorado, and engaging in the practice of dentistry in Englewood, Colorado.

2. Defendant, Colgate-Palmolive Company, is incorporated in the State of Delaware and, upon information and belief, has its United States headquarters and principal place of business at 300 Park Avenue, PK-14, New York City, New York 10022.

3. Defendant, and/or through its agents, subsidiaries and affiliates, upon information and belief, have had employees and regular and established places of business and have conducted business in the State of Colorado in the past and have

continued to do so. Defendant has also committed acts of infringement in the State of Colorado.

4. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

5. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400 since the Defendant has committed acts of infringement and conducted business in the State of Colorado and this judicial district.

GENERAL ALLEGATIONS

6. Plaintiff created, designed, and invented a plaque removing toothbrush and was issued United States Patent No. 5,735,011 on or about April 7, 1998 ("Plaintiff's Patent"). A copy of Plaintiff's Patent is attached hereto as "Exhibit 1" and incorporated herein. Oversimplified, the primary purpose of Plaintiff's Patent was to create a better toothbrush that removes plaque by adding one or more plaque removing members (preferably composed of a mixture of an elastomeric component and an abrasive component) placed among the conventional toothbrush bristles.

7. Defendant, itself and through its respective divisions, subsidiaries and/or agents is engaged, *inter alia*, in the business of manufacturing, marketing, distributing and selling toothbrushes, which Defendant has purportedly trademarked in some fashion.

8. Defendant manufactures, markets, and sells a variety of toothbrushes, including the "Colgate 360 Surround," the "Colgate 360 Optic White," the "Colgate 360 Pro Relief," the "Colgate 360 Surround Sonic Power," and the "Colgate 360 Fresh N' Protect" (collectively "Colgate's Toothbrushes").

9. Colgate's offending toothbrushes contain an elastomeric component, which contain abrasives.

FIRST CLAIM FOR RELIEF
Patent Infringement

10. Plaintiff incorporates and restates the foregoing allegations as set forth above as though fully set forth herein.

11. Since at least 2009, Defendant, and/or its agents, were manufacturing, distributing, marketing, and selling a number of toothbrushes via its distribution channels throughout various portions of the United States, including in the state of Colorado.

12. Specifically, Plaintiff has manufactured, marketed and sold the following toothbrushes:

- i. the “Colgate 360 Surround” brand, “Soft;”
- ii. the “Colgate 360 Surround” brand, “Medium;”
- iii. the “Colgate 360 Optic White” brand, “Soft;”
- iv. the “Colgate 360 Pro Relief” brand, “Extra Soft;”
- v. the “Colgate 360 Surround Sonic Power” brand, “Soft;”
- vi. the “Colgate 360 Fresh N’ Protect” brand, “Soft” (with green inserts);
- vii. the “Colgate 360 Fresh N’ Protect” brand, “Soft” (with pink inserts);
- viii. the “Colgate 360 Fresh N’ Protect” brand, “Soft” (with violet and black inserts);
- ix. the “Colgate 360 Fresh N’ Protect” brand, “Soft” (with black inserts);

13. Colgate’s Toothbrushes implement “plaque removing members” placed among the toothbrush bristles.

14. The "plaque removing members" are composed of an elastomeric component and an abrasive component.

15. Colgate's Toothbrushes are literally the same and/or similar and/or equivalent in design, use and/or effect to Plaintiff's Patent.

16. Despite being put on notice of the infringement, Defendant continues to make, distribute, advertise, market and sell the Colgate Toothbrushes that infringe upon Plaintiff's Patent.

17. Defendant is infringing upon Plaintiff's Patent by, *inter alia*, manufacturing, distributing, advertising, marketing and selling the Colgate Toothbrushes. Such infringement is deliberate, willful, intentional and with full knowledge of the existence and validity of Plaintiff's Patent.

18. Upon information and belief, Defendant has been infringing upon Plaintiff's Patent since at least 2009. Defendant's infringement continues to date and will continue unless Defendant is enjoined by the Court.

19. As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages in the state of Colorado in an amount to be ascertained but in excess of \$75,000.00.

SECOND CLAIM FOR RELIEF
Injunction

20. Plaintiff incorporates and restates the allegations set forth above as though fully set forth herein.

21. As a direct and proximate result of Defendant's actions of infringing upon Plaintiff's Patent, Plaintiff has suffered, and will continue to suffer, irreparable harm.

22. Plaintiff has no adequate remedy at law if Defendant continues to infringe upon Plaintiff's Patent.

23. Plaintiff has suffered, and will continue to suffer, irreparable harm and damage unless preliminary and final injunctions are issued enjoining Defendant from infringing upon Plaintiff's Patent.

24. Plaintiff will likely prevail on the merits of this case at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Adjudging that Plaintiff's Patent has been infringed upon by Defendant;
- B. Awarding Plaintiff a preliminary and permanent final injunction against the continued infringements;
- C. Ordering an accounting of Defendant's sales, profits, cost of goods sold and other relevant financial information as it relates to Defendant's toothbrushes as specified in this First Amended Complaint;
- D. Awarding Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff for Defendant's infringement, and not less than amount of a reasonable royalty, together with interest and costs, in an amount to be ascertained but in excess of seventy-five thousand dollars (\$75,000.00);
- E. Awarding Plaintiff an additional sum on account of the willful, intentional and deliberate character of Defendant's infringing acts pursuant to 35 U.S.C. 284;
- F. Awarding Plaintiff reasonable attorney fees and costs against Defendant;
and
- G. Granting Plaintiff all other legal and equitable relief for which Plaintiff is entitled.

PLAINTIFF DEMANDS A JURY OF 12.

Dated this 21st day of August, 2012.

/s/ Erik G. Fischer

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