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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Prestige Sales and Distribution LLC,
Plaintiff,

vs.

Gary Hines and Belinda Hines, husband
and wife;
Arizona Rainfall, Inc., an Arizona
corporation; and
Spas By Design, INC., an Arizona
corporation

Defendants.

Case No.

COMPLAINT

(Jury Trial Demanded)

Plaintiff Prestige Sales and Distribution LLC alleges the following for its complaint against defendants Gary Hines, Belinda Hines, Arizona Rainfall, Inc., and Spas by Design, Inc.

PARTIES

1. Plaintiff Prestige Sales and Distribution LLC (“PSD”) is an Arizona limited liability company and operates under the trade name “Sedona Spas” with its principal place of business in Phoenix, Arizona.

2. Gary Hines is a resident of Arizona and operates a sole proprietorship under the trade name "Spa's by Design" [sic] ("SBD") with a principal place of business in at Surprise, Arizona. In July 2011, Mr. Hines registered the trade name "Spa's by Design" with the State of Arizona, claiming a domestic start date in April 2011.

3. Upon information and belief, Mr. Hines was at all material times married to Belinda Hines. Upon information and belief, all acts alleged herein to have been committed by Mr. Hines were committed on behalf of and for the benefit of the marital community.

4. Arizona Rainfall, Inc. ("AZR") is an Arizona corporation organized in July 1983 with its principal place of business located in Surprise, Arizona. Mr. Hines is the president and one of the primary shareholders of AZR.

5. Spas by Design, Inc. ("SBDI") is an Arizona corporation organized in July 2012 with its principal place of business located in Surprise, Arizona. Mr. Hines is the president and sole board member of SBDI.

JURISDICTION AND VENUE

6. This civil action includes claims for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1-376.

7. This court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338.

8. This Court has personal jurisdiction over Defendants because Defendants are residents of Arizona or business organizations formed in Arizona and have contacts with Arizona that are substantial, continuous, and systematic. Defendants' products have been sold in Arizona.

9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendants reside in this district, are subject to personal jurisdiction in this district, and have committed acts alleged to infringe in this district,

and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

BACKGROUND

10. On May 7, 2002, the United States Patent and Trademark Office issued United States Patent 6,381,768 ("the '768 Patent") [attached], entitled "IN-GROUND SPA SYSTEM AND METHOD FOR INSTALLATION OF SAME," to Mr. L. Ross Herman.

11. Plaintiff PSD has been engaged in the business of building and selling partial in-ground spas within the scope of the '768 Patent under exclusive license from Mr. Herman since its formation in 2008. PSD sells spas both on a retail basis, directly to consumers, and wholesale, through dealers. In August 2012, Mr. Herman assigned all right, title, and interest in the '768 Patent to PSD.

12. In 2009, Defendant AZR began operating as a dealer for Plaintiff PSD's spas.

13. In January 2011, Defendants Hines and/or AZR hired Robert Campo, who had performed the duties of sales and operations manager at PSD, and Oscar Palameros, who had been in charge of building and installing PSD's spas.

14. Defendants, with knowledge of the '768 Patent, began making, using, offering for sale and selling partial in-ground spas that infringe one or more of the claims of the '768 Patent ("Infringing Products"), beginning in approximately Summer or Fall 2011. Since that time, upon information and belief, Defendants have steadily increased the level of sales of Infringing Products.

15. Upon information and belief, Defendants used Mr. Campo's and Mr. Palameros's knowledge of the components and techniques used by PSD to build spas according to the '768 Patent and to enter the market for partial in-ground spas with little or no product development. Upon information and belief, Defendants used Mr.

Campo's knowledge of PSD's dealer relationships (e.g., dealer and price information) to enter the wholesale market for partial in-ground spas.

16. Defendants have infringed and are continuing to infringe, literally, and/or under the doctrine of equivalents, the '768 Patent by practicing one of more claims of the '768 Patent in the manufacture, use, offering for sale, and/or sale of the Infringing Products in violation of 35 U.S.C. § 271. Specifically, Defendant Hines has manufactured, offered for sale, or sold Infringing Products to retail and dealer customers. Defendant Hines markets Infringing Products through SBD or SBDI using, *inter alia*, a website (<http://www.spasbydesign.com>). Defendant AZR hosts a retail showroom at 13001 West Grand Avenue, Surprise, AZ 85374, which displays for sale models of Infringing Products sold by Hines, SBD, or SBDI.

17. Defendants have infringed and are continuing to infringe the '768 Patent by contributing to and/or actively inducing the infringement of the '768 Patent by their retail customers who use the Infringing Product in violation of 35 U.S.C. § 271. In addition, Defendants have infringed and are continuing to infringe the '768 Patent by contributing to and/or actively inducing the infringement of the '768 Patent by their dealer customers who manufacture, use, offer for sale, and/or sell the Infringing Product in violation of 35 U.S.C. § 271. In addition, Defendants have infringed and are continuing to infringe the '768 Patent by contributing to and/or actively inducing the infringement of the '768 Patent by each other.

18. Defendants have willfully infringed the '768 Patent by deliberately and intentionally copying the core features of PSD's partial in-ground spas and copying the patented invention, for use in Defendants' Infringing Products, with knowledge of the '768 Patent. In February 2012, when Defendants were presented with claim charts and photographs detailing how their partial in-ground spas infringed the '768 Patent, Defendants did not assert any invalidity defenses and instead relied solely on alleged non-infringement defenses, but presented defenses that were unclear and declined to

clarify them. As best as could be ascertained by Plaintiff, the infringement defenses primarily depended on merely relabeling structures of the Infringing Products with words other than those used in claims, rather than identifying any structural difference or missing elements. When Defendants' supposed defenses were challenged and explanation requested, Defendants refused any meeting or discussion, refused to explain their position further, and instead continued to sell and manufacture Infringing Products.

19. As a direct and proximate result of Defendants' infringement of the '768 Patent, Plaintiff has suffered and will suffer monetary damages. Plaintiff is entitled to recover from Defendants damages in an amount no less than a reasonable royalty as a result of Defendants' wrongful acts in an amount to be determined at trial. In particular, Plaintiff is entitled to recover lost profits.

20. PSD has suffered irreparable harm as a result of Defendants' infringement of the '768 Patent. Unless Defendants are enjoined by this Court from continuing their infringement of the '768 Patent, Plaintiff will continue to suffer irreparable harm, *inter alia*, because Defendants infringing activities are damaging Plaintiff's business and stand as a significant obstacle to its expansion. Monetary damages are inadequate to compensate Plaintiff for such harm. The balance of equities are in Plaintiff's favor because, *inter alia*, Defendants chose to end a business relationship with Plaintiffs and, with knowledge of the '768 Patent, to start a competing business selling Infringing Products.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants as follows:

1. For judgment in favor of Plaintiff and against Defendants on the claim for infringement of the '768 Patent;
2. For judgment that the '768 Patent is not invalid, enforceable, and infringed by Defendants;

3. For lost profits and damages resulting from Defendants' infringement of the '768 Patent;
4. For judgment that Defendants' conduct was willful, intentional, and/or in bad faith;
5. For treble damages resulting from Defendants' willful infringement of the '768 Patent under 35 U.S.C. §284;
6. For judgment that this is an exceptional case under 35 U.S.C. §285;
7. For an award of reasonable attorney's fees under 35 U.S.C. §285;
8. For injunctive relief permanently enjoining the continuing infringement of the '768 Patent by Defendants, their officers, agents, servants, employees, and those persons acting in concert or in participation with them, under 35 U.S.C. § 283;
9. For costs and disbursements incurred by Plaintiff;
10. For an assessment of prejudgment interest; and
11. For any other and further relief requested by Plaintiff and that the Court deems just and proper.

DEMAND FOR JURY TRIAL

PSD hereby demands a jury trial under Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit for which trial by jury is permitted.

Dated this 19th day of November, 2012.

Louis J. Hoffman, P.C.

By: /s/Louis J. Hoffman
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