

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2012 NOV 20 AM 9:13

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS
78201

MARK A. KRULL

Plaintiff,

v.

Case Number: _____

S A 1 2 C A 1 0 9 9 H

AMAZON.COM INC.,
CORE FITNESS, L.L.C.
SEARS HOLDINGS CORPORATION, and
WAL-MART STORES, INC.

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Mark A. Krull, for his Complaint against Defendants, Amazon.com Inc., Core Fitness, L.L.C., Sears Holdings Corporation, and Wal-Mart Stores, Inc., alleges as follows:

PARTIES

1. Mark A. Krull is an individual residing in New Braunfels, Texas ("Krull").
2. On information and belief, Amazon.com Inc. is a Delaware corporation with its principal place of business located in Seattle, Washington ("Amazon").
3. On information and belief, Core Fitness, L.L.C. is a Washington limited liability company with its principal place of business located in Vancouver, Washington ("Core").
4. On information and belief, Sears Holdings Corporation is a Delaware corporation with its principal place of business located in Hoffman Estates, Illinois ("Sears").
5. On information and belief, Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business located in Bentonville, Arkansas ("Wal-Mart").

JURISDICTION AND VENUE

6. The allegations set forth in paragraphs 1-5 are hereby realleged in this section.

7. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. The "Accused Product" is the STAIRMASTER adjustable weight dumbbell system shown in the attached Exhibit A.

10. The Accused Product and/or the manner in which it is manufactured or used falls within the scope of Krull's U.S. Patent Nos. 6,033,350, 6,416,446, 6,540,650, 6,679,816, 7,264,578, 7,387,597, 7,547,268, and 7,648,448 ("Asserted Patents").

11. On information and belief, Amazon operates a web site at www.amazon.com, which is available to the purchasing public in this District, and Amazon sells products to residents in this District through its own web site and/or other web sites linked to its web site.

12. On information and belief, Amazon has offered the Accused Product for sale through its web site and/or other web sites linked with its web site with a reasonable expectation that the Accused Product will be purchased by residents in this District.

13. On information and belief, Core operates a web site at www.stairmaster.com, which is available to the purchasing public in this District, and Core has offered the Accused Product for sale through this web site with a reasonable expectation that the Accused Product will be purchased by residents in this District.

14. On information and belief, Core has placed the Accused Product into the stream of commerce through established distribution channels with a reasonable expectation that the Accused Product will be purchased by residents in this District.

15. On information and belief, Sears operates retail stores in this District; sells products to individuals residing in this District; and operates web sites located at www.sears.com and www.kmart.com, which are available to the purchasing public in this District.

16. On information and belief, Sears has offered the Accused Product for sale through its web sites with a reasonable expectation that the Accused Product will be purchased by residents in this District.

17. On information and belief, Wal-Mart operates retail stores in this District; sells products to individuals residing in this District; and operates a web site at www.walmart.com, which is available to the purchasing public in this District.

18. On information and belief, Wal-Mart has offered the Accused Product for sale through its web site with a reasonable expectation that the Accused Product will be purchased by residents in this District.

19. This Court's exercise of personal jurisdiction over Amazon is consistent with the Constitutions of the United States and the State of Texas.

20. This Court's exercise of personal jurisdiction over Core is consistent with the Constitutions of the United States and the State of Texas.

21. This Court's exercise of personal jurisdiction over Sears is consistent with the Constitutions of the United States and the State of Texas.

22. This Court's exercise of personal jurisdiction over Wal-Mart is consistent with the Constitutions of the United States and the State of Texas.

23. Venue is proper in this judicial district, pursuant to at least 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400(b).

PATENT INFRINGEMENT COUNTS

24. The allegations set forth and/or realleged in paragraphs 6-23 are hereby realleged in this section.

25. Krull has dedicated significant time and resources to developing adjustable weight exercise equipment and an associated portfolio of approximately sixty U.S. patents directed toward adjustable weight exercise equipment.

26. Krull is the sole and rightful owner of all right, title and interest in and to the Asserted Patents, and Krull has owned the Asserted Patents exclusively throughout the period of each Defendant's infringing acts.

27. Defendants' activities involving the Accused Product have infringed the Asserted Patents to the detriment of Krull, and entitle Krull to injunctive relief, damages, reasonable attorney fees, and costs.

28. In December of 2003, Krull put Amazon on notice of U.S. Patent Nos. 6,033,350, 6,416,446 and 6,540,650.

29. In February of 2012, Krull put Core on notice of U.S. Patent Nos. 6,416,446, 6,540,650, and 7,264,578.

30. In December of 2003, Krull put Sears on notice (directly and through what was then Kmart Holding Corp.) of U.S. Patent Nos. 6,033,350, 6,416,446 and 6,540,650.

31. In December of 2003, Krull put Wal-Mart on notice of U.S. Patent Nos. 6,033,350, 6,416,446 and 6,540,650.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,033,350

32. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

33. U.S. Patent No. 6,033,350 ("USPN 350") was duly and properly issued by the U.S. Patent and Trademark Office on March 7, 2000, and remains in full force and effect.

34. A true and correct copy of USPN 350 is attached hereto as Exhibit B.

35. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 1-2, 4, 6-7, 10, 12-13 and 20 of USPN 350 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

36. Subsequent to receiving notice of USPN 350, to the extent that any Defendant has sold the Accused Product despite an objectively high likelihood that its continued actions constituted patent infringement, such Defendant's infringement activity has been knowing and willful.

37. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,416,446

38. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

39. U.S. Patent No. 6,416,446 ("USPN 446") was duly and properly issued by the U.S. Patent and Trademark Office on July 9, 2002, and remains in full force and effect.

40. A true and correct copy of USPN 446 is attached hereto as Exhibit C.

41. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 1, 3-4, 7-8, 11-12 and 17 of USPN 446 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

42. Subsequent to receiving notice of USPN 446, to the extent that any Defendant has sold the Accused Product despite an objectively high likelihood that its continued actions constituted patent infringement, such Defendant's infringement activity has been knowing and willful.

43. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 6,540,650

44. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

45. U.S. Patent No. 6,540,650 ("USPN 650") was duly and properly issued by the U.S. Patent and Trademark Office on April 1, 2003, and remains in full force and effect.

46. A true and correct copy of USPN 650 is attached hereto as Exhibit D.

47. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 11-15, 22-25 and 36-38 of USPN 650 by making, using, offering for sale and/or selling the Accused Product in the United States and/or importing the Accused Product into the United States.

48. Subsequent to receiving notice of USPN 650, to the extent that any Defendant has sold the Accused Product despite an objectively high likelihood that its continued actions constituted patent infringement, such Defendant's infringement activity has been knowing and willful.

49. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 6,679,816

50. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

51. U.S. Patent No. 6,679,816 ("USPN 816") was duly and properly issued by the U.S. Patent and Trademark Office on January 20, 2004, and remains in full force and effect.

52. A true and correct copy of USPN 816 is attached hereto as Exhibit E.

53. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 1, 4-5 and 10-17 of USPN 816 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

54. Subsequent to receiving notice of USPN 816, to the extent that any Defendant sells the Accused Product despite an objectively high likelihood that its continued actions constitute patent infringement, such Defendant's infringement activity will be knowing and willful.

55. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. 7,264,578

56. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

57. U.S. Patent No. 7,264,578 ("USPN 578") was duly and properly issued by the U.S. Patent and Trademark Office on September 4, 2007, and remains in full force and effect.

58. A true and correct copy of USPN 578 is attached hereto as Exhibit F.

59. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 4-9 of USPN 578 by making, using, offering for

sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

60. Subsequent to receiving notice of USPN 578, to the extent that any Defendant has sold the Accused Product despite an objectively high likelihood that its continued actions constituted patent infringement, such Defendant's infringement activity has been knowing and willful.

61. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 7,387,597

62. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

63. U.S. Patent No. 7,387,597 ("USPN 597") was duly and properly issued by the U.S. Patent and Trademark Office on June 17, 2008, and remains in full force and effect.

64. A true and correct copy of USPN 597 is attached hereto as Exhibit G.

65. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 9-10, 12 and 16 of USPN 597 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

66. Subsequent to receiving notice of USPN 597, to the extent that any Defendant sells the Accused Product despite an objectively high likelihood that its continued actions constitute patent infringement, such Defendant's subsequent infringement activity will be knowing and willful.

67. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT VII

INFRINGEMENT OF U.S. PATENT NO. 7,547,268

68. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

69. U.S. Patent No. 7,547,268 ("USPN 268") was duly and properly issued by the U.S. Patent and Trademark Office on June 16, 2009, and remains in full force and effect.

70. A true and correct copy of USPN 268 is attached hereto as Exhibit H.

71. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 1-3 and 5-7 of USPN 268 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

72. Subsequent to receiving notice of USPN 268, to the extent that any Defendant sells the Accused Product despite an objectively high likelihood that its continued actions constitute patent infringement, such Defendant's subsequent infringement activity will be knowing and willful.

73. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

COUNT VIII

INFRINGEMENT OF U.S. PATENT NO. 7,648,448

74. The allegations set forth and/or realleged in paragraphs 24-31 are hereby realleged in this section.

75. U.S. Patent No. 7,648,448 ("USPN 448") was duly and properly issued by the U.S. Patent and Trademark Office on January 19, 2010, and remains in full force and effect.

76. A true and correct copy of USPN 448 is attached hereto as Exhibit I.

77. On information and belief, each Defendant has infringed, induced infringement of, and/or contributed to infringement of claims 1, 5 and 7-8 of USPN 448 by making, using, offering for sale and/or selling the Accused Product in the United States, and/or importing the Accused Product into the United States.

78. Subsequent to receiving notice of USPN 448, to the extent that any Defendant sells the Accused Product despite an objectively high likelihood that its continued actions constitute patent infringement, such Defendant's subsequent infringement activity will be knowing and willful.

79. By reason of the foregoing, Krull is entitled to relief against each said Defendant, pursuant to at least 35 U.S.C. §§ 284-285.

PRAYER FOR RELIEF


WHEREFORE, Krull prays for relief as follows:

- A. A judgment that each Defendant has infringed the Asserted Patents;
- B. An order permanently enjoining each Defendant, its agents, servants, and any and all parties acting in concert with any of them, from (i) directly or indirectly making, using and/or selling the Accused Product in the United States, and/or (ii) importing the Accused Product into the United States, pursuant to at least 35 U.S.C. § 283;
- C. A judgment against each Defendant awarding Krull damages adequate to fully compensate Krull for each Defendant's infringement of the Asserted Patents, together with interest and costs, pursuant to at least 35 U.S.C. § 284;
- D. A judgment trebling the damages awarded to Krull, pursuant to at least 35 U.S.C. § 284;
- E. A judgment that this is an exceptional case of knowing and willful patent infringement;
- F. A judgment awarding Krull reasonable attorney fees, pursuant to at least 35 U.S.C. § 285;

G. An order that each Defendant, to the satisfaction of Krull and this Court, properly dispose of all the Accused Product in its possession and/or scheduled to come into its possession; and

H. Such other and further relief as the Court deems just and equitable.

Dated: November 20, 2012



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