

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC,

Plaintiff,

v.

TROPICAL SMOOTHIE CAFÉ, LLC,

Defendant.

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Civil Action No. 2:12-cv-_____

Jury Trial Demanded

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff DietGoal Innovations LLC files this Complaint against Tropical Smoothie Café, LLC (“Defendant”) and alleges as follows:

PARTIES

1. Plaintiff DietGoal Innovations LLC (“DietGoal”) is a Texas Limited Liability Company based in Austin, Texas.

2. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 12598 U.S. Highway 98 West, Suite 200, Destin, Florida 32550. Defendant may be served with process through its registered agent Alonzo E. Soliz, 203 Valona Dr., Round Rock, TX 78681-3840.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to this Court's general and/or specific personal jurisdiction because it (a) is a resident of the State of Texas; and/or (b) has designated an agent for service of process in the State of Texas; and/or (c) has committed acts of infringement in the State of Texas as alleged below; and/or (d) is engaged in continuous and systematic activities in the State of Texas. Therefore, this Court has personal jurisdiction over Defendant under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district, and/or has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

THE PATENT-IN-SUIT

7. On July 1, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,585,516 ("the '516 Patent") entitled "Method and System for Computerized Visual Behavior Analysis, Training, and Planning," a true copy of which is attached as Exhibit A.

8. DietGoal is the exclusive licensee of the '516 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the '516 Patent.

CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 6,585,516

9. Defendant has been and now is directly infringing one or more claims of the '516 Patent, in violation of 35 U.S.C. § 271(a), by making and/or using in the United States the computer implemented website www.tropicalsmoothie.com, which has a computerized meal planning interface at <http://www.tropicalsmoothie.com/menu/nutritional-calculator/> and its

related webpages such as <http://www.tropicalsmoothie.com/menu/breakfast/#breakfast-bagels> (“Meal Builder”).

10. In addition and/or in the alternative, the Defendant has been and/or is now indirectly infringing one or more claims of the ‘516 Patent, in violation of 35 U.S.C. § 271(b), by inducing visitors to its website and its Meal Builder (“End Users”) to directly infringe the ‘516 Patent through their use of the infringing instrumentality. The Defendant induces such infringement by at least making its website available to End Users and providing links and/or other directions on its website and/or the internet for End Users to visit its Meal Builder. The Defendant engages in such activities knowingly and, at least from the time of receipt of the present Complaint, has done so with the knowledge that such activity encourages End Users to directly infringe the ‘516 Patent.

11. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the ‘516 Patent, DietGoal has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

12. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to DietGoal.

13. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and DietGoal is thus entitled to an award of its reasonable attorneys’ fees.

DEMAND FOR JURY TRIAL

14. DietGoal, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, DietGoal requests entry of judgment that:

1. Defendant has infringed the patent-in-suit;
2. Defendant accounts for and pays to Plaintiff all damages caused by its respective infringement of the patent-in-suit; and
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendant's patent infringement;
4. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
5. Costs be awarded to Plaintiff; and
6. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 7, 2012

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

By: /s/ Christopher M. Joe
Christopher M. Joe (Lead Counsel)
State Bar No. 00787770
Chris.Joe@BJCIPLaw.com
Eric W. Buether
State Bar No. 03316880
Eric.Buether@BJCIPLaw.com
Brian A. Carpenter
State Bar No. 03840600
Brian.Carpenter@BJCIPLaw.com
Niky Bukovcan
State Bar No. 24078287
Niky.Bukovcan@BJCIPLaw.com
Monica Tavakoli
State Bar No. 24065822
Monica.Tavakoli@BJCIPLaw.com

1700 Pacific Avenue
Suite 4750
Dallas, Texas 75201
Telephone: (214) 466-1272
Facsimile: (214) 635-1828

THE LAW OFFICES OF DAMON YOUNG

Damon M. Young
State Bar No. 2176700
damon@dylawoffices.com

4122 Texas Boulevard
P.O. Box 1897*
Texarkana, TX. 75503 (*04*)
Telephone: (903) 794-1303
Facsimile: (903) 792-5098

**ATTORNEYS FOR PLAINTIFF
DIETGOAL INNOVATIONS LLC**