

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

FILED

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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

Frederick M. Levinger,

Plaintiff

v.

Integral Logistics, LLC,

Defendant

C.A. No.

JURY TRIAL DEMANDED

CA 13- 1945

COMPLAINT

Plaintiff, Frederick M. Levinger ("Levinger"), by and through his attorneys Partridge Snow & Hahn LLP, brings this action for infringement of a design patent and, for cause therefore, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Levinger is an individual who maintains a residence in the City of Providence, State of Rhode Island, and maintains a place of business at 245 Waterman Street, Providence, Rhode Island 02906.
2. Defendant, Integral Logistics, LLC ("Integral") is a limited liability corporation organized and existing under the laws of the State of Florida.
3. Integral does business in the State of Rhode Island by, among other things, selling cigar lighters and smoking accessories to dealers located in the State of Rhode Island.
4. Integral maintains sufficient minimal contacts with the State of Rhode Island to permit this Court to exercise jurisdiction over its person consistent with the Due Process Clause of the United States Constitution.
5. This Court has subject matter jurisdiction over this action based upon 28 U.S.C. §§1331 and 1338(a) in that the civil action arises under the laws of the United States including,

but not limited to, 35 U.S.C. §1 *et seq.* and 15 U.S.C. §1111 *et seq.*

6. Venue of this action is proper in this Court under 28 U.S.C. §§1391 and 1400.

FACTS GIVING RISE TO THE CLAIM

7. On February 10, 2012, Levinger filed United States Patent Application No. 29/413, 091 with the United States Patent and Trademark Office seeking a design patent as the inventor of a “combination light and cigar cutting blade” in order to protect the unique and innovation ornamental design he had invented.

8. On or about December 25, 2012, the application was granted and United States Design Patent No. D673,314S (the “Patent”) was issued by the United States Patent and Trademark Office. A true and correct copy of the Patent is attached hereto as Exhibit A.

9. Levinger is the owner of all right, title and interest in the Patent.

10. Integral is in the business of importing and marketing cigar lighters and smoking accessories from Asia for distribution and resale in the United States.

11. Integral markets and distributes its imported products to dealers across the United States, including within the State of Rhode Island.

12. From April, 2011 through December 31, 2011, Levinger, the former sole shareholder of a major company which, among other things, marketed and sold cigar lighters and smoking accessories, acted as an independent, freelance consultant to Integral. During the period of the consultancy, Levinger disclosed to Integral his ideas for an ornamental design for a combination light and cigar cutting blade, as shown and described in the Patent. Integral indicated to Levinger that it had no interest in obtaining patent protection on the invention, did not compensate Levinger for his invention, and did not contribute to Levinger’s costs associated with obtaining the Patent. Neither Yigal Cohen Harel, the principal member and executive of

Integral, nor any other employee of Integral, were involved with the invention of the patented design.

13. Levinger terminated and ceased all consultant activities with Integral effective December 31, 2011.

CLAIM FOR PATENT INFRINGEMENT, 35 U.S.C. §1 et seq.

14. Integral has made, used, offered to sell and sold, and is still making, using, offering to sell and/or is selling a product called “PUNCH LIGHT! An LED Light & Cigar Punch in One!” (“Punch Light!”). This product is an exact copy of, and is identical in all respects to, the design which is the subject matter of the Patent. A copy of Integral’s marketing materials regarding the “PUNCH LIGHT!” is attached hereto and marked as Exhibit B.

15. Integral has no license, authority, or permission to make, use or sell the design invented by Levinger and protected by the Patent.

16. By importing, making, using, selling and/or offering the “PUNCH LIGHT!” product, Integral has directly and contributorily infringed and will continue to directly and contributorily infringe upon the Patent under 35 U.S.C. §271(a), (b), (c) and/or (f), literally and/or under the doctrine of equivalents.

17. By using, selling and/or offering for sale the “PUNCH LIGHT!” product, Integral has induced infringement of, and will continue to induce infringement of, the Patent under 35 U.S.C. §271(b) and/or (f), literally and/or under the doctrine of equivalents.

18. Upon information and belief, Integral’s infringing conduct is and has been malicious, intentional, deliberate and willful making this an exceptional case within the meaning of 35 U.S.C. §285.

19. As a direct and proximate result of the infringing conduct of Integral, Levinger

has suffered, and will continue to suffer, damages to his business and property rights for which he is entitled to recover pursuant to 35 U.S.C. §284.

20. As a direct and proximate result of the infringing conduct of Integral, Levinger has been, and will continue to be, irreparably harmed by Integral's infringement of the Patent.

21. On or about January 13, 2013, Levinger, via an agent, was able to purchase a quantity of Integral's "PUNCH LIGHT!" products from Soma Cigars, located at 341 South Main Street, Providence, Rhode Island 02903. Upon information and belief, Soma Cigars is a dealer of products distributed by Integral and Integral sold to Soma Cigars the "PUNCH LIGHT!" products Levinger purchased in Rhode Island. A copy of the purchase order and receipt evidencing this infringing activity in Rhode Island is attached hereto and marked as Exhibit C.

WHEREFORE, Plaintiff Levinger requests the following relief:

- A. A judgment that Integral willfully infringed the Patent in violation of 35 U.S.C. §271(a);
- B. An injunction against further infringement of the Patent by Integral and its agents, servants, employees, officers, and all others controlled by them pursuant to 35 U.S.C. §283;
- C. A full and complete accounting of all payments, receipts, income, benefits, compensation, re-numeration, and monies received, paid or due in connection with the production, importation, sale and distribution of the "PUNCH LIGHT!" product in the United States;
- D. An award equal to all of Integral's profits as a result of the infringing sales pursuant to 35 U.S.C. §289;
- E. In the alternative, compensatory damages in the form of a reasonable royalty

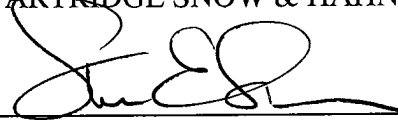
pursuant to 35 U.S.C. §284;

- F. Treble damages due to Integral's willful and intentional infringement of the Patent pursuant to 35 U.S.C. §284;
- G. An assessment of costs, including reasonable attorneys' fees, pursuant to 35 U.S.C. §285;
- H. Interest; and
- I. Such other relief as to the Court seems meet and just.

FREDERICK M. LEVINGER,

By His Attorneys,

PARTRIDGE SNOW & HAHN LLP



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DATED: March 22, 2013

JURY TRIAL DEMAND

Plaintiff demands trial by jury.