UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BRANDSTAND AMERICA, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
	)	Jury Trial Demanded
MOSS HOLDING COMPANY,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

Plaintiff Brandstand America, Inc. ("Brandstand"), for its Complaint against Defendant Moss Holding Company ("Moss"), alleges and states:

NATURE OF THE ACTION

1. This is an action for declaratory judgment arising under the patent laws of the United States, 35 U.S.C. §101 et seq., for a declaration that U.S. Patent Nos. D561,257, D561,258, D561,259, and D571,409 (collectively, "Moss design patents") are not infringed by Brandstand, and are invalid and/or unenforceable. Attached hereto as Exhibit A to D are copies of each of the Moss design patents.

THE PARTIES

2. Brandstand is a Florida corporation with its principal place of business in Nokomis, Florida.

3. On information and belief, Defendant Moss Holding Company is a Delaware corporation with a principal place of business in Elk Grove Village, IL.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under the Patent Act, 35 U.S.C. § 101 et seq., and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

5. There is complete diversity between Brandstand and Defendant Moss Holding Company, and the amount in controversy exceeds $75,000, exclusive of interest and costs. Therefore, this Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and § 1400 because a substantial part of the events giving rise to the claims occurred in this district, and Moss Holding Company is subject to personal jurisdiction in this judicial district and Moss Holding Company may be found in this judicial district.

7. Personal jurisdiction over Moss Holding Company is established in this district because Moss Holding Company has had specific business contacts with Florida and this district that are related to the claims in this Complaint, including assertions by Moss Holding Company that Brandstand's activities infringe the Moss design patents. Also, on information and belief, personal jurisdiction is established in this district because Moss Holding Company has made, and continues to have, continuous and systematic general business contacts with Florida and this district, and/or derives substantial revenue from goods used or consumed in Florida.

8. Brandstand is in the business of the design, manufacture, and selling of a wide variety of innovative and reliable portable display systems including for tradeshow and exhibit, retail design, and event planning industries..

9. Among other products, Brandstand designs, manufactures, and sells a collection of portable display systems called the BrandCusi™ Counter.

10. Brandstand has an ongoing business relationship with a number of customers that purchase Brandstand products, including purchasing the BrandCusi™ Counter.

11. On information and belief, Moss Holding Company is in the business of, among other things, manufacturing and selling portable display systems and enforcing its alleged intellectual property rights.

12. On February 22, 2013, counsel for Moss Holding Company, the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, sent a letter to Brandstand ("Moss Cease & Desist Letter"). A copy of the Moss Cease & Desist Letter is attached at Exhibit E.

13. In the Moss Cease & Desist Letter, Defendant Moss alleges that it has design patent rights in its Allure brand portable display assemblies that Moss manufactures and sells.

14. The Moss Cease & Desist Letter asserts that Defendant Moss Holding Company owns four U.S. design patents, U.S. Patent Nos. D561,257, D561,258, D561,259, and D571,409, and "[t]he Allure displays are covered by" these design patents.

15. The Moss Cease & Desist Letter alleges that Brandstand's BrandCusi™ portable display systems (1) are "colorable imitations of [Defendant Moss Holding Company's] Allure brand display assemblies," and (2) infringe its design patents.

16. The Moss Cease & Desist Letter informs that "our client vigorously enforces its patent rights."

17. The Moss Cease & Desist Letter demands that Brandstand "take steps to avoid further infringement of our client's patent rights" and that "[o]ur client takes this matter very seriously."

18. Finally, the Moss Cease & Desist Letter demands that "[i]n order to avoid further action please provide us with written assurance no later than Wednesday, March 6, 2013 that you will discontinue marketing, distribution or sales of any infringing portable display assemblies in the United States of America."

19. In view of the foregoing allegation that Brandstand is infringing the patent rights of Moss, Brandstand's intention at the present time is to continue its business and activities which are now being asserted to infringe the Moss design patents. Brandstand alleges that the Moss design patents are not being infringed by Brandstand, and are invalid and/or unenforceable. For these reasons, there has been and now exists an actual controversy between Brandstand and the Moss Defendants regarding the non-infringement, invalidity and unenforceability of the Moss design patents asserted against Brandstand.

The Moss Design Patents

20. U.S. Patent No. D561,257 ("the '257 patent) has a single claim that covers the ornamental design for the portable display assembly as shown and described in the figures incorporated into the '257 patent.

21. As provided on the face of the '257 patent, the design embodied therein was purportedly created by Bob Frey.

22. On information and belief, the '257 patent was purportedly assigned by Bob Frey to Nichols, Inc. On information and belief, Nichols, Inc. subsequently assigned the '257 patent to Moss.

23. U.S. Patent No. D 61,258 ("the '258 patent) has a single claim that covers the ornamental design for the portable display assembly as shown and described in the figures incorporated into the '258 patent.

24. As provided on the face of the '258 patent, the design embodied therein was purportedly created by Bob Frey.

25. On information and belief, the '258 patent was purportedly assigned by Bob Frey to Nichols, Inc. On information and belief, Nichols, Inc. subsequently assigned the '258 patent to Defendant Moss.

26. U.S. Patent No. D561,259 ("the '259 patent) has a single claim that covers the ornamental design for the portable display assembly as shown and described in the figures incorporated into the '259 patent.

27. As provided on the face of the '259 patent, the design embodied therein was purportedly created by Bob Frey.

28. On information and belief, the ‘259 patent was purportedly assigned by Bob Frey to Nichols, Inc. On information and belief, Nichols, Inc. subsequently assigned the ‘259 patent to Defendant Moss.

29. U.S. Patent No. D571,409 (“the ‘409 patent) has a single claim that covers the ornamental design for the portable display assembly as shown and described in the figures incorporated into the ‘409 patent.

30. As provided on the face of the ‘409 patent, the design embodied therein was purportedly created by Bob Frey.

31. On information and belief, the ‘409 patent was purportedly assigned by Bob Frey to Nichols, Inc. On information and belief, Nichols, Inc. subsequently assigned the ‘409 patent to Defendant Moss.

32. By virtue of the unwarranted accusations of infringement of the Moss design patents and the demands in the Moss Cease & Desist Letter, Brandstand is compelled to seek a declaration from this Court that it does not infringe any of the Moss design patents and/or that the Moss design patents are invalid and/or unenforceable so that Brandstand may continue its normal business operations without further interruption from Moss.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. D561,257

33. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 32 of this Complaint as if set forth in full herein.

34. An actual case or controversy has arisen and now exists between Brandstand and Moss concerning whether Brandstand infringed and is infringing the '257 patent.

35. Brandstand has not infringed and does not infringe the '257 patent.

36. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States by Brandstand of portable display systems accused by Moss do not infringe, either literally or under the doctrine of equivalents, the claim of the '257 patent.

37. Brandstand does not contribute to the infringement of, or induce others to infringe, the claim of the '257 patent, nor has it ever done so.

38. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '257 patent.

39. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

40. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT II
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. D561,258

41. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 40 of this Complaint as if set forth in full herein.

42. An actual case or controversy has arisen and now exists between Brandstand and Moss concerning whether Brandstand infringed and is infringing the '258 patent.

43. Brandstand has not infringed and does not infringe the '258 patent.

44. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States by Brandstand of portable display systems accused by Moss do not infringe, either literally or under the doctrine of equivalents, the claim of the '258 patent.

45. Brandstand does not contribute to the infringement of, or induce others to infringe, the claim of the '258 patent, nor has it ever done so.

46. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '258 patent.

47. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

48. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT III
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. D561,259

49. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 48 of this Complaint as if set forth in full herein.

50. An actual case or controversy has arisen and now exists between Brandstand and Moss concerning whether Brandstand infringed and is infringing the '259 patent.

51. Brandstand has not infringed and does not infringe the '259 patent.

52. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States by Brandstand of portable display systems accused by Moss do not infringe, either literally or under the doctrine of equivalents, the claim of the '259 patent.

53. Brandstand does not contribute to the infringement of, or induce others to infringe, the claim of the '259 patent, nor has it ever done so.

54. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '259 patent.

55. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

56. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT IV
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. D571,409

57. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 56 of this Complaint as if set forth in full herein.

58. An actual case or controversy has arisen and now exists between Brandstand and Moss concerning whether Brandstand infringed and is infringing the '409 patent.

59. Brandstand has not infringed and does not infringe the '409 patent.

60. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States by Brandstand of portable display systems accused by Moss do not infringe, either literally or under the doctrine of equivalents, the claim of the '409 patent.

61. Brandstand does not contribute to the infringement of, or induce others to infringe, the claim of the '409 patent, nor has it ever done so.

62. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '409 patent.

63. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

64. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT V
DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY OF U.S. PATENT NO. D561,257

65. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 64 as if set forth in full herein.

66. An actual controversy has arisen and now exists between Brandstand and Moss concerning whether the '257 patent is invalid and unenforceable.

67. Upon information and belief, the claim of the '257 patent is invalid and/or unenforceable for failing to comply with one or more of the conditions and requirements of the patent laws, including but not limited to 35 U.S.C. § 101, 102, 103, and/or 112, and/or the rules, regulations, and laws pertaining thereto.

68. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '257 patent.

69. A judicial determination is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

70. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT VI
DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY OF U.S. PATENT NO. D561,258

71. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 70 as if set forth in full herein.

72. An actual controversy has arisen and now exists between Brandstand and Moss concerning whether the '258 patent is invalid and unenforceable.

73. Upon information and belief, the claim of the '258 patent is invalid and/or unenforceable for failing to comply with one or more of the conditions and

requirements of the patent laws, including but not limited to 35 U.S.C. § 101, 102, 103, and/or 112, and/or the rules, regulations, and laws pertaining thereto.

74. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '258 patent.

75. A judicial determination is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

76. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT VII
DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY OF U.S. PATENT NO. D561,259

77. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 76 as if set forth in full herein.

78. An actual controversy has arisen and now exists between Brandstand and Moss concerning whether the '259 patent is invalid and unenforceable.

79. Upon information and belief, the claim of the '259 patent is invalid and/or unenforceable for failing to comply with one or more of the conditions and requirements of the patent laws, including but not limited to 35 U.S.C. § 101, 102, 103, and/or 112, and/or the rules, regulations, and laws pertaining thereto.

80. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '259 patent.

81. A judicial determination is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

82. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

COUNT VIII
DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY
OF U.S. PATENT NO. D571,409

83. Brandstand repeats and re-alleges each allegation in paragraphs 1 through 82 as if set forth in full herein.

84. An actual controversy has arisen and now exists between Brandstand and Moss concerning whether the '409 patent is invalid and unenforceable.

85. Upon information and belief, the claim of the '409 patent is invalid and/or unenforceable for failing to comply with one or more of the conditions and requirements of the patent laws, including but not limited to 35 U.S.C. § 101, 102, 103, and/or 112, and/or the rules, regulations, and laws pertaining thereto.

86. By virtue of the foregoing, Brandstand desires a judicial determination of the parties' rights and duties with respect to the '409 patent.

87. A judicial determination is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

88. This is an exceptional case which entitles Brandstand to an award of reasonable attorneys' fees under 35 U.S.C. § 285.

WHEREFORE, Brandstand prays for the following relief against Moss Holding Company:

A. For a declaration and judgment declaring that the '257 patent is not infringed.

B. For a declaration and judgment declaring that the '257 patent is invalid and/or unenforceable.

C. For a declaration and judgment declaring that the '258 patent is not infringed.

D. For a declaration and judgment declaring that the '258 patent is invalid and/or unenforceable.

E. For a declaration and judgment declaring that the '259 patent is not infringed.

F. For a declaration and judgment declaring that the '259 patent is invalid and/or unenforceable.

G. For a declaration and judgment declaring that the '409 patent is not infringed.

H. For a declaration and judgment declaring that the '409 patent is invalid and/or unenforceable.

I. For a declaration and judgment declaring this case to be exceptional within the meaning of 35 U.S.C. § 285;

J. For an order preliminarily and permanently enjoining Moss, and all those acting in concert or participation with it, from communicating

with any third party that Brandstand has infringed or is infringing the Moss design patents, or making any false or misleading statements about Brandstand and its business practices;

K. For an award to Brandstand of its costs, expenses, and reasonable attorneys' fees as permitted by law; and

L. For an award to Brandstand for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Brandstand hereby demands a trial by jury on all issues so triable.

Dated: March 7, 2013.

Respectfully submitted,

s/ Douglas A. Cherry
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