

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CABLZ, INC.,

Plaintiff,

v.

CROAKIES, a corporation,

Defendant.

Civil Action No. _____

DEMAND FOR JURY TRIAL**COMPLAINT FOR PATENT INFRINGEMENT**

1. Plaintiff Cablz, Inc. (“Cablz” or “Plaintiff”), for its Complaint against Defendant Croakies (“Croakies” or the “Defendant”), alleges the following.

NATURE OF THE ACTION

2. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, based upon Croakies’ infringement of U.S. Patent No. 8,366,268 (“the ‘268 Patent”).

PARTIES

3. Cablz is a corporation organized and existing under the laws of the State of Alabama, having its principal place of business in Birmingham, Alabama, in this judicial district. Cablz is the originator of a design for an innovative eyewear retainer which, when worn on eyewear by a person, stays off the person’s neck.

4. Croakies is a corporation organized and existing under the laws of the State of Wyoming and, on information and belief, has its principal place of business in Jackson, Wyoming.

JURISDICTION AND VENUE

5. This is an action for patent infringement. The claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

7. Upon information and belief, this Court has personal jurisdiction over the Defendant because the Defendant has sufficient contacts within the State of Alabama and the Northern District of Alabama. Upon information and belief, within the Northern District of Alabama, the Defendant: (i) regularly transacts business; (ii) regularly supplies goods; and (iii) committed the tortious acts alleged in the Complaint. Upon information and belief, such activities include, without limitation, offers to sell and sale and use of infringing eyewear retainers in this judicial district. Further, upon information and belief, the Defendant also sells to distributors or merchants which retail infringing eyewear retainers in the Northern District of Alabama.

8. Accordingly, this Court has personal jurisdiction over the Defendant pursuant to Fed. R. Civ. P. 4(k)(1)(A).

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) for at least the reasons that, upon information and belief, the Defendant has transacted business in this district and has committed, induced, and contributed to acts of patent infringement within this district.

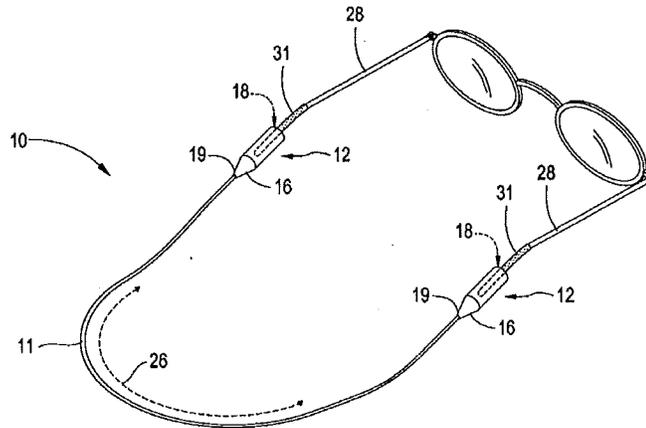
THE PATENT-IN-SUIT

10. Cablz is the owner of the entire right, title, and interest in and to the '268 Patent, which the United States Patent and Trademark Office duly and lawfully issued on February 5, 2013, entitled "Eyewear Retainer." A copy of the '268 Patent is attached as Exhibit A.

11. The '268 Patent is now, and has been at all times since its issuance, valid and enforceable.

12. The claims of the '268 Patent include an eyewear retainer having two temple retainers connected by a resilient member, such that when the temple retainers are attached to a

pair of eyeglasses and the eyeglasses are worn over the ears of the wearer, the resilient member extends rearward from the head of the wearer and is suspended off the neck of the wearer. *See* Ex. A, at col. 4, lines 36–41. Figure 4 of the ‘268 Patent illustrates such an eyewear retainer attached to a pair of glasses:



THE ACCUSED PRODUCTS

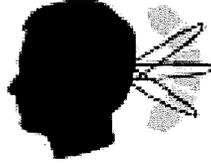
13. The Defendant manufactures and sells infringing eyewear retainers under the Croakies brand bearing the name “the ARC System,” including these specific models: the ARC System, ARC Endless, and ARC Monofilament including models designated for Kids (hereinafter, the “Accused Products”). These eyewear retainers are sold in the United States, including in this judicial district. Croakies’ catalog and website excerpts for the Accused Products units purchased in this judicial district are attached as Exhibit B to the Complaint, and these excerpts demonstrate infringement of the ‘268 Patent.

14. The Accused Products have two temple retainers connected by a resilient member, such that when the temple retainers are attached to a pair of eyeglasses and the eyeglasses are worn over the ears of the wearer, the resilient member extends rearward from the head of the wearer and is suspended off the neck of the wearer.

15. Croakies' own website depicts infringement of the '268 Patent as follows:

ARC System Features

Articulating Cable



stays off neck & collar

Ex. B. Additionally, Croakies' website states each product "stays off neck & collar." Ex. B.

16. On information and belief, Croakies had actual knowledge of the '268 Patent before the filing of this suit.

COUNT I

(Infringement of the '268 Patent)

17. The allegations of paragraphs 1-16 above are repeated and re-alleged as if set forth fully herein.

18. Upon information and belief, the Defendant's manufacture or importation, use, offer to sell, and sales of the Accused Products within the United States and this judicial district infringes, literally or under the doctrine of equivalents, one or more claims of the '268 Patent pursuant to 35 U.S.C. § 271(a), (b), (c), and (f).

19. Upon information and belief, the Defendant's infringement of the '268 Patent has been knowing and willful.

20. The Defendant's infringement of the '268 Patent has caused and continues to cause Cablz to suffer substantial monetary damages.

21. The Defendant's infringement of the '268 Patent has caused and continues to cause Cablz to suffer irreparable harm for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Cablz respectfully requests that the Court grant the following relief:

- a) enter judgment that the Defendant infringes and has infringed the '268 Patent;
- b) declare that the Defendant's infringement of the '268 Patent has been willful;
- c) enter a permanent injunction enjoining the Defendant, its officers, agents, servants, employees, and attorneys, and those persons and entities in active concert or participation with them, from further infringement of the '268 Patent;
- d) enter judgment awarding Cablz damages from the Defendant adequate to compensate for the Defendant's infringement, including interest and costs;
- e) enter judgment awarding Cablz treble damages based on the Defendant's willful infringement of the '268 Patent;
- f) declare this case to be exceptional and enter judgment awarding Cablz increased damages under 35 U.S.C. § 284 and its reasonable attorney fees and costs under 35 U.S.C. § 285; and
- g) award Cablz such further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Cablz respectfully requests a trial by jury on all issues so triable, pursuant to Fed. R. Civ.

P. 38.

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