

Benson L. Hathaway Jr. (Bar No. 4219)
Michael F. Krieger (Bar No. 5984)
Adam D. Stevens (Bar No. 10986)
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Tel. 801-328-3600
Fax 801-321-4893
Email bhathaway@kmclaw.com
mkrieger@kmclaw.com
astevens@kmclaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>OGIO INTERNATIONAL, INC., a Utah corporation, Plaintiff, vs. CALLAWAY GOLF COMPANY a Delaware company, Defendant.</p>	<p>Civil Action No. Judge COMPLAINT AND JURY DEMAND</p>
--	--

COMPLAINT

This is an action for patent infringement. Plaintiff, Ogio International, Inc., (“Ogio”), through its undersigned counsel, bring this action against Defendant, Callaway Golf Company. In support of this Complaint, Ogio alleges as follows:

THE PARTIES

1. Plaintiff Ogio International, Inc., (“Ogio”) is a corporation existing under the laws of the State of Utah with its principal place of business at 14926 Pony Express Road Bluffdale, UT 84065.

2. On information and belief, defendant Callaway Golf Company (“Callaway”) is a company existing under the laws of the State of Delaware with its principal place of business at 2180 Rutherford Road, Carlsbad, California 92008. Callaway is doing business within Utah and this judicial district.

JURISDICTION

3. This action is brought under the Patent Laws of the United States, 35 U.S.C. § 271 and 281. This Court has subject matter jurisdiction over this controversy under 28 U.S.C. §§ 1338(a) and 1331.

4. Callaway regularly and systematically solicits sales and sells products within Utah and this judicial district. Callaway has committed and continues to commit acts of patent infringement in the District, the State of Utah, and elsewhere in the United States.

VENUE

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400.

FACTUAL BACKGROUND

6. Ogio develops, manufactures and sells golf bags.

7. Inventors associated with Ogio invented a unique golf bag top and club retention device.

8. On April 12, 2005, United States Patent No. 6,877,604 (“the ‘604 patent”) issued. The ‘604 patent is valid and enforceable. A true and correct copy of the ‘604 patent is attached hereto as Exhibit A.

9. The ‘604 patent discloses and claims an invention entitled ERGONOMIC GOLF BAG TOP AND CLUB SEPARATOR.

10. The ‘604 patent was duly and legally issued.

11. The '604 patent was issued from an application originally filed on October 16, 2006.

12. Ogio is the assignee and owner of all right, title and interest in and to the '604 patent and has all necessary rights to bring this suit for damages and injunctive relief.

13. On May 8, 2007, United States Patent No. 7,213,705 ("the '705 patent") issued. The '705 patent is valid and enforceable. A true and correct copy of the '705 patent is attached hereto as Exhibit B.

14. The '705 patent discloses and claims an invention entitled ERGONOMIC GOLF BAG TOP AND CLUB SEPARATOR.

15. The '705 patent was duly and legally issued.

16. The '705 patent was issued from an application originally filed on April 7, 2005, as a continuation application of the application that matured into the '604 patent.

17. Ogio is the assignee and owner of all right, title and interest in and to the '705 patent and has all necessary rights to bring this suit for damages and injunctive relief.

18. Callaway makes or has made and sells or has sold golf stand bags bearing the names WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X.

19. Callaway has and/or does sell its WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X golf stand bags into Utah.

20. One or more claims of the '604 patent read on the WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X golf stand bags.

21. One or more claims of the '705 patent read on the WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X golf stand bags.

22. Callaway has not secured, nor attempted to secure, a license to make, use, import, offer to sell, or sell the invention disclosed and claimed in the '604 patent.

23. Callaway has not secured, nor attempted to secure, a license to make, use, import, offer to sell, or sell the invention disclosed and claimed in the '705 patent.

FIRST CLAIM FOR RELIEF

(Direct patent infringement 35 U.S.C. § 271(a))

24. Ogio realleges and incorporates by reference Paragraphs 1 through 23 inclusive.
25. Callaway has manufactured, used, imported, sold or offered for sale, or, manufactures, uses, sells, and/or offers for sale golf bags as disclosed and claimed in the '604 patent.
26. Callaway has done so in this judicial district and elsewhere in the United States.
27. This conduct of Callaway constitutes direct infringement.
28. Callaway has actual notice of the '604 patent.
29. Despite such notice, Callaway has continued and continues to willfully infringe the '604 patent.
30. Callaway has actual notice of the '705 patent.
31. On information and belief, despite such notice, Callaway has continued and continues to willfully infringe the '705 patent.
32. Ogio has been irreparably harmed by said acts of wanton and willful infringement, and will continue to be harmed unless Callaway's further acts of infringement are restrained by order of the Court. Ogio has no adequate remedy at law.
33. As a result of Callaway's activities and acts of infringement, Ogio has suffered and will continue to suffer damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(Inducement of patent infringement 35 U.S.C. § 271(b))

34. Ogio realleges and incorporates by reference Paragraphs 1 though 33 inclusive.
35. Callaway has intentionally induces infringement of the '604 patent by others, has induced and is inducing such infringement, including but not limited to, through its marketing, sale and instructions for the distribution, sales and use of its WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X products.
36. Callaway provides business operations and opportunities for the distribution, sales, and offers of sales of the WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X products to prospective customers.

37. Use of the WARBIRD XTT, WARBIRD HOT, TERRA FIRMA X, TERRA FIRMA XI, and HYPER-X products as instructed has and will result in direct infringement of the '604 and '705 patents.

38. Callaway has had actual notice of the '604 patent while inducing infringement.

39. On information and belief, Callaway has and continues to willfully induce the infringement of the '604 patent despite its notice of the '604 patent.

40. Ogio has been irreparably harmed by said acts of willful inducement of infringement, and will continue to be harmed unless Callaway's further acts of infringement are restrained by order of the Court. Ogio has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Ogio prays that this Court enter a judgment and decree:

1. A declaration that Callaway has and is infringing one or more claims of the '604 patent.

2. A declaration that Callaway's infringement of the '604 patent has been willful.

3. A declaration that Callaway has and is infringing one or more claims of the '705 patent.

4. A declaration that Callaway's infringement of the '705 patent has been willful.

5. A permanent injunction enjoining Callaway, its officers, directors, employees, agents, and attorneys and all persons in active concert or participation with them from infringing one or more claims of either of the '604 and '705 patents;

6. A permanent injunction enjoining Callaway, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, from selling to others any products developed in whole or in part by Callaway that when used infringes one or more claims of either of the '604 and '705 patents;

7. A permanent injunction requiring Callaway to cease the manufacture, sales, distribution or promotion of all products developed in whole or in part by Callaway for golf bags which infringe, or which when used infringe, one or more of the claims of either of the '604 and '705 patents;

8. A permanent injunction requiring the impoundment and destruction of all products developed in whole or in part by Callaway which infringe, or when used infringe, one or more claims of either of the '604 and '705 patents;

9. Awarding Ogio damages, together with prejudgment interest, based on Callaway's infringement of the '604 patent and trebling the same pursuant to 35 U.S.C. § 284 for the willful and deliberate nature of such infringement;

10. Awarding Ogio damages, together with prejudgment interest, based on Callaway's infringement of the '705 patent and trebling the same pursuant to 35 U.S.C. § 284 for the willful and deliberate nature of such infringement;

11. Awarding Ogio its costs and reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

12. Granting Ogio such other and further relief as this Court deems proper and just.

JURY DEMAND

Ogio demands a trial by jury.

DATED this 12 day of February, 2008.

KIRTON & McCONKIE

By: _____

Benson L. Hathaway Jr.
Michael F. Krieger
Adam D. Stevens

Attorneys for Plaintiff
OGIO INTERNATIONAL, INC.

1033384.01