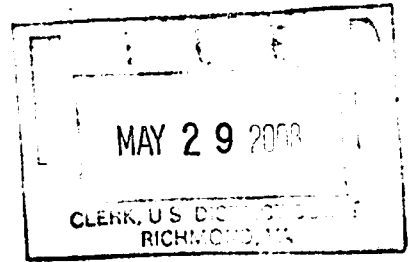


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



DYNAMIC BRANDS, LLC, d/b/a THE)
BAG BOY COMPANY,)
)
Plaintiff,)
)
v.)
)
SUN MOUNTAIN SPORTS, INC.,)
)
Defendant.)
_____)

Civil Action No. 2:08CV244

COMPLAINT

Plaintiff Dynamic Brands, LLC, d/b/a The Bag Boy Company, by counsel, alleges as follows:

1. This is an action for a declaratory judgment of patent non-infringement and invalidity brought pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57, between Plaintiff Dynamic Brands, LLC, d/b/a The Bag Boy Company, of Richmond, Virginia, and Sun Mountain Sports, Inc. ("Sun Mountain"), of Missoula, Montana, relating to U.S. Patent No. 7,131,534 entitled "Golf Bag and Strap System," issued on November 7, 2006.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff Dynamic Brands, LLC, d/b/a The Bag Boy Company ("Bag Boy") is a Virginia limited liability company with its headquarters and principal place of business located at 8757 Magellan Parkway, Suite 1000, Richmond, Virginia 23231.

3. Defendant Sun Mountain is a corporation organized and existing under the laws of Montana, and has a principal place of business at 301 North 1st Street West, Missoula,

Montana 59802. Sun Mountain distributes golf bags and other golf-related equipment for sale throughout the Commonwealth of Virginia. According to Sun Mountain's internet website, www.sunmountain.com/locator.php, the following retail outlets sell Sun Mountain golf bags and other golf-related equipment in the City of Richmond, Virginia: The Country Club of Virginia, 709 S. Gaskins Road, Richmond, Virginia 23233; Dean Evans PGA Corp., 3700 Cogbill Road, Richmond, Virginia 23234; Jefferson Lakeside Club, 1700 Lakeside Avenue, Richmond, Virginia 23228; Mulligans, A Golf Shop, 9127-R W. Broad Street, Richmond, Virginia 23294; Providence Golf Course, 1160 South Providence, Richmond, Virginia 23236; Richmond Country Club, 12950 Patterson Avenue, Richmond, Virginia 23233; Stonehenge Golf & Country Club, 1000 Farnham Drive, Richmond, Virginia 23236; and Willow Oaks Country Club, 6228 Forest Hill Avenue, Richmond, Virginia 23225. Upon information and belief, Sun Mountain receives substantial revenue from the sale of its golf bags and other golf-related equipment in the Commonwealth of Virginia

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

5. This Court has personal jurisdiction over Sun Mountain because Sun Mountain transacts substantial business in the Commonwealth of Virginia and because Sun Mountain is subject to jurisdiction under Virginia Code Section 8.01-328.1.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because (i) a substantial part of property that is the subject of the action is situated in the District, (ii) at least some of the events giving rise to this action occurred in this District, and (iii) Sun Mountain is subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

7. On November 7, 2006, United States Patent No. 7,131,534 (the "'534 patent") issued to Seth M. Enes of Missoula, Montana, an employee of Sun Mountain. The '534 Patent is for an invention entitled "Golf Bag and Strap System." The patent generally relates to a strap system for supporting a golf bag using a central hub with radially extending arms and each arm having a D-ring attachment point at the end of said arm providing pivotal connection with straps from the golf bag. According to the patent, the central hub and pivotally connecting straps "provid[e] continually adjusting balance during use." A copy of the '534 patent is attached hereto as Exhibit A.

8. Upon information and belief, Mr. Enes assigned the '534 patent to Sun Mountain. Sun Mountain now claims ownership of the '534 patent and sells golf bags utilizing the strap system purportedly covered by the '534 patent.

9. On March 12, 2008, counsel for Sun Mountain wrote David Boardman, President and CEO of Bag Boy, and asserted that Bag Boy's COSMIC™ golf bag "infringes every claim of the '534 patent" and "[t]he straps on that bag appear to be a nearly identical copy of [Sun Mountain's] invention." In the March 12, 2008 letter, Sun Mountain demanded that Bag Boy "immediately cease and desist from all manufacture, use or sale of infringing golf bag systems and to destroy all such items in inventory," as well as provide a full accounting and reparations "for each and every infringing item which has been manufactured by or for, delivered to or passed through your company or its distributors." Further, Sun Mountain threatened "in the absence of full cooperation [from Bag Boy], [Sun Mountain] will do what is needed to protect its rights in this matter." A copy of the March 12, 2008 letter is attached hereto as Exhibit B.

10. On May 5, 2008, Mr. Boardman sent a email to Rick Reimers, an employee of Sun Mountain, responding to the March 12, 2008 letter and inquiring generally about Sun Mountain's willingness to license the '534 patent if Bag Boy determined that its products, despite representations to the contrary from its suppliers, infringed the '534 patent. A copy of the May 5, 2008 email is attached hereto as Exhibit C.

11. On May 14, 2008, counsel for Sun Mountain responded to Mr. Boardman's email by rebuffing Bag Boy's inquiry regarding licensing and again demanding that Bag Boy "cease all sales, advertisement and distribution of infringing products," as well as pressing for "[d]estruction of current inventory..." Again, Sun Mountain threatened "in the absence of cooperation [from Bag Boy], Sun Mountain will do what is needed to protect its rights in this matter." A copy of the May 14, 2008 letter is attached hereto as Exhibit D.

12. Given Sun Mountain's unwillingness to even discuss licensing of its patent and its repeated demands that Bag Boy destroy all products accused of infringing the '534 patent, the clear implication of Sun Mountain's threat is that it will file litigation against Bag Boy to seek enforcement of the '534 patent against Bag Boy.

13. After receiving the March 12, 2008 and May 14, 2008 letters from Sun Mountain, Bag Boy analyzed the '534 patent and compare it with the accused Bag Boy golf bags. As a result of this investigation, Bag Boy concluded that its golf bags do *not* infringe any of the claims of the '534 patent and, further, that the '534 patent is likely invalid.

14. On May 29, 2008, counsel for Bag Boy sent a letter to counsel for Sun Mountain explaining some of the reasons why Bag Boy's golf bags do not infringe the '534 patent and why the '534 patent may be invalid. In that letter, counsel for Bag Boy also relayed Bag Boy's intent to change the strap system on its golf bags -- without regard to Sun Mountain's infringement

claims -- to a design that is very different from the system claimed in the '534 patent. A copy of the May 29, 2008 letter is attached hereto as Exhibit E.

15. Despite Bag Boy's intent to change the design of its golf bag strap system, Bag Boy nevertheless has a reasonable apprehension that Sun Mountain will initiate litigation against Bag Boy given Sun Mountain's unwillingness to even discuss licensing with Bag Boy and its repeated demands that Bag Boy destroy all accused products and provide an accounting and reparations for all accused products previously sold or distributed by Bag Boy.

16. There is an actual, substantial and continuing justiciable case or controversy between Bag Boy and Sun Mountain regarding the infringement and validity of the '534 patent. Although Sun Mountain has not yet filed suit against Bag Boy, it has made unreasonable demands upon Bag Boy, refused to even discuss licensing with Bag Boy, and made threats that leave no doubt about Sun Mountain's intent to initiate litigation against Bag Boy. Accordingly, Bag Boy reasonably apprehends and anticipates that Sun Mountain will initiate litigation against Bag Boy asserting infringement of the '534 patent.

FIRST CLAIM FOR RELIEF
(Declaratory Action for Determination of Non-Infringement)

17. Bag Boy incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Complaint.

18. As a result of the actions and accusations detailed above, an actual and present controversy exists between Bag Boy and Sun Mountain as to whether Bag Boy's golf bag strap systems infringe the '534 patent purportedly owned by Sun Mountain.

19. Bag Boy's golf bag strap systems do not infringe any claims of the '534 patent.

20. Bag Boy is entitled to a judgment declaring that its golf bag strap systems do not infringe any claim in the '534 patent.

21. Bag Boy has suffered damage, injury, and harm from Sun Mountain's conduct, including but not limited to the taint placed on Bag Boy's golf bag strap systems and Bag Boy in general as a result of Sun Mountain's baseless claims of infringement, and Bag Boy will suffer further damage, injury, and harm unless the Court adjudicates the controversy between the parties and issues a declaratory judgment of non-infringement of the '534 patent.

SECOND CLAIM FOR RELIEF
(Declaratory Action for Determination of Patent Invalidity)

22. Bag Boy incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Complaint.

23. As a result of the actions and accusations detailed above, an actual and present controversy exists between Bag Boy and Sun Mountain with respect to the validity of the '534 patent.

24. The claims of the '534 patent, individually or collectively, are invalid for failure to comply with the requirements of United States patent laws, and in particular for failure to comply with 35 U.S.C. §§ 101, 102, 103, and/or 112.

25. Bag Boy is entitled to a judgment declaring that the claims in the '534 patent are invalid.

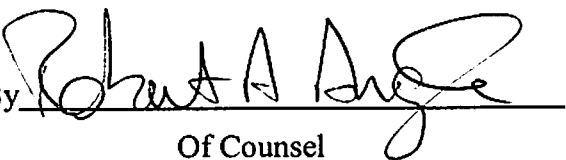
26. Bag Boy has suffered damage, injury, and harm from Sun Mountain's conduct, including but not limited to the taint placed on Bag Boy's golf bag strap systems and Bag Boy in general as a result of Sun Mountain's baseless claims of infringement, and Bag Boy will suffer further damage, injury, and harm unless the Court adjudicates the controversy between the parties and issues a declaratory judgment of invalidity of the claims in the '534 patent.

WHEREFORE, Bag Boy prays for Judgment as follows:

1. On its First Claim for Relief, for a declaratory judgment that Bag Boy has not infringed the '534 patent;
2. On its Second Claim for Relief, for a declaratory judgment that one or more of the claims in the '534 patent are invalid;
3. That the Court find this case exceptional and award Bag Boy its attorneys' fees, costs, and expenses against Sun Mountain pursuant to 35 U.S.C. § 285; and
4. That this Court award Bag Boy such other and further relief as the Court deems just and proper.

Dated this 29th day of May, 2008

DYNAMIC BRANDS, LLC, d/b/a THE
BAG BOY COMPANY

By 
Of Counsel

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