

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



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Esther A. L. Verbovszky
325 N. Falmouth Drive
Rocky River, Ohio 44116

and

HUG ME JOEY, LLC
325 N. Falmouth Drive
Rocky River, Ohio 44116

Plaintiffs,

v.

DOREL JUVENILE GROUP, INC.
dba Maxi-Cosi
2525 State Street
Columbus, IN 47201

Defendant.

) Case No.

) Judge

) Magistrate

) **COMPLAINT FOR**
) **PATENT INFRINGEMENT**

) *(Jury demand endorsed hereon)*

NOW COME Plaintiffs, *Esther A. L. Verbovszky* ("EV") and *Hug Me Joey, LLC* ("HMJ"), by and for his complaint against Defendant, *Dorel Juvenile Group, Inc.* ("DJG"), alleges as follows:

THE PARTIES

1. EV is an individual and is a resident of Rocky River, Ohio, which is in Cuyahoga County.

2. HMJ is a limited liability company organized under the laws of Ohio, and has its principal place of business in Rocky River, Ohio, which is in Cuyahoga County.
3. Upon information and belief, Defendant is headquartered in Columbus, Indiana is a division of Dorel Industries, Inc., a Canadian Corporation with principal places of business in Massachusetts and Indiana, as well as over 20 other countries. Defendant is engaged in the manufacture and sale of the Maxi-Cosi Mico 30 family of car seats. Defendant has offered for sale and sold its product in Ohio and elsewhere.

JURISDICTION AND VENUE

4. This is an action for patent infringement. The patent claims arise under the patent laws of the United States, specifically 35 U.S.C. §281. This Court has subject matter jurisdiction over the patent infringement claim by virtue of 28 U.S.C. §1331, 1338, and U.S.C. §281.
5. This Court has diversity jurisdiction over all claims asserted in this action pursuant to 28 U.S.C. §1332, because the parties are citizens of different states and the amount in controversy exceeds the jurisdictional amount of \$75,000, excluding interests and costs.
6. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) and/or 28 U.S.C. §1400(b) because a substantial part of the events giving rise to the claims occurred

in this judicial district, the Defendant is subject to personal jurisdiction in this district, and the infringement occurred within this judicial district.

FACTUAL ALLEGATIONS

7. Since 1998, the Plaintiffs have designed, produced, and marketed products to improve breathing problems and decrease digestive troubles occurring in poorly-positioned infants.
8. EV has dedicated extensive time to the understanding of breathing problems and digestive troubles that are related to the positioning of infants.
9. Along with proper positioning, the Plaintiffs' products help to make infants more comfortable when being positioned, especially during transport.
10. EV strives to develop truly unique and innovative products and, in fact, EV is listed as an inventor in 10 Letters Patent.
11. EV is the founder and Chief Executive Officer of HMJ Limited Liability Company.
12. On October 22, 2002, United States Letters Patent No. 6,467,840, entitled "Child's Car Seat Insert" ("840 patent") fully and legally issued to EV, as joint inventor, for the aforementioned child's car seat insert. *See* a true and accurate copy of the '840 patent as issued, attached as "Exhibit 1."
13. At all times relevant, all rights to the '840 patent, including but not limited to the right to recover for infringement there under, has been solely assigned to EV.

14. The Plaintiff has manufactured and marketed a product in commerce that reads on the '840 patent, namely, the Plaintiffs' Hug Me Joey child's car seat insert ("HMJ insert").
15. The Plaintiffs' HMJ insert has enjoyed sales success. However, the HMJ insert has enjoyed less success than should otherwise enjoy, due to the Defendant's actions and infringement.
16. Upon information and belief, the Defendant, at all times relevant, had actual and constructive knowledge of the Plaintiffs' HMJ insert and of the existence of the '840 patent.
17. Defendant has been and is currently making, using, offering for sale, selling, and/or importing child safety goods that infringe the '840 patent. The Defendant has infringed the Plaintiffs' patent by, including but not limited to, making, using, offering for sale, selling, and importing the Maxi-Cosi Mico Max 30 family of car seats. *See* the Defendant's product packaging of the infringing product, attached as "Exhibit 2."
18. Defendant's product infringes the claims of the '840 patent. *See* an infringement chart relative to the Defendant's product compared to the '840 patent, attached as "Exhibit 3." The attached infringement chart is for illustrative purposes only, and the Plaintiff reserves its rights to alter, amend, or modify its claims positions pursuant to the local patent rules.

19. The '840 patent includes claims directed to a child's car seat insert for preventing slouching of a child adapted to be placed on the insert in a car seat in a travel position. Defendant's Maxi-Cosi Mico Max 30 family of car seats are directed towards small infants to achieve a snug fit of the nearness around the infants when placed in a car seat which read on the claims of the '840 patent.
20. The specimen sample of Defendant's infringing Maxi-Cosi Mico Max 30 family of car seats, as depicted in "Exhibits 2 and 3", was sold and purchased in Ohio within this judicial district. *See* a copy of the receipt order, attached as "Exhibit 4."
21. Defendant's activities have injured and threaten future injury to the Plaintiffs. More specifically, Defendant's activities have diminished the Plaintiffs' goodwill and caused the Plaintiffs to lose sales that they otherwise would have made but for the sales of the Defendant's infringing Maxi-Cosi Mico Max 30 family of car seats.
22. Defendant is not authorized in any way to sell their infringing products or to use the patent jointly owned by Plaintiffs and fully assigned to EV.
23. Plaintiffs are entitled to an award of damages against the Defendant for patent infringement.

CLAIM NO. 1

(Patent Infringement 35 U.S.C. §271)

24. Plaintiffs incorporate by reference each statement of this Complaint, whether stated above or below, as if each is fully re-written herein.

25. Defendant has been and is currently making, using, offering for sale, selling, and/or importing child safety products that infringe the '840 patent. *See* Exhibits 2 and 3.
26. Defendant has sold its infringing products, the Maxi-Cosi Mico Max 30 family of car seats, in this judicial district as demonstrated by a purchased evidenced by Exhibit 4.
27. Defendant has infringed the '840 patent because the Defendant's accused article, namely the Maxi-Cosi Mico Max 30 family of car seats, reads on the claims of the '840 patent or any equivalent thereof. *See* Exhibits 2 and 3.
28. Defendant's conduct is an infringement of the '840 patent, and in violation of 35 U.S.C. §271 within this judicial district and elsewhere.
29. Defendant will continue to make, use, offer for sale, sell, and import their infringing products unless enjoined by this Court.
30. Defendant has been, and is, actively inducing infringement of the '840 patent by offering for sale and selling their infringing products to dealers at wholesale prices who have, and will continue to, offer them for sale and sell them to end users.
31. Defendant's infringement is, and at all times has been, deliberate, willful, with full knowledge of the Plaintiff's patent rights. Further, Defendant's actions and infringement is, and at all times has been, wanton. As a result, the Plaintiffs are entitled to recover treble damages from Defendants pursuant to 35 U.S.C. §284.

32. This is an exceptional case within the meaning 15 U.S.C. §285, and the award of appropriate attorneys' fees is justified.

PRAYER FOR RELIEF / REQUEST FOR REMEDIES

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- A. A preliminary the injunction enjoining the Defendant from making, using, or selling any product that infringes upon the '840 patent;
- B. A permanent injunction enjoining the Defendant from making, using, or selling any product that infringes upon the '840 patent;
- C. An accounting for damages resulting from Defendant's patent infringement and contributory infringement and the trebling of such damages because of the knowing, willful, and wanton nature of the Defendant's conduct;
- D. As assessment of interest on the damages so computed;
- E. An award of attorney's fees and costs in this action under 36 U.C.S. § 285;
- F. Judgment against Defendant for indemnify in the Plaintiffs from any claims brought against the Plaintiffs for negligence, debts, malpractice, product liability, or other breaches of any duty owed by the Defendant to any person who was confused as to some association between the Plaintiffs and Defendant as alleged in this Complaint;

G. Judgment against Defendant for an accounting and monetary award in an amount to be determined at trial;

H. Requiring Defendant to account to the Plaintiffs for all sales and purchases that have occurred to date, and requiring the Defendant to disgorge any and all profits derived by Defendant to selling infringing product

I. Requiring Defendant to provide full disclosure of any and all information relating to its supplier or suppliers of infringing product;

J. Requiring Defendant to provide the location of any and all manufacturing equipment, including but not limited to molds used to manufacture Defendant's infringing products;

K. Requiring Defendant to destroy any and all manufacturing equipment use to manufacture infringing product or to deliver said equipment to the Plaintiffs;

L. Ordering a product recall of infringing product for destruction;

M. Requiring Defendant to file with this Court and serve on the Plaintiffs within thirty (30) days of this Court's order a report setting forth the manner in which they complied with the order;

N. Requiring Defendant to provide to Plaintiffs all sales records, including but not limited to email, mail, and advertising lists;

O. Damages according to each cause of action herein; and,

P. Prejudgment interest.

JURY DEMAND

WHEREFORE, the Plaintiffs request a trial by jury on all issues so triable.

Most Respectfully Submitted,

/s/ John D. Gugliotta

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