

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**



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ELLISON EDUCATIONAL EQUIPMENT,
a California corporation,

Plaintiff,

vs.

HEARTFELT CREATIONS, INC.,
and DOES 1-10,

Defendants.

Case No. 3:19-cv-99

COMPLAINT FOR DIRECT AND INDIRECT PATENT INFRINGEMENT

Plaintiff Ellison Educational Equipment (“Plaintiff”), by and through its attorneys, for its Complaint against Defendant Heartfelt Creations, Inc. (“Heartfelt” or “Defendant,” and collectively with DOES 1 – 10, “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to end Defendants’ direct, induced, and/or contributory infringement of Plaintiff’s patented invention, including but not limited to Defendants’ unauthorized and infringing use, sale, offering for sale, manufacture, and/or importation of methods and products incorporating Plaintiff’s invention.

2. The patent at issue, United States Patent No. 9,079,325 (the ’325 Patent), which is further discussed below, is owned by Plaintiff. Defendants provide, use, sell, offer for sale, distribute, manufacture, and/or import infringing products and methods, and encourage others to use their products in an infringing manner, including their customers.

3. Plaintiff seeks to prevent Defendants from continuing infringement of Plaintiff's patent rights. Plaintiff further seeks past and future damages and prejudgment and post judgment interest for Defendants' past infringement of the patent at issue.

THE PARTIES

4. Ellison is a California corporation, having its principal place of business located at 25862 Commercentre Drive, Lake Forest, California 92630.

5. On information and belief, Defendant is an Indiana corporation, having its principal place of business located at 2147 Eisenhower Dr. N., Goshen, Indiana 46526-8807. Defendant may be served through its registered agent, Linda M. Bontrager, 14373 CO RD 50, Syracuse, Indiana, 46567, USA.

6. Ellison is ignorant to the true names and capacities of the Defendants sued as DOES 1–10, inclusive, and therefore Ellison has sued them by their fictitious names. Upon information and belief, DOES 1–10 were and are a moving, active, conscious force behind the infringement of Ellison's rights. As such, DOES 1-10 are liable to Ellison.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101 et seq.

8. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Heartfelt because, on information and belief, Heartfelt regularly engages in business in the State of Indiana and in this Judicial District.

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

FACTUAL ALLEGATIONS

A. Plaintiff Ellison is a leading provider of products, machines, and tools used for creative and educational purposes.

11. Ellison was founded in 1977 by LaDorna and Robert Eichenberg. As a graduate from the Chouinard Art Institute in Los Angeles, LaDorna worked as a fashion illustrator and then later as a teacher in Orange County. Seeking an easier way for teachers to cut shapes and letters for their classroom needs, she and her husband Bob invested their entire life's savings and began designing the very first hand-operated die-cutting machine.

12. A "die" is a type of device which can cut various materials, such as paper, fabric, or leather, into different shapes and sizes. Dies are usually made of metal or other material, and are often used to create such cut-outs for scrapbooking, greeting cards, and other hand-crafted novelties.

13. From the start, LaDorna insisted on quality, accessibility and affordability of Ellison products for educators everywhere and Ellison soon gained a reputation for building "workhorse" machines.

14. In 2001, Ellison grew into the craft space by launching the Sizzix® crafts brand, adding an array of crafts and quilting products to match consumers' passion to create.

15. Thirty-seven years later, Ellison has maintained its position as an innovator and leader in the educational and craft markets, selling over 1,000,000 machines, in over 89,000 schools and in over 100 countries.

16. Today, Ellison is a third generation, privately held, family-owned, woman-led business. Ellison products can be found in more than 100 countries, all thanks to the tenacity of one woman, who in her 50's pursued a dream to help others and turned it into an American institution that continues to inspire imaginations of all ages for generations to come.

17. Ellison maintains and continues to invest in its California-based teams for R&D, Creative, Sales and Marketing, and Quality Control. The in-house engineering team boasts more than 159 years of collective experience, while the creative, design and concept teams boast over 165 years of collective experience.

18. Ellison remains an Orange County based business with its United States headquarters in Lake Forest, California. Ellison employs over 100 people, many of whom also live in the Lake Forest area. Ellison has grown to now have international offices in the United Kingdom and fully-owned manufacturing facilities in Guangdong, China.

19. Ellison is the winner of the 2011 Learning Magazine Teachers' Choice Award; the 2011 Academics Choice Award; and the 2015 Modern Library Platinum Award.

20. From the classroom to the craft room, the revolutionary achievements of LaDorna and Robert Eichenberg have inspired numerous people and related businesses, shaping a legacy of creativity that has since been unmatched.

B. Ellison files and is granted the '325 Patent.

21. Continuing with its legacy of innovation, on July 15, 2011, Ellison filed a provisional patent application on its invention entitled "Chemical-Etched Die Having Improved Registration Means."

22. Chemical-etching refers to the process by which the physical die is created. The die material undergoes very specific and intensive cleaning process, masking (which ensures that only desired areas are etched), and then immersion into a chemical bath, which dissolves parts of the material to reveal the intended pattern and design of the die. This approach allows for intricate die designs that are otherwise difficult or nearly impossible to execute through traditional means.

23. On July 14, 2015, the aforementioned provisional application matured into United States Patent No. 9,079,325 (the “’325 Patent”) and was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “Chemical-Etched Die Having Improved Registration Means.” A true and correct copy of the ’325 patent is attached hereto as **Exhibit 1** and incorporated herein by reference.

24. Ellison owns the entire right, title, and interest in and to the ’325 Patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringement.

25. The ’325 Patent claims inventions related to a chemical-etched die of the kind to be used in combination with a press (e.g., roller) to produce die-cut shapes from a sheet material.

C. Heartfelt directly and indirectly infringes on the ’325 Patent.

26. Ellison recently discovered that Heartfelt is making or having their patterns made into chemically-etched dies that are used to perform the method taught by the ’325 Patent.

27. Examples of Heartfelt’s products that are used to infringe the methods taught by the ’325 Patent can be found at these links: <https://www.heartfeltcreations.us/shop/craft-dies/dies-that-match-stamps/tropical-hibiscus-die> and <https://www.heartfeltcreations.us/shop/product-collections/under-the-sea/under-the-sea-creative-essentials?search=under+the+se>.

28. Indeed, Heartfelt’s website lists over seventy (70) “Dies that Match Stamps.” These products can be found here: <https://www.heartfeltcreations.us/shop/craft-dies/dies-that-match-stamps?limit=75>.

29. Moreover, a recent video on the Heartfelt’s YouTube channel clearly shows Ms. Emma Lou Beechy, the Creative Director of Heartfelt, demonstrating products that are used to

perform the methods taught by the '325 Patent. This video also teaches members of the public how to infringe at least one claim of the '325 Patent. It is located here:

https://youtu.be/O5X_I9j9hGk.

30. Additional examples include the images below, taken from Heartfelt's website on Wednesday, December 19, 2018.



31. On information and belief, Defendants have actual or constructive knowledge of Ellison's rights and of the '325 Patent.

32. On December 21, 2018, counsel for Ellison served a cease and desist letter on Heartfelt, informing it that it is directly and indirectly infringing at least one claim of the '325 Patent and enclosing a copy of the '325 Patent. A true and correct copy of that cease and desist letter is attached hereto as **Exhibit 2** and incorporated herein by reference.

33. On information and belief, despite such knowledge Defendants have willfully infringed and continue to infringe Ellison's rights and the '325 Patent by making, providing, selling, offering for sale, using, and/or distributing infringing systems, articles and methods. Further, Defendants induce and/or contribute to the infringement by one or more third parties, including by instructing, directing and/or requiring others, including customers, purchasers, users

and developers, to perform the steps of the method claim of the '325 Patent, either literally or under the doctrine of equivalents, where all of the steps of the method claim is performed by either Defendants or its customers, purchasers, users and developers, or some combination thereof.

34. On information and belief, Defendants' direct and indirect infringement of the '325 Patent occurred in this Judicial District and elsewhere in the United States.

COUNT I

(Direct Infringement of the '325 Patent)

35. The allegations of paragraphs 1-34 are repeated and re-alleged as if fully set forth herein.

36. On information and belief, Defendants have infringed and continue to infringe, literally and/or under the doctrine of equivalents, at least claim one (1) of the '325 patent as set forth by 35 U.S.C §271(a), by using the methods covered by the '325 Patent.

37. Defendants do not have a license or permission from Ellison to use the claimed subject matter of the '325 Patent.

38. On information and belief, Defendants' infringement is the result of its importing, making, using, selling, and/or offering to sell, patterns made into chemically-etched dies that are used to perform the method taught by the '325 Patent.

39. Defendants' aforementioned acts have caused damage to Ellison and will continue to do so unless and until enjoined.

40. On information and belief, Defendants have been on notice of Ellison's rights and the '325 Patent as a result of, inter alia, Plaintiff sending a cease and desist letter (*see Exhibit 2*) to Defendants. Despite this knowledge of the '325 Patent and an objectively high likelihood that

its actions constitute infringement of Ellison's valid patent rights, Defendants continue to infringe.

41. As this objectively-defined risk was either known or so obvious that it should have been known to Defendants, Ellison seeks enhanced damages pursuant to 35 U.S.C. § 284 from Defendants.

42. As a result of Defendants' infringement of the '325 Patent, Ellison has suffered monetary damages. Defendants are thereby liable to Ellison in an amount that adequately compensates it for Defendants' infringement, which, by law cannot be less than a reasonable royalty, together with interest and costs fixed by this Court under 35 U.S.C. § 284.

43. Defendants' acts of infringement have deprived, and will continue to deprive, Ellison of sales, profits, and other related revenue that Ellison would have made or would enjoy in the future; has injured Ellison in other respects; and will continue to cause Ellison added injury and damage unless and until the Court enters an injunction prohibiting further infringement, and specifically enjoins Defendants from further manufacture, use, offers for sale, sale, and importation of products and/or services embodying the patent inventions claimed in the '325 Patent.

COUNT II

(Inducing Infringement of the '325 Patent Pursuant to 35 U.S.C. § 271(b))

44. The allegations of paragraphs 1-43 are repeated and re-alleged as if fully set forth herein.

45. On information and belief, Defendants have infringed and continue to infringe, literally and/or under the doctrine of equivalents, at least claim one (1) of the '325 Patent as set forth by 35 U.S.C § 271(a), by using the methods covered by the '325 Patent.

46. Defendants have also induced and continue to induce infringement of at least claim one (1) of the Patent under 35 U.S.C. § 271(b).

47. Defendants indirectly infringe on the '325 Patent by instructing, directing and/or requiring others, including but not limited to, customers, purchasers, users and developers, to perform the steps of claim 1, either literally or under the doctrine of equivalents, of the '325 Patent, where the steps of the method claim is performed by Defendants or their customers, purchasers, users and developers.

48. On information and belief, Defendants' acts constituting the induced infringement of the '325 Patent occurred in the United States.

49. Defendants do not have a license or permission to use the claimed subject matter of the '325 Patent.

50. As a direct and proximate result of the Defendants' induced infringement of the '325 Patent, Ellison has been injured and has been caused significant financial damages.

51. Ellison alleges upon information and belief that Defendants have, knowingly or with willful blindness, willfully induced infringement of at least claim 1 of the '325 Patent. Defendants had knowledge of the '325 Patent, as set forth above, having been advised of the existence and substance of the '325 Patent by Ellison. Defendants acted with knowledge of the '325 Patent, and, despite their knowledge or despite that they should have known of an objectively high likelihood that their actions constituted inducement of infringement of Ellison's valid patent rights, continue to so infringe. Additionally, Defendants have been on notice of the '325 Patent since at least Plaintiff's cease and desist letter attached hereto as Exhibit 2.

COUNT III

(Contributory Infringement of the '325 Patent Pursuant to 35 U.S.C. § 271(c))

52. The allegations of paragraphs 1-51 are repeated and re-alleged as if fully set forth herein.

53. Defendants, without permission of Ellison, have been and are presently infringing at least claim one (1) of the '325 Patent pursuant to 35 U.S.C. § 271(c), by selling or offering to sell material or apparatus for use in practicing the '325 Patent that is a material part of the invention.

54. On information and belief, this includes, but is not limited to, Defendants' sale and/or offers to sell its' chemically-etched dies that are used to perform the same method taught by the '325 patent.

55. The components sold or offered for sale by Defendants have no substantial non-infringing uses. Further, they are not staple articles of commerce and constitute a material part of the invention. Such chemically-etched dies have no other reasonable commercial use than for practicing the methods taught by the '325 Patent.

56. Defendants do not have a license or permission to use the claimed subject matter of the '325 Patent.

57. Defendants have contributorily infringed the '325 Patent, as set forth herein, knowing that the materials or components would be made or especially adapted for use in a manner that results in infringement of the '325 Patent.

58. Defendants have, knowingly or with willful blindness, willfully contributed to the infringement of at least claim 1 of the '325 Patent. Defendants had knowledge of the '325 Patent, as set forth above, having been advised of the existence and substance of the '325 Patent by Ellison. Defendants acted with knowledge of the '325 Patent, and, despite their knowledge or

despite that they should have known of an objectively high likelihood that their actions constituted infringement of Ellison's valid patent rights, continue to infringe.

59. As a direct and proximate result of the Defendants' contributory infringement of the '325 Patent, Ellison has been injured and has been caused significant financial damages.

PRAYER FOR RELIEF

WHEREFORE, Ellison respectfully requests this Court to enter judgment:

A. Declaring that Defendants have infringed one or more claims of the '325 Patent pursuant to 35 U.S.C. §§ 271 subd. (a), (b), and/or (c);

B. Declaring that Defendants' infringement has been willful;

C. Awarding to Ellison damages adequate to compensate Ellison for each instance of infringement of the '325 Patent in an amount to be determined at trial, with interest as fixed by the Court;

C. That Ellison's damages be enhanced pursuant to 35 U.S.C. § 284 as a result of Defendants' willful infringement.

D. Declaring that this case is exceptional under 35 U.S.C. § 285 and awarding Ellison their reasonable costs and expenses of litigation, including attorneys' and experts' fees;

E. Enter a permanent injunction against Defendants enjoining them, their directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Defendants from making, using, selling, or offering for sale in the United States, or importing into the United States, any and all products and/or services embodying the patented inventions claimed in the '325 Patent; and

F. Awarding Ellison such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial on all issues so triable pursuant to Fed. R. Civ.

P. 38(b).

Dated: February 18, 2019

Respectfully submitted,

/s/ Andrew M. McCoy

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