

#1751095

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**



INDIAN INDUSTRIES, INC.	§	
DBA ESCALADE SPORTS	§	
	§	
<i>Declaratory Judgment Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:20-cv-92 _
	§	
ARACHNID 360, LLC	§	
	§	
	§	
<i>Declaratory Judgment Defendant.</i>	§	JURY TRIAL DEMANDED

DECLARATORY JUDGMENT COMPLAINT

In 1999 Arachnid, Inc. sold its Consumer Product Line of dart products to DMI Sports. Since Arachnid, Inc. was maintaining its commercial products business, the sale included a perpetual license to use the ARACHNID trademarks to sell consumer dart products. Plaintiff Indian Industries, Inc. dba Escalade Sports (“Escalade Sports”) and Arachnid 360, LLC (“Arachnid 360”) are the successors in interest, respectively, to DMI Sports and Arachnid, Inc.

After 20 years, Arachnid 360 is now improperly attempting to terminate Escalade Sports’ rights to use the ARACHNID trademarks for consumer dart products, presumably to clear the way to expand its own product line. Escalade Sports seeks an injunction declaring the Trademark License has not been terminated, prohibiting Arachnid 360 from terminating the Trademark License on the alleged basis and prohibiting Arachnid 360 from taking action to prevent Escalade Sports’ continued use of the Licensed Trademarks under the terms of the Trademark License.

Parties

1. Escalade Sports is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 817 Maxwell Avenue, P.O. Box 889, Evansville, IN 47706-0889.

2. Arachnid 360, LLC is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business at 6212 Material Avenue, Loves Park, IL 61111.

Jurisdiction and Venue

3. Subject matter jurisdiction arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

4. This Court has original jurisdiction of this action for both diversity and federal question under 15 U.S.C. § 1121, 1125 and 28 U.S.C. § 1331, 1332 and through the Court's pendant and supplemental jurisdiction under 28 U.S.C. §1367.

5. Venue is proper in this district under 28 U.S.C. §§ 1391.

6. Upon information and belief, Defendant is subject to the personal jurisdiction of this Court.

7. Upon information and belief, Defendant does business in this Judicial District.

8. The present case involves Federal Questions under 28 U.S.C. §1331.

9. The present case involves diverse parties -- the parties are citizens of different states and the matter in controversy, exclusive of interest and costs, exceeds the sum specified by 28 U.S.C. §1332.

Factual Background

10. On May 26, 1999, Arachnid, Inc., its owner John R. Martin, and DMI Sports, Inc. entered into an Asset Purchase and License Agreement (hereafter the “Purchase Agreement”) wherein Arachnid, Inc. sold its “Consumer Products Line” of dart related products to DMI Sports.

11. The Purchase Agreement sold various assets to DMI Sports and provided a license to DMI Sports to use the name ARACHNID and related trademarks listed on Schedule 8.1 of the Purchase Agreement (the “Licensed Marks”) to make and sell Consumer Goods for Consumer Usage (the “Trademark License”).

12. The Trademark License had an initial term of 99 years. On May 27, 2004, DMI Sports exercised an option defined in the Purchase Agreement and converted the Trademark License so that it has a perpetual term.

13. DMI Sports paid Arachnid, Inc. royalties under the Trademark License for an initial term of three years. When the Trademark License was converted to a perpetual license, it became a royalty free license.

14. Arachnid, Inc. retained the right to use the Licensed Marks to sell dart products outside of the Consumer Product Line, namely in the commercial market.

15. The Purchase Agreement prohibits Arachnid from using the Licensed Trademarks to sell goods in the consumer market.

16. The Purchase Agreement includes a provision that the Trademark License can be terminated if DMI materially breaches any covenant, warranty or representation of DMI made in the Purchase Agreement and fails to cure the breach within 30 days after notice of the breach is sent to it by Arachnid.

17. In November 2013, Escalade Sports acquired DMI Sports, Inc. and the Trademark License with the consent of Arachnid, Inc.

18. Arachnid 360 claims it is the successor in interest to Arachnid, Inc.

19. In or around July 2015, Arachnid 360 introduced and began promoting a dart game for the consumer market under the Licensed Trademarks.

20. In approximately August 2015, Escalade Sports reminded Arachnid 360 that, pursuant to the Purchase Agreement, it is prohibited from selling consumer dart products under the Licensed Trademarks.

21. In response, Arachnid 360 indicated that it was not aware of the Purchase Agreement provisions and asked for a copy of the Purchase Agreement.

22. After reviewing the Agreement, Arachnid 360 began claiming that Escalade Sports was in violation of the Quality Control section, namely section 10.7, of the Purchase Agreement due to Escalade Sports' alleged failure to provide samples of new products to Arachnid 360.

23. Escalade Sports responded explaining that Section 10.7 the Purchase Agreement had lapsed, but in the alternative and for the avoidance of doubt, on or around November 30, 2015 Escalade Sports provided Arachnid 360 samples of each ARACHNID product in Escalade Sports' product line, including many products which were previously sold by DMI Sports.

24. Arachnid 360 did not identify any specific quality concerns with the products Escalade Sports provided in 2015.

25. Arachnid 360 thereafter did not pursue its claims of a breach.

26. From 1999 to 2020, DMI Sports and then Escalade Sports have actively promoted the Consumer Product Line of ARACHNID dart products which DMI Sports purchased from Arachnid, Inc.

27. Escalade Sports currently sells millions of dollars' worth of products in the Consumer Product Line of ARACHNID dart products each year.

28. From 1999 to 2020, Arachnid, Inc. and then Arachnid 360 have promoted and sold ARACHNID dart products in the commercial market.

29. In addition, Arachnid 360 has launched dart products in the consumer market under the alternative brand of SPIDER360.

30. On January 10, 2020, over four years after their prior allegation, counsel for Arachnid 360 sent a letter to counsel for Escalade Sports, again alleging that Escalade Sports had materially breached the Quality Control Provision, namely Section 10.7, of the Purchase Agreement by a) failing to provide advance notice to Arachnid 360 before introducing an "Arachnid SDB4000 Electronic Soft Tip Smart Dartboard with Online Game Play" to the market as allegedly required by the APA and by b) allegedly sublicensing the ARACHNID name on an SBD app which Escalade Sports commissioned for use with the Arachnid SDB4000 product.

31. Escalade Sports responded on January 20, 2020 explaining to Arachnid 360 that according to its terms, Section 10.7 the Purchase Agreement had lapsed, but in the alternative and for the avoidance of doubt, Escalade Sports provided for Arachnid's inspection samples of its three (3) ARACHNID products which have been introduced since 2015.

32. On or around January 20, 2020 Escalade Sports shipped to Arachnid samples of each of these three products.

33. Additionally, in order to alleviate Arachnid 360's concerns, Escalade Sports' January 20, 2020 letter explained that it was having the Arachnid version of the SBD app discontinued.

34. On February 13, 2020, Arachnid 360 responded to Escalade Sports' letter disagreeing on the interpretation of Section 10.7, alleging that Escalade Sports had not cured material breaches of the Purchase Agreement and therefore Arachnid 360 purported to terminate the Trademark License.

35. After further correspondence, Arachnid 360 has maintained its allegations that Escalade Sports has not cured material breaches of the Purchase Agreement, that therefore the Trademark License is terminated and that therefore Escalade Sports has no rights under the APA to use the Licensed Trademarks.

36. In its latest letters, despite over twenty years of sales, Arachnid 360 has also summarily alleged that Escalade Sports' ARACHNID products are of inferior quality.

37. The Quality Control standards in Section 10.7, if in force, require that:

DMI shall cause those products as made by or on behalf of DMI to either (i) meet or exceed the technical specifications established and used by Arachnid as of the date of this Agreement or (ii) to meet or exceed the functional capabilities (including without limitation the useful life of components) of the Technology Products in question as of the date of this Agreement.

38. Arachnid 360 has never specifically identified or explained how any of Escalade Sports' ARACHNID products are of inferior quality.

39. Arachnid 360 has never specifically identified or explained how any of Escalade Sports' ARACHNID products do not meet or exceed the technical specification or product functionalities used by Arachnid as of the date of the Purchase Agreement.

40. Arachnid 360 has stated a desire to itself sell consumer products under the Licensed Trademarks.

41. There is a justiciable controversy between Escalade Sports and Arachnid 360, namely Arachnid 360 is alleging that Escalade Sports breached a trademark license between the parties, that the license agreement is therefore terminated and that Escalade Sports has no rights to continue using the licensed trademarks.

42. The Purchase Agreement includes an arbitration provision, namely Section 12.7, which provides for arbitration of all disputes concerning any provisions of the Purchase Agreement; however, a party may seek injunction relief in a court to protect its right until the time that an arbitration judgment is entered.

43. Escalade Sports is serving a demand for arbitration on Arachnid 360 concurrently with the filing of this Complaint.

COUNT I: DECLARATORY JUDGMENT OF NON-TERMINATION

44. Escalade Sports incorporates by reference the averments contained in paragraphs 1 through 4341.

45. Escalade Sports has not materially breached the Purchase Agreement and accordingly the Trademark License is not terminated and cannot be terminated on that basis.

46. In the alternative, any material breach of the Purchase Agreement has been cured and accordingly, the Trademark License is not terminated and cannot be terminated on that basis.

47. Any claim of breach originally asserted by Arachnid 360 in 2015 has been waived due to waiver, acquiescence, laches and/or course of performance by the parties.

48. Any claim of breach of the quality standards related to the products Escalade Sports provided to Arachnid 360 in 2015 has been waived due to waiver, acquiescence, laches and/or course of performance by the parties.

49. Any claim of breach of the quality standards has been waived due to waiver, acquiescence, laches and/or course of performance by the parties.

50. Arachnid 360's improper attempts to terminate the Trademark License will cause irreparable damage to Escalade Sports for which there is no adequate remedy at law.

COUNT II: DECLARATORY JUDGMENT OF NO TRADEMARK INFRINGEMENT

51. Escalade Sports incorporates by reference the averments contained in paragraphs 1 through 50.

52. Arachnid 360 has alleged that Escalade Sports has no further rights to use the Licensed Trademarks and that Escalade Sports must cease all use of the Licensed Trademarks.

53. Escalade Sports' has the continued right to use the Licensed Trademarks under the Trademark License and such use does not infringe trademark rights owned by Arachnid 360.

54. Arachnid 360's improper attempts to prevent Escalade Sports from continuing to use the Licensed Trademarks will cause irreparable damage to Escalade Sports for which there is no adequate remedy at law.

Prayer

Escalade Sports requests that the Court:

A. Enter judgment that the Trademark License under the Purchase Agreement has not been terminated and that Escalade Sports' continuing use of the Licensed Trademarks is proper.

B. Enjoin Arachnid 360 from terminating the Trademark License, from asserting that the Trademark License has been terminated, from taking action to prevent Escalade Sports'

continued use of the Licensed Trademarks under the terms of the Trademark License and/or from breaching any obligation it has under the Purchase Agreement, including the restriction against making sales of products under the Licensed Mark in the consumer market.

- C. Award Escalade Sports' costs, attorneys' fees and expenses associated with this action.
- D. Grant all such other relief that the Court deems just.

Respectfully submitted,

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