

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SELECT BRANDS, INC.,

Plaintiff,

v.

SENSIO INC.,

Defendant.

Civil No. 13-cv-2108 KHV/GLR

SELECT BRANDS, INC.'S FIRST AMENDED COMPLAINT

Plaintiff Select Brands, Inc. ("Select Brands"), for its first amended complaint against Sensio Inc. ("Sensio" or "Defendant") alleges and states as follows:

JURISDICTION AND VENUE

1. Jurisdiction over this action is founded upon 28 U.S.C. §§1331 and 1338.
2. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §1400(b). Sensio sold the products accused of infringement in this judicial district and has directed sales and marketing efforts toward this judicial district. Venue is additionally proper pursuant to 28 U.S.C. §1391(c), as an alien may be sued in any district.

THE PARTIES

3. Plaintiff Select Brands is a corporation organized and existing under the laws of Kansas and having its principal place of business at 10817 Renner Blvd., Lenexa, KS 66219 and doing business within this judicial district.

4. Based upon information and belief, Sensio is a corporation organized and existing under the laws of Canada, with a business address of 1175 Place du Fere Andre, Montreal,

Canada H3B3X9. Sensio also has offices located in the United States at 1410 Broadway, 34th Floor, New York, New York 10018.

FACTUAL BACKGROUND

5. Select Brands is in the business of designing, manufacturing and selling kitchen appliances. Select Brands sells its products under its own trademarks as well as manufactures private label products.

6. On October 30, 2012, U.S. Patent No. D669,731 (the “ D’731 Patent”), entitled “Multiple Crock Buffet Server,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the D’731 Patent is attached as Exhibit 1 and incorporated herein. Select Brands owns all right, title, and interest in and to the D’731 Patent, including full rights to recover past and future damages thereunder.

7. On February 12, 2013, U.S. Patent No. D675,864 (the “ D’864 Patent”), entitled “Multiple Crock Buffet Server,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the D’864 Patent is attached as Exhibit 2 and incorporated herein. Select Brands owns all right, title, and interest in and to the D’864 Patent, including full rights to recover past and future damages thereunder.

8. On July 23, 2013, U.S. Patent No. D686,447 (the “ D’447 Patent”), entitled “Multiple Crock Buffet Server,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the D’447 Patent is attached as Exhibit 3 and incorporated herein. Select Brands owns all right, title, and interest in and to the D’447 Patent, including full rights to recover past and future damages thereunder.

9. Select Brands is informed and believes, and therefore alleges that Sensio on its own, or through inducement of others, is making, using, selling or offering for sale multiple

crook servers that infringe upon the designs of and embody the subject matter claimed in Select Brands' D'731, D'864 and/or D'447 Patents. Sensio models that infringe include, but may not be limited to the following model numbers: 13557; 13595; and 90036. (These products will collectively be referred to as "Sensio Accused Products"). Select Brands reserves the right to add models as they are inspected during discovery. True and accurate copies of photographs of the Sensio Accused Products are attached as Exhibits 4, 5 and 6, and incorporated by reference.

10. Sensio's offering for sale and sale of the Sensio Accused Products is without any license from Select Brands and Sensio is thereby infringing Select Brands' D'731, D'864 and D'447 Patents.

11. Sensio has received written notice of Select Brands' proprietary rights in its D'731 Patent by way of a letter sent to Sensio's counsel dated October 31, 2012 from counsel for Select Brands. A true and correct copy of that letter is attached as Exhibit 7 and incorporated herein.

12. Sensio has received written notice of Select Brands' proprietary rights in its D'864 Patent by way of a letter sent to Sensio's counsel dated February 12, 2013 from counsel for Select Brands. A true and correct copy of that letter is attached as Exhibit 8 and incorporated herein.

COUNT I - PATENT INFRINGEMENT
(U.S. Patent No. D669,731)

13. The allegations of Paragraphs 1 - 12 are incorporated by reference and re-alleged.

14. Sensio, through its respective agents, employees and servants, has been and currently are committing acts of direct infringement of the D'731 Patent by making, using importing, selling and/or offering for sale the Sensio Accused Products and/or committing acts of indirect infringement of the D'731 Patent by actively inducing and/or contributing to the

infringement of the D'731 Patent. In particular, the design claimed in the D'731 Patent and the Sensio Accused Products are substantially the same such that an ordinary observer, giving such attention as a purchaser usually gives, would be deceived into believing that the Sensio Accused Products are the same as the design claimed in the D'731 Patent, therefore inducing an ordinary purchaser to purchase the Sensio Accused Products supposing them to be the design claimed in the D'731 Patent.

15. Select Brands has been, and continues to be, greatly damaged by reasons of these acts of infringement.

16. Upon information and belief, Select Brands claims that Sensio has willfully infringed upon Select Brands' exclusive rights under the D'731 Patent, with full notice and knowledge thereof.

17. Upon information and belief, Sensio, from its infringing activities, has received and will continue to receive gains, profits and advantages, in an amount not presently known to Select Brands.

18. Select Brands has suffered and will continue to suffer irreparable harm in its trade and business as a result of Sensio's infringement of the D'731 Patent, for which Select Brands is entitled to both preliminary and permanent injunctive relief pursuant to 35 U.S.C. §283.

19. Select Brands has suffered and will continue to suffer monetary damages, in an amount not yet presently known, as a result of Sensio's infringement of the D'731 Patent.

20. Select Brands is entitled to monetary damages pursuant to 35 U.S.C. § 284 in an amount to be proven at trial as well as Sensio's profits on the Sensio Accused Products pursuant to 35 U.S.C. § 289.

COUNT II - PATENT INFRINGEMENT
(U.S. Patent No. D675,864)

21. The allegations of Paragraphs 1 - 20 are incorporated by reference and re-alleged.

22. Sensio, through its respective agents, employees and servants, has been and currently are committing acts of direct infringement of the D'864 Patent by making, using importing, selling and/or offering for sale the Sensio Accused Products and/or committing acts of indirect infringement of the D'864 Patent by actively inducing and/or contributing to the infringement of the D'864 Patent. In particular, the design claimed in the D'864 Patent and the Sensio Accused Products are substantially the same such that an ordinary observer, giving such attention as a purchaser usually gives, would be deceived into believing that the Sensio Accused Products are the same as the design claimed in the D'864 Patent, therefore inducing an ordinary purchaser to purchase the Sensio Accused Products supposing them to be the design claimed in the D'864 Patent.

23. Select Brands has been, and continues to be, greatly damaged by reasons of these acts of infringement.

24. Upon information and belief, Select Brands claims that Sensio has willfully infringed upon Select Brands' exclusive rights under the D'864 Patent, with full notice and knowledge thereof.

25. Upon information and belief, Sensio, from its infringing activities, has received and will continue to receive gains, profits and advantages, in an amount not presently known to Select Brands.

26. Select Brands has suffered and will continue to suffer irreparable harm in its trade and business as a result of Sensio's infringement of the D'864 Patent, for which Select Brands is entitled to both preliminary and permanent injunctive relief pursuant to 35 U.S.C. §283.

27. Select Brands has suffered and will continue to suffer monetary damages, in an amount not yet presently known, as a result of Sensio's infringement of the D'864 Patent.

28. Select Brands is entitled to monetary damages pursuant to 35 U.S.C. §284 in an amount to be proven at trial as well as Sensio's profits on the Sensio Accused Products pursuant to 35 U.S.C. §289.

COUNT III - PATENT INFRINGEMENT
(U.S. Patent No. D686,447)

29. The allegations of Paragraphs 1 - 28 are incorporated by reference and re-alleged.

30. Sensio, through its respective agents, employees and servants, has been and currently are committing acts of direct infringement of the D'447 Patent by making, using importing, selling and/or offering for sale the Sensio Accused Products and/or committing acts of indirect infringement of the D'447 Patent by actively inducing and/or contributing to the infringement of the D'447 Patent. In particular, the design claimed in the D'447 Patent and the Sensio Accused Products are substantially the same such that an ordinary observer, giving such attention as a purchaser usually gives, would be deceived into believing that the Sensio Accused Products are the same as the design claimed in the D'447 Patent, therefore inducing an ordinary purchaser to purchase the Sensio Accused Products supposing them to be the design claimed in the D'447 Patent.

31. Select Brands has been, and continues to be, greatly damaged by reasons of these acts of infringement.

32. Upon information and belief, Sensio, from its infringing activities, has received and will continue to receive gains, profits and advantages, in an amount not presently known to Select Brands.

33. Select Brands has suffered and will continue to suffer irreparable harm in its trade and business as a result of Sensio's infringement of the D'447 Patent, for which Select Brands is entitled to both preliminary and permanent injunctive relief pursuant to 35 U.S.C. §283.

34. Select Brands has suffered and will continue to suffer monetary damages, in an amount not yet presently known, as a result of Sensio's infringement of the D'447 Patent.

35. Select Brands is entitled to monetary damages pursuant to 35 U.S.C. §284 in an amount to be proven at trial as well as Sensio's profits on the Sensio Accused Products pursuant to 35 U.S.C. §289.

Prayer for Relief

Wherefore, Select Brands requests entry of judgment in its favor and against Sensio as follows:

A. Enter judgment that Sensio has directly and/or indirectly infringed the claims of the D'731, D'864 and D'447 Patents:

B. Enjoin Sensio and its officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from any infringement of the D'731, D'864 and D'447 Patents, whether direct or indirect;

C. Award to Select Brands the total profits realized by Sensio on the Sensio Products that infringe the D'731, D'864 or D'447 Patents, pursuant to 35 U.S.C. §289;

D. Award damages to compensate Select Brands for Sensio's infringement of the D'731, D'864 and D'447 Patents pursuant to 35 U.S.C. §284;

E. Award to Select Brands enhanced damages pursuant to 35 U.S.C. §284;

F. Award to Select Brands pre-judgment and post-judgment interest and costs in accordance with 35 U.S.C. §284;

G. Award to Select Brands its reasonable attorneys' fees pursuant to 35 U.S.C. §285; and

H. For any such other relief as the Court may deem just, proper and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Select Brands respectfully demands a trial by jury on all claims and issues so triable.

Dated: August 21, 2013

Respectfully Submitted,

s/Scott R. Brown
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Certificate of Service

I hereby certify that on the 21st day of August, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM / ECF system, which sent notification of such filing to the following:

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s/Scott R. Brown