

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1) OUTDOOR CAP CO., INC.,)	
an Arkansas corporation,)	
)	
Plaintiff,)	
)	Civil Action No.: 13-cv-665-CVE-FHM
v.)	
)	JURY TRIAL DEMANDED
1) MICHAEL WATERS,)	
an individual,)	
)	
Defendant.)	

DECLARATORY JUDGMENT COMPLAINT

Plaintiff Outdoor Cap Co., Inc., by and through its undersigned attorneys, brings this action against Defendant Michael Waters for a declaratory judgment that U.S. Patent No. 8,550,651 is not infringed by Outdoor Cap Co., Inc. and is invalid.

PARTIES

1. Plaintiff Outdoor Cap Co., Inc. (“Outdoor Cap”) is a corporation duly organized and existing under the laws of the State of Arkansas, having its principal place of business in Bentonville, Arkansas.

2. On information and belief, Defendant Michael Waters (“Waters”) is an individual residing in Aspen, Colorado.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this Complaint for declaration of patent non-infringement pursuant to the patent laws of the United States, 35 U.S.C. § 271 *et seq.*, under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367.

4. This Court has personal jurisdiction over Defendants because, among other things, he has the requisite minimum contacts with the forum and, on information and belief, has physically conducted and continues to physically conduct business throughout the State of Oklahoma and in this judicial district through his licensee, Panther Vision.

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

BACKGROUND

6. On October 8, 2013, U.S. Patent No. 8,550,651 entitled “Lighted Hat” was issued to Waters (“the ‘651 Patent”). A copy of the ‘651 Patent is attached hereto as Exhibit “A.”

7. Outdoor Cap has been and is currently engaged in the manufacture and sale of lighted hats.

8. Waters, in a letter to Outdoor Cap dated April 22, 2011, a copy of which is attached hereto as Exhibit “B,” represented that Waters was the owner of the application that eventually became the ‘651 Patent and alleged that certain of Outdoor Cap’s products embody subject matter claimed in at least some of the claims included in that application, which has now issued as claims of the ‘651 Patent; wherefore, a case of actual controversy within this Court’s jurisdiction exists between Plaintiff and Defendant with respect to the validity, infringement, and enforceability of such patent.

9. As a result of the aforementioned letter and other contacts by Waters, Outdoor Cap has a reasonable fear and apprehension that patent infringement litigation will be brought against it as a direct, inducing, or contributory infringer of the ‘651 Patent. An actual and justiciable controversy therefore exists between the parties.

10. Outdoor Cap has not directly infringed, has not induced the infringement of, and has not been a contributory infringer of the valid claims of the ‘651 Patent.

11. The ‘651 Patent is invalid in whole or in part.

***COUNT I: DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE ‘651 PATENT***

12. Pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, Outdoor Cap seeks a declaration that none of the lighted caps that it manufactures, uses, offers for sale, or sells in the United States, or imports into the United States, infringes any of the valid claims of the ‘651 Patent.

COUNT II: DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘651 PATENT

13. Pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, Outdoor Cap seeks a declaration that the ‘651 Patent is invalid and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Outdoor Cap respectfully prays that this Court enter Judgment in Outdoor Cap’s favor and against Waters as follows:

(a) That Outdoor Cap does not manufacture, use, offer for sale, or sell in the United States, or import into the United States, any apparatus that infringes any of the valid claims of the ‘651 Patent;

(b) That Outdoor Cap has not induced the infringement of nor been a contributory infringer of the ‘651 Patent;

(c) That the ‘651 Patent is invalid and unenforceable;

(d) That this case is “exceptional” under 35 U.S.C. § 285 and Outdoor Cap is entitled to an award of its attorneys’ fees, expenses, and costs incurred in this action;

(e) That Waters and all of his licensees, officers, agents, employees, representatives, and counsel, and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from charging infringement or instituting any action for infringement of the '651 Patent against Plaintiff, its customers, associates, distributors, and/or manufacturers; and

(f) That Outdoor Cap be granted such other and further relief as this Court deems just and proper.

Date: October 8, 2013

Respectfully submitted,

s/markgkachigian/

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VERIFICATION

State of Arkansas)
) ss.
County of Benton)

Jerry House, being duly sworn, says that he is the Executive Vice President of Finance & Administration of Outdoor Cap Co., Inc., who is the Plaintiff in this action, that he has read the foregoing Complaint, that the same is true to his own knowledge except to matters therein alleged on information and belief, and as to those matters he believes the same to be true.

Jerry House

Sworn to and Subscribed before me, this _____ day of October, 2013.

Commission Expires: _____
Commission No. _____

Notary Public

[seal]