

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JEMACO, LLC)	
)	
Plaintiff,)	
)	
v.)	
)	JURY TRIAL DEMANDED
MIA MODA COLLECTIONS, LLC,)	
DREAM ON ME INC.)	
DREAM ON ME INDUSTRIES, INC.)	
MIA MODA INC.)	
)	
Defendants.)	
_____)	

COMPLAINT

For its Complaint, Plaintiff Jemaco, LLC by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Jemaco, LLC (“Jemaco”) is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 475, Plano, Texas 75093.
2. Upon information and belief, Defendant Mia Moda Collections, LLC (“Mia Moda LLC”), is a New Jersey limited liability company with its principal place of business at 125 Helen St., South Plainfield, New Jersey, 07080.
3. Upon information and belief, Defendant Dream On Me Industries, Inc. (“DOM Industries”) is a New York corporation with its principal place of business at 125 Helen St., South Plainfield, New Jersey, 07080.

4. Upon information and belief, Defendant Dream On Me Inc. (“DOM Inc.”) is a New Jersey corporation with its principal place of business at 1532 S. Washington Ave, Piscataway, NJ 08854.

5. Upon information and belief, Mia Moda LLC, DOM Industries, and DOM Inc. are privately-held related entities, the exact nature of the relationship being unknown to Plaintiff, and existing under common family ownership. Collectively, these companies shall be referred to as the “DOM Companies.”

6. Upon information and belief, Defendant Mia Moda Inc., is a Pennsylvania Corporation with a place of business at 1966 Highway 160, W. Fort Mill, SC 29708 and a registered address at 111 North Sixth Street, Reading, Berks, PA 19601.

JURISDICTION AND VENUE

7. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

8. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

9. Upon information and belief, the DOM Companies and Mia Moda Inc. conduct or have conducted substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

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

THE PATENT-IN-SUIT

11. United States Patent No. 5,839,748 (the “’748 patent”), entitled “Convertible Stroller” was duly and lawfully issued by the U.S. Patent and Trademark Office on November 24,

1998. A true and correct copy of the '748 patent is attached hereto as Exhibit A.

12. The claims of the '748 patent disclose a child stroller which is convertible between a sitting condition, which is adapted to carry a child in a normal sitting position, and a standing condition, which is adapted to carry a child in a standing position. In the sitting condition, a seat precludes a child from standing on the step.

13. The inventor of the invention claimed in the '748 patent, Joan Cohen, was a mother, who created the invention because her child frequently preferred to stand, rather than sit, in a stroller. Thus, Ms. Cohen created her invention in order to provide her child with a safe stroller in which to stand when needed, while being pushed, while being able to convert the stroller back to a sitting stroller at other times. At the time when Ms. Cohen created her invention, no standing strollers of any kind were available on the market, let alone one that was convertible between sitting and standing.

14. Jemaco is the assignee and owner of the right, title and interest in and to the '748 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,839,748

15. Jemaco repeats and realleges the allegations of paragraphs 1 through 11 as if fully set forth herein.

16. Without license or authorization and in violation of 35 U.S.C. § 271(a), the DOM Companies and Mia Moda Inc., (collectively “Defendants”) have infringed at least claims 1, 5, 13 and 14 of the '748 patent by making, using, importing, offering for sale, and/or selling a stroller that is convertible between a sitting condition, which is adapted to carry a child in a normal sitting position, and a standing condition, which is adapted to carry a child in a standing position, and where

a seat precludes a child from standing on the step, including the Mia Moda Compagno stroller, as explained below (the “Compagno Stroller”).

17. More specifically, the accused Compagno Stroller meets all of the limitations of Claim 1 as it includes (1) a frame; (2) a plurality of wheels rotatably mounted to the frame, the wheels supporting the frame above the ground when they are in contact with the ground; (3) a seat which in the stroller’s sitting condition is secured to the frame generally horizontally at a height above the ground sufficient to enable a child to sit upon the seat in a normal sitting position; (4) a step which in the stroller’s standing condition is secured to the frame generally horizontally at a height above the ground which is lower than the height of the seat in the stroller’s sitting condition; and (5) a seat which, when the stroller is in a sitting condition, precludes a child from standing on the step. By way of further explanation, the seat described in the foregoing at elements 3 and 5 is the rear bench seat found in the Campagno Stroller.

18. Further, the accused Compagno Stroller also meets all of the limitations of Claim 13 as it is a child stroller that includes (1) a seat; and (2) a step below the seat; (3) where the seat is moveable from a position where it precludes a child from standing on the step to; (4) a position in which a child may stand on the step without interference by the seat. The seat described in the foregoing at elements 2 and 3 is the rear bench seat found in the Compagno Stroller.

19. Further, the accused Compagno Stroller meets all the limitations of dependent claims 5 and 14 of the ‘748 patent because, *inter alia*, it includes a means for restraining a child standing on the step from falling from the stroller, namely the handles on the frame.

20. Jemaco is entitled to recover from Defendants the damages sustained by Jemaco as a result of Defendants’ infringement of the ‘748 patent in an amount subject to proof at trial, which,

by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. Upon information and belief, Defendants began to sell the Compagno Stroller model as early as 2008.

JURY DEMAND

Jemaco hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Jemaco requests that this Court enter judgment against Defendants as follows:

- A. An adjudication that Defendants have infringed the '748 patent;
- B. An award of damages to be paid by Defendants adequate to compensate Jemaco for Defendants' past infringement of the '748 patent through the date of the expiration of the '748 patent, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Jemaco's reasonable attorneys' fees; and

D. An award to Jemaco of such further relief at law or in equity as the Court deems just and proper.

Dated: February 15, 2017

/s/ L. Charles van Cleef

L. Charles van Cleef
State Bar No. 00786305 (TX)
Van Cleef Law Office
PO Box 2432
Longview, Texas 75606-2432
Telephone: (903) 248-8244
Facsimile: (903) 248-8249
charles@vancleef.pro

Nicole D. Galli (PA SB #78420)
Law Offices of N.D. Galli LLC
2 Penn Center Plaza, Suite 910
1500 JFK Blvd
Philadelphia, PA 19102
Telephone: (215) 525-9580
Facsimile: (215) 525-9585
ndgalli@ndgallilaw.com

Attorneys for Plaintiff Jemaco, LLC