

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

COMFORT LINE PRODUCTS, Inc., a Florida Corporation,

Plaintiff

Case No.: 2:17-cv-00198-FtM-99CM

v.

Oceantis LLC, a Florida
Limited Liability Company and Michael Shawn O'Brien as
Curator of Estate of the Michael J.P. O'Brien

Defendants

**PLAINTIFF COMFORT LINE PRODUCTS' FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL;
INJUNCTIVE RELIEF SOUGHT**

1. This is an Action for patent infringement pursuant to Title 35, U.S. Code.

THE PARTIES

2. Plaintiff, Comfort Line Products, Inc. (hereinafter COMFORT) is a Florida corporation with a principal place of business located in this district and for the entire time pertinent hereto, has maintained a place of business at and conducted business in North Fort Myers, Lee County, Florida.

3. Defendant Oceantis, LLC (hereinafter OCEANTIS) is a Florida limited liability company with a principal place of business in North Fort Myers, Florida.

4. Defendant Michael Shawn O'Brien is an individual resident of the state of Texas who is serving as the Curator of the Estate of his father, Michael J.P. O'Brien

(hereinafter O'BRIEN). O'BRIEN was a resident of Lee County, Florida at the time of his death on June 17, 2016. His estate (hereinafter "the Estate") is being administered in Lee County, Florida. Upon information and belief, O'BRIEN was the manager and sole owner of OCEANTIS and has personally directed, participated in and benefited from the wrongful actions alleged herein.

JURISDICTION

5. Subject matter jurisdiction is based on 28 U.S.C. §1338. Venue is proper in this district pursuant to 28 U.S.C. §1400. Defendants have been doing business in this district, have a regular and established place of business in this district and have committed acts of infringement of the alleged patent sued upon herein in this district.

6. On October 5, 2016, Plaintiff filed a Statement of Claim by Comfort Line Products, Inc. in the Florida state civil action, Case No. 16-CP-001861 and 16-CP-001976, related to the Estate of Michael J.P. O'Brien, Exhibit A. The Statement of Claim specifically included a cause of action for patent infringement, among other claims.

7. On February 22, 2017, the Florida Circuit Court issued an Order granting COMFORT a sixty (60) day extension of time to file an independent action, Exhibit B.

8. On April 13, 2017, COMFORT notified the Circuit Court that COMFORT had filed the present action. (Exhibit C). COMFORT'S independent action for patent infringement was therefore filed within the sixty day extension granted by the Circuit Court.

9. All conditions precedent to the filing of this action have been performed, discharged, waived or otherwise satisfied.

FACTUAL ALLEGATIONS

10. Since at least 1996, COMFORT has been involved in the business of manufacturing and selling spas.

11. O'BRIEN was employed by COMFORT from approximately 1996 to 2010.

12. In the course and scope of his employment with COMFORT, O'BREIN invented a collapsible spa unit.

13. On November 6, 1997, Unites States Patent Application Serial No. 08/965,444 (hereinafter Serial No. '444) entitled "Collapsible Spa Unit" was filed for the collapsible spa unit invented by O'BRIEN. O'BRIEN was the first, original and sole inventor of the inventions set forth in Serial No. '444.

14. On November 6, 1997, O'BRIEN also executed a written Assignment, attached hereto as Exhibit D, which assigned and transferred to COMFORT, O'BRIEN'S entire right, title and interest in and to all inventions disclosed in Serial No. '444, as well as the application itself and any patents issued on the inventions set forth in the application. This Assignment was recorded with the Assignment Division of the United States Patent and Trademark Office on November 6, 1997. Exhibit E.

15. On May 9, 2000, United States Patent No. 6,058,521 (hereinafter Patent No. '521) was granted for the Collapsible Spa Unit as set forth and claimed in Application Serial No. '444. A true and correct copy of Patent No. '521 is attached hereto as Exhibit F.

16. COMFORT has been and remains the sole and exclusive proprietor of all rights, title and interest in and to Application Serial No. '444, Patent No. '521, and the inventions set forth therein.

17. Since 1997, COMFORT has continuously manufactured and sold collapsible spa units in accordance with the inventions and patent claims set forth in Patent No. '521. COMFORT'S collapsible spa units have been manufactured by COMFORT at COMFORT'S facility in North Fort Myers, Florida and have been marketed, sold and distributed worldwide under the trademark SPA-N-A-BOX.

COUNT I
PATENT INFRINGEMENT – 35 USC §271(a)

18. Plaintiff re-alleges paragraphs 1-17 as fully set forth herein.

19. Following termination of his employment with COMFORT, O'BRIEN established OCEANTIS and assumed the title of manager of that limited liability company. Upon information and belief O'BRIEN was the principal and sole owner of OCEANTIS and was personally involved in, directed and benefited from the wrongful actions alleged herein.

20. Defendants OCEANTIS and O'BRIEN were authorized to re-sell genuine SPA-N-A-BOX collapsible spa units manufactured by and purchased from Plaintiff COMFORT. Defendants also contracted with Plaintiff to provide customer service and repairs for Plaintiff's SPA-N-A-BOX collapsible spa unit. The parties agreed and arranged for OCEANTIS to conduct its business at COMFORT'S warehouse and manufacturing facility in North Fort Myers, Florida.

21. In the course of the parties' business relationship, COMFORT provided parts to OCEANTIS for enabling OCEANTIS to perform customer service and repair work on Plaintiff's SPA-N-A-BOX spas.

22. COMFORT never authorized Defendants to independently make or sell collapsible spa units as covered by Patent No. '521. In accordance with the parties' business arrangement, Plaintiff only authorized Defendants to re-sell and distribute spas manufactured by and purchased from Plaintiff and to service and repair genuine collapsible spa units, which Plaintiff had previously distributed to Plaintiff's customers.

23. Upon information and belief, Defendants have independently manufactured, advertised, and sold collapsible spa units as covered by the claims of COMFORT'S Patent No. '521, without purchasing such spa units from COMFORT and without receiving permission or authorization from Plaintiff,

24. Defendants have infringed COMFORT'S Patent No. '521 by making and selling products embodying the patented inventions without authority from Plaintiff, and will continue to do so and thereby cause irreparable damage to Plaintiff unless enjoined by this Court.

25. Defendants' infringing product is embodied by the spa shown in Exhibit G, which comprises a true copy of a page from Defendants' website www.oceantis.com. Defendants' spa is sold under the identical trademark SPA-N-A-BOX used previously and continuously by Plaintiff for its patented collapsible spa unit.

26. In particular, Defendants have infringed independent claims 1 and 6 of Patent No. '521 by incorporating into Defendants' spa each element and limitation of those claims. As indicated by the annotated photographs and text in Exhibit G, Defendants' spa specifically includes a base 12 at the bottom of the spa (see "padded floor" on page 2 of Exhibit G). A peripheral wall 1 (page 1, Exhibit G) has discrete panels 2 that are releasably interconnected to one another by angled connectors 3 at

angles less than 180 degrees. Liner means (Exhibit G, page 2) extend across the base and the inside surfaces of the panels. Means comprising communicably connected water inlet and discharge lines, which are obscured in the attached photographs, are provided for introducing water into and discharging water from the enclosed are of the spa unit. Means comprising a pump 4 (Exhibit G, page 1) circulates water through the spa.

27. Claim 1 of Patent No. '521 requires that each connector is interengaged with a pair of adjacent panels and includes means such as a pair of elongate slots (specifically recited in claim 2 of Patent No. '521) for gripping the adjacent panels. In Exhibit G, the elongate slots are obscured; nonetheless each of angled connectors 3 include such slots as claimed.

28. Claim 6 requires that each angled connector be separate and distinct from the adjacent panels that the connector joins. This feature is depicted, for example, in the photograph (Exhibit G, page 1) annotated as reference numeral number 5. This allows the panel to be slidably engaged with and disengaged from the angled connectors.

29. Defendants' spa includes all elements required by independent claims 1 and 6 of Patent No. '521 and infringes that patent.

30. Defendants have infringed dependent claims 2-5 and 7-14 of Patent No. '521 by featuring each of the elements set forth in the respective dependent claims as well as the elements of the respective underlying independent claims 1 and 6. In particular, Defendants' infringing spa, as shown in Exhibit G, employs parts that are identical and/or legally equivalent to those used by Plaintiff in its patented SPA-N-A-BOX product.

31. Defendants have, with actual and constructive knowledge of Patent No. '521, nevertheless willfully and wantonly proceeded to infringe said patent in flagrant disregard of Plaintiff's rights thereunder.

32. Defendants' foregoing actions constitute infringement of Patent No. '521 pursuant to 35 USC §271(a).

33. By reason of the foregoing, Plaintiff has been injured in an amount not yet ascertained.

COUNT II
PATENT INFRINGEMENT- INDUCING INFRINGEMENT 35 USC§271(b)

34. Plaintiff re-alleges paragraphs 1-17 and 19-33 as set forth herein.

35. Defendants have advertised and sold collapsible spa units covered by Patent No. '521 and collapsible spa kits comprising all of the elements, components, and limitations required by the claims of Patent No. '521, without purchasing such items or receiving permission or authorization from Plaintiff. Defendants have encouraged, instructed and assisted their customers in the purchase, assembly and use of such spa units. Such actions by Defendants' customers were unauthorized and constitute infringement of Patent No. '521.

36. By providing instruction, encouragement and assistance to their customers in the purchase, assembly and use of unauthorized and infringing spa units covered by Patent No. '521, Defendants have actively induced infringement of Patent No. '521, and are liable as infringers pursuant to 35 USC §271(b).

37. Defendants have, with actual and constructive knowledge of Patent No. '521, nevertheless willfully and wantonly proceeded to induce infringement of said patent, in flagrant disregard of Plaintiff's rights thereunder.

38. By reason of the foregoing, Plaintiff has been injured in an amount not yet ascertained.

COUNT III
PATENT INFRINGEMENT- CONTRIBUTORY INFRINGEMENT §271(c)

39. Plaintiff re-alleges paragraphs 1-17, 19-38, and 35-38 as fully set forth herein.

40. Defendants have advertised and sold material components of the collapsible spa unit covered by Patent No. '521 without purchasing said components from Plaintiff or receiving Plaintiff's permission or authorization. Defendants knew such components were especially made or adapted for use in the infringement of Patent No. '521 and were not staple articles of commerce suitable for substantial non-infringing use. Such actions by Defendants constitute contributory patent infringement pursuant to 35 USC §271(c).

41. Defendants have, with actual and constructive knowledge of Patent No. '521, nevertheless willfully and wantonly proceeded with the aforesaid contributory infringement of said patent, in flagrant disregard of Plaintiff's rights thereunder.

42. By reason of the foregoing, Plaintiff has been injured in an amount not yet ascertained.

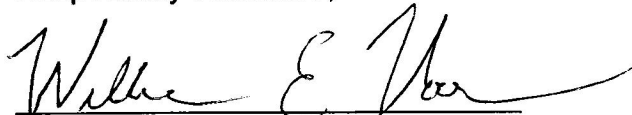
WHEREFORE, Plaintiff demands:

1. An injunction against Defendants' continued infringement of Patent No. '521;
2. An accounting of damages resulting from Defendants' infringement and the trebling of such damages because of the knowing, willful and wanton nature of Defendant's conduct;
3. An assessment of interest on the damages so computed;
4. An award of Plaintiff's attorneys' fee and costs in this action; and
5. Such other and future relief as the Court deems just equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury as to all issues triable by jury in this case as a matter of right.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William E. Noonan", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2017, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notification of a true and correct copy of the Notice of Electronic Filing to those listed under the Service List below:

/s/ William E. Noonan
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