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Attorneys for Plaintiffs
C-SAW ENTERPRISES L.L.C., d/b/a SPARE SOLES

FILED
09 OCT 20 AM 10: 20
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

'09 CV 2326 LAB AJB

Civil Case No. _____

C-SAW ENTERPRISES L.L.C., a California limited liability company, d/b/a SPARE SOLES,

Plaintiffs,

v.

FUNK-TIONAL ENTERPRISES, LLC, a New York limited liability company, d/b/a CITISOLES, and KATELIN SHEA, an individual, and SUSAN LEVITT, an individual,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT UNDER 28 U.S.C. §§ 2201 & 2202 OF:
(1) NON-INFRINGEMENT OF PATENT RIGHTS;
(2) NON-INFRINGEMENT OF TRADEMARK RIGHTS UNDER 15 U.S.C. §§ 1125 OR 1114; AND
(3) NO STATUTORY & COMMON LAW UNFAIR COMPETITION AND CLAIMS FOR UNFAIR COMPETITION.

JURY TRIAL DEMANDED

COMES NOW Plaintiff C-Saw Enterprises, L.L.C. d/b/a Spare Soles, by and through its counsel, and who alleges as and for its Complaint against Defendant as follows:

NATURE OF THE ACTION

This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that plaintiff C-Saw Enterprises, LLC d/b/a Spare Soles (a) is not infringing any valid and enforceable United States

ORIGINAL

Patent held by any of defendants; (b) is not infringing any valid and enforceable trademark rights held by any of defendants; (c) is not infringing any valid and enforceable copyright rights held by any of defendants, and (d) and is not committing acts amounting to unfair competition under the laws of either California or New York. This action also contains pendent state causes of action for statutory and common law unfair competition.

THE PARTIES

1. Plaintiff, C-Saw Enterprises, LLC ("C-Saw"), is a California limited liability company, who does business as "Spare Soles," (hereinafter "Spare Soles" or "Plaintiff").

2. Defendant Funk-Tional, Enterprises, LLC, ("FTE") is a limited liability company organized and existing on or about June 3, 2009, under the laws of the State of New York. On information and belief, FTE does not have a registered agent for service of process in the State of California. On information and belief, FTE maintains its principal place of business in the State of New York and service of process on FTE may be made by serving its registered agent, Katelin Shea at 453 East 14th Street, #5H, New York, NY 10009.

3. On information and belief, defendant Katelin Shea (hereinafter, "Shea") is an individual, who is a resident of the State of New York, and who may be served with process at 453 East 14th Street, #5H, New York, NY 10009, or wherever else she may be located.

4. On information and belief, defendant Susan Levitt (hereinafter, "Levitt." Collectively with Shea and FTE, "Defendants") is an individual who is a resident of the State of Connecticut, and who may be served with process at 2 Westminster Road, Danbury, CT 06811-3429, or wherever else she may be located.

JURISDICTION & VENUE

5. This Court has subject matter jurisdiction over this lawsuit under 28 U.S.C. §§ 1338, 2201 & 2202, and the suit arises under the Lanham Act, 15 U.S.C. § 1125, et seq., and the United States patent laws, 35 U.S.C. § 1, et seq., and the United States Copyright Act, Title 17 of the United States Code.

6. By asserting infringement of certain rights, defendants have created an actual and justiciable case and controversy between themselves and plaintiff, namely concerning whether Spare

Soles infringes any protectable rights, including assertions of patent rights, trademark rights, and copyrights.

7. This is, in part, an action for declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Among other things, plaintiff Spare Soles seeks a declaratory judgment that Defendants do not have any valid and enforceable patent rights, and to the extent they do, that plaintiff does not infringe such rights. Moreover, plaintiff seeks a judgment that it is not infringing any valid and enforceable trademark rights or copyrights owned by defendants.

8. This Court has personal jurisdiction over defendants FTE, Levitt, and Shea, since each of said defendants purposefully availed themselves of such jurisdiction by sending a cease-and-desist letter within this district, wherein defendants threatened litigation. Defendant Shea telephoned Plaintiff personally and threatened Plaintiff with litigation and falsely accused Plaintiff of infringing various and sundry intellectual property rights. Upon information and belief, this Court also has personal jurisdiction over FTE, Levitt, and Shea since each defendant has minimum contacts with the State of California and/or has otherwise availed themselves of the jurisdiction of this Court. Upon information and belief, defendant FTE is undercapitalized and is being used for an improper purpose and is the alter-ego of defendants Shea and Levitt.

9. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this District and because there is personal jurisdiction over defendant corporation under 28 U.S.C. §1391(c).

FACTS

10. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

11. Plaintiff entity C-Saw was formed and began conducting business in or about June 2003. C-Saw registered to do business as Spare Soles in 2007.

12. Among other things, Spare Soles has sold a variety of shoes for women since commencing its operations. For example, Spare Soles' products have included ballet-type slippers designed to be worn by women whose aching feet need a break following a long day in high heels.

13. The Spare Soles shoes are attractive to women because the shoes come packaged in a

small pouch. Spare Sole shoes typically have a small pouch that is opened to reveal the ballet slipper-style shoes folded inside.

14. In fact, Spare Soles filed an application for a utility patent relating to its unique style of shoes, U.S. Patent Application Ser. No. 11/429,596 (filed on May 2, 2006) (hereinafter, "the '596 application"). The '596 application is currently still pending while it undergoes prosecution before the U.S. Patent & Trademark Office ("PTO").

15. In July 2009, Spare Soles also filed for design patent protection for a new ballet slipper shoe design. Spare Soles filed U.S. Design Patent No. 29/339,557 (filed on Jul. 2, 2009), which likewise is still pending (hereinafter, "the '557 application") before the PTO.

16. To market its products, among other things, Spare Soles maintains a website (http://www.sparesoles.com) (See Exhibit 1).

17. As advertised on its website, Spare Soles' current product line features such styles as the "Spare Soles Originals" collection, the "Spare Soles Diamond" collection, and the "Spare Soles Metro" collection. (See Exhibit 2). Spare Soles offers each of these shoes collections in various sizes and colors.

18. In addition to its pending patent applications, Spare Soles owns trademark registration no. 3,351,507, for the mark "SPARE SOLES - STYLISH COMFORT FOR YOUR FEET" in class 025 for shoes. Spare Soles filed this application in March 2007, and the registration issued in December 2007. (See Exhibit 3).

19. Recently, Spare Soles became aware that defendants were selling a shoe and pouch design similar to its own.

20. Spare Soles became aware of Defendants' activities when Defendants' representative recently contacted Spare Soles by telephone to demand Spare Soles discontinue selling its shoes.

21. Soon thereafter counsel for Defendants sent a letter to Spare Soles, dated October 12, 2009, asserting that Spare Soles was violating defendants' various rights in the shoes. (See Exhibit 4).

22. Specifically, counsel for Defendants alleged that Spare Soles infringed Defendants' rights in the trademark for "Citisoles." Id at p. 1, ¶ 1.

23. Defendants went on to allege that Spare Soles "misappropriated all aspects" of the shoes and that Spare Soles "sought to usurp Funk-Tional's business through the theft related to its intellectual property." Id at p. 1, ¶ 3.

24. In their October 12th letter, Defendants further alleged that Spare Soles' actions constituted, "a violation of, *inter alia*, Funk-Tional's trademark, trade dress, copyright rights, and prospective patent rights." Id. at p. 2, ¶ 2 (italics in original).

25. After alleging further wrongful conduct, Defendants concluded their letter by saying that if they did not receive confirmation that Spare Soles would comply with all demands contained therein, Defendants would "without further notice to you, institute appropriate legal proceedings against all the parties involved in the chain of infringement." Id. at p. 3, ¶ 2.

26. Spare Soles is unaware whether Defendants have any pending patent applications or issued patents. Spare Soles asserts that Defendants do not have actual patent rights, but have merely threatened rights to unfairly compete and control the market and dissuade otherwise fair competition.

27. Spare Soles is informed and believes and on that basis alleges that defendants have applied for a trademark for "Citisoles," in conjunction with "shoe bags for travel," in international class 018, on or about February 27, 2009. (See Exhibit 5). As of the date of this filing, it appears that the application remains unregistered and an office action is still outstanding and unanswered. Id. Thus, Spare Soles asserts that Defendants have threatened nonexistent trademarks rights to unfairly compete and control the market and dissuade otherwise fair competition.

Count 1

(Declaration of Non-Infringement of Trademark Rights Under the Lanham Act)

28. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

29. Spare Soles has not infringed and is not now infringing, either directly, contributorily, or through inducement, any trademark rights defendants may have.

30. As a result of Defendants' actions and statements, including the sending of a cease-and-desist letter, an actual controversy now exists between the parties regarding the alleged infringement of various rights, including the asserted mark "Citisoles."

31. Spare Soles owns a federal trademark registration which predates defendants' formation date and application for its mark. Moreover, Spare Soles has never used the mark "Citisoles" or confusing versions thereof.

32. Spare Soles is entitled to a declaration that it does not infringe any rights defendants may or may not have, whether under 15 USC § 1125(a), § 1114, the common law, or applicable authority.

Count 2

(Declaratory Judgment of Noninfringement of Patent Rights)

33. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

34. Defendants have alleged that they are the owner of all right, title and interest to the "prospective patent rights" in the shoes and that Spare Soles is prohibited from continuing to sells its own shoes.

35. Spare Soles has not infringed and is not now infringing, either directly, contributorily, or through inducement, any valid and enforceable patent right(s) defendants may hold.

36. Due to defendants' actions and statements, including the sending of a cease-and-desist letter, an actual controversy now exists between the parties regarding the alleged infringement of defendants' asserted "prospective patent rights."

37. Defendants failed to substantiate their allegations of infringement with any evidence of issued and valid U.S. patents, or even pending applications.

38. Spare Soles is entitled to a declaration that it does not infringe any valid and enforceable patent rights owned by Defendants.

Count 3

(Declaration of Non-Infringement of Copyrights, 17 U.S.C. § 101, et seq.)

39. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

40. In its October 12th letter, Defendants allege that plaintiff Spare Soles' marketing efforts constitute "nearly identical" works to those used by defendants. Defendants further assert that Spare Soles' acts constitute violation of Defendants' copyright rights.

41. Spare Soles' has not infringed any copyright rights, if any, held by Defendants.

42. Due to defendants' actions and statements, including the sending of a cease-and-desist letter, an actual controversy now exists between the parties regarding the alleged infringement by defendants' asserted "copyright rights."

43. Spare Soles is entitled to a declaration that it does not infringe any of valid and enforceable copyrights rights owned by defendants.

Count 4

(Declaration of No Acts by Plaintiff Constituting Unfair Competition)

44. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

45. In its October 12th letter, defendants allege that they possess "proof of actual incidents of confusion arising out of C-Saw's misconduct," and that these actions evidence "an attempt to misappropriate and profit from the skill and efforts of Funk-Tional," and "give rise to state law unfair competition claims under both California and New York law."

46. Spare Soles denies it has acted in any way improperly in its dealings with defendants, or has otherwise acted in a way which would constitute unfair competition under the laws of either California or New York.

47. Due to defendants' actions and statements, including the sending of a cease-and-desist letter, an actual controversy now exists between the parties regarding the alleged infringement by defendants' asserted "copyright rights."

48. Spare Soles is entitled to a declaration that its acts do not constitute unfair competition under the laws of either California or New York.

Count 5

(Statutory Unfair Competition – Cal. Bus. & Prof. C. 17200, et seq.)

49. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

50. Spare Soles is informed and believes and on that basis alleges that Defendants have no enforceable patent rights, yet are attempting to unfairly interfere with Spare Soles' right to conduct business and fairly compete by making frivolous allegations of infringement.

51. Likewise, Spare Soles is informed and believes and on that basis alleges that Defendants' allegations of trademark infringement, copyright infringement, and unfair competition were made in order to unfairly interfere with Spare Soles' right to fairly compete in the marketplace.

52. Defendants, and each of their, acts, as described above, constitute unlawful, unfair or fraudulent business acts or practices in violation of the statutory laws of the State of California, namely, the Unfair Practices Act, California Business and Professions Code, Sections 17200, *et seq.*

Count 6

(Common Law Unfair Competition)

53. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

54. Defendants, and each of their, acts, as described above, constitute unlawful, unfair or fraudulent business act or practices in violation of the common law of the State of California.

Damages

55. Spare Soles repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

56. As a direct and proximate result of Defendants' conduct, Spare Soles has suffered the actual damages and enhanced damages for unfair competition, according to proof at trial.

//

//

Attorney Fees

This is an exceptional case, and Spare Soles is entitled to an award of attorney fees under 15 U.S.C. §1117(a).

Jury Demand

Spare Soles hereby demands a trial by jury on all issues that may be heard by a jury.

Prayer for Relief

For the foregoing reasons, plaintiff Spare Soles asks for judgment in its favor and against defendants Funk-Tional Enterprises, LLC, Katelin Shea, and Susan Levitt, and each of them, that:

a. Plaintiff's acts do not amount to infringement of any rights held by defendants under the U.S. Patent laws, Title 35 of the United States Code;

b. Plaintiff's acts do not amount to infringement of any rights held by defendants under the Lanham Act, Title 15 of the United States Code;

c. Plaintiff's acts do not amount to infringement of any rights held by defendants under the Copyright Act, Title 17 of the United States Code;

d. Plaintiff's acts do not amount to infringement unfair competition, whether under the laws of California, New York, or any other applicable jurisdiction;

e. Defendants', and each of their, acts amount to unfair competition, whether under the statutory or common laws of the United States and the State of California;

f. This case is exceptional under 35 U.S.C. § 285 and that Spare Soles be awarded its attorneys' fees, costs and expenses incurred in this action as provided by that statute;

h. Defendants', and each of their, acts otherwise amount to behavior justifying an award of reasonable attorney fees in Spare Soles' favor;

i. Defendants', and each of their, acts amount to behavior justifying an award of punitive/exemplary damages;

j. Spare Soles be awarded costs of court;

k. Spare Soles be awarded all pre- and post-judgment interest at the highest rates allowable by law;

l. Spare Soles be awarded all other relief the court deems just and proper.

Respectfully Submitted,

BUCHE & ASSOCIATES, P.C.

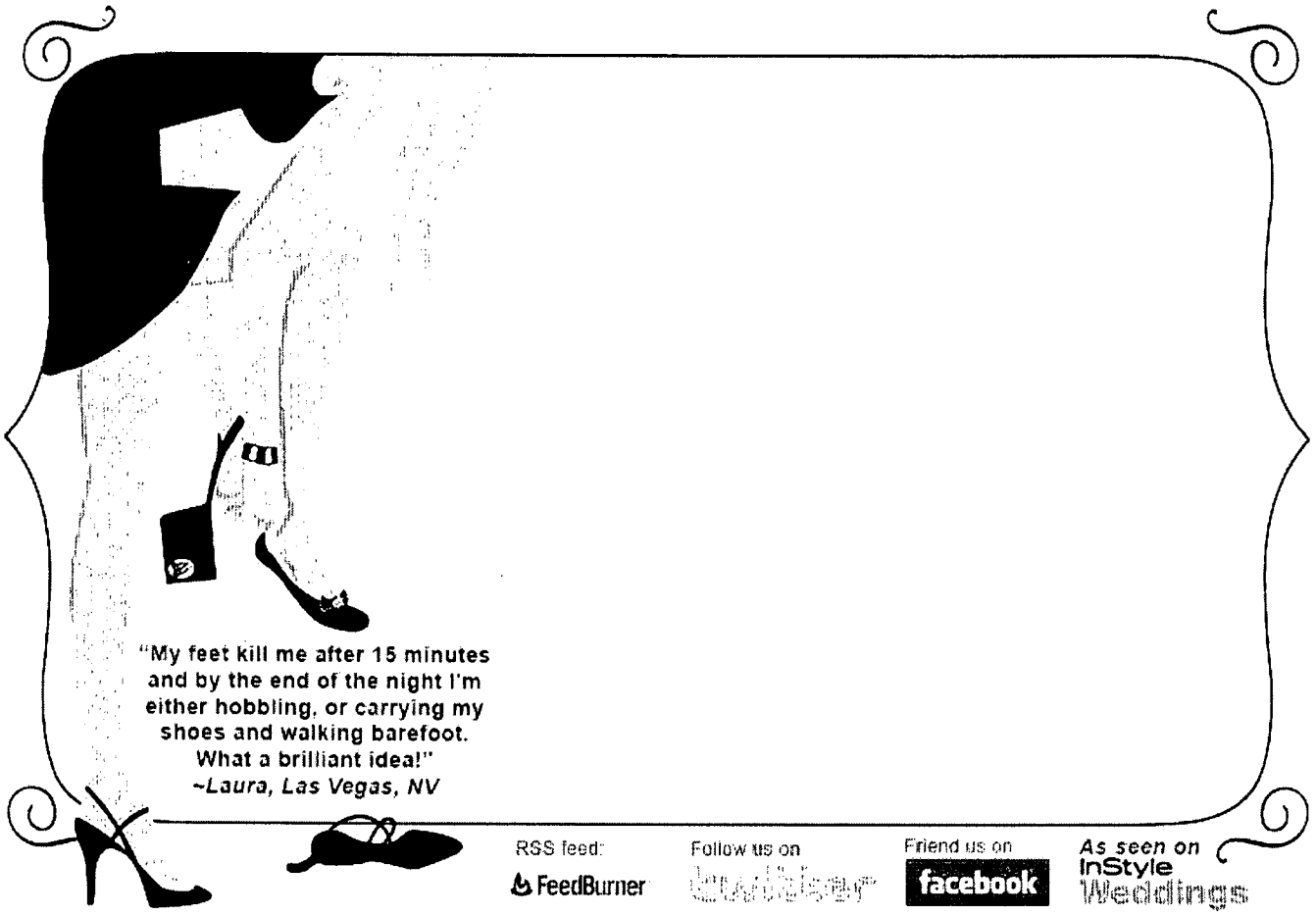
Dated: October 19, 2009

JOHN KARL BUCHE (SBN 239477)
SEAN M. SULLIVAN (SBN 254372)

Attorneys for Plaintiffs,
C-SAW ENTERPRISES L.L.C.,
d/b/a SPARE SOLES

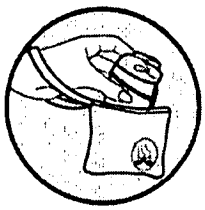
EXHIBIT 1

SpareSoles®



© 2008 C-SAW Enterprises LLC, All rights reserved. "Spare Soles" is a registered trademark of C-SAW Enterprises LLC.
PO Box 230221, Encinitas, CA 92023

Something Your Feet Won't Regret
In The Morning.



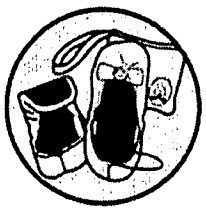
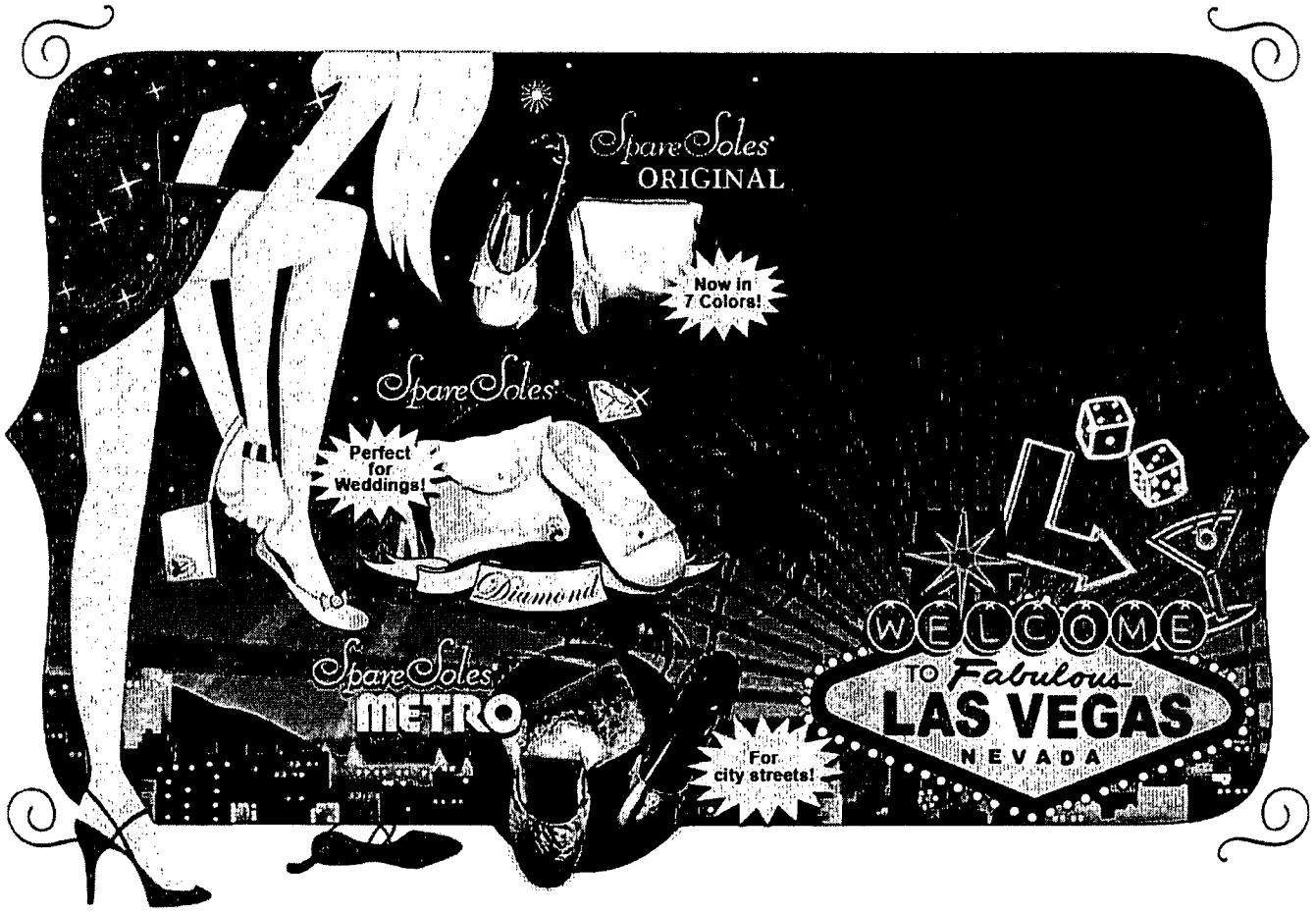


EXHIBIT 2

For those nights when your feet have had enough, but you haven't...

View Product Gallery



© 2008 C-SAW Enterprises LLC, All rights reserved. "Spare Soles" is a registered trademark of C-SAW Enterprises LLC.
PO Box 230221, Encinitas, CA 92023

EXHIBIT 3

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 3,351,507

United States Patent and Trademark Office

Registered Dec. 11, 2007

TRADEMARK
PRINCIPAL REGISTER

Stylish Comfort *for* Your Feet

WEISNER, ANDREA PADILLA (UNITED STATES INDIVIDUAL)
C/O E. HANSCOM, 7395 PORTAGE WAY
CARLSBAD, CA 92011

FOR: SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-1-2007; IN COMMERCE 3-1-2007.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE SOLES , APART FROM THE MARK AS SHOWN.

THE COLOR(S) PEACH, LAVENDER, WHITE, AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF AN OVAL IN WHICH APPEARS A PAIR OF FEET IN SHOES DECORATED WITH BOWS ABOVE THE STYLIZED WORDS SPARE SOLES; THE STYLIZED WORDS STYLISH COMFORT FOR YOUR FEET APPEARS BELOW SPARE SOULS; THE COLOR PEACH APPEARS ON THE FEET; THE COLOR LAVENDER APPEARS IN THE BACKGROUND OF THE OVAL; THE COLOR WHITE APPEARS ON THE BOWS; THE COLOR BLACK APPEARS IN THE OUTLINE OF THE OVAL, ON THE SHOES, AND IN THE TEXT

SER. NO. 77-139,649, FILED 3-25-2007.

DAVID TOOLEY, EXAMINING ATTORNEY

EXHIBIT 4

PRYOR CASHMAN LLP

New York | Los Angeles

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Firm Telephone: (212) 421-4100
Firm Fax: (212) 326-0806
Direct Dial: (212) 326-0244
Direct Fax: (212) 798-6338
Email: mgoldberg@pryorcashman.com

FACSIMILE COVER LETTER

USER: 8751
DATE: October 13, 2009
CLIENT/MATTER: 15808.00001

NAME: Andrea Padilla Weisner
FIRM: C-Saw Enterprises
CITY, STATE: Encinitas, CA
FACSIMILE NO.: (858) 923-2023
PHONE NO.:

FROM: Michael G. Goldberg, Esq.
TOTAL PAGES: 4

If you do not receive all the pages, please contact us at 212-326-0187 or our receptionist at 212-421-4100

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MESSAGE

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Michael G. Goldberg, Esq.
Partner

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Direct Fax: (212) 798-6338
mgoldberg@pryorcashman.com

October 12, 2009

Via Facsimile and Regular Mail
C-Saw Enterprises
P.O. Box 230221
Encinitas, CA 92023
Attn: Andrea Padilla Weisner

Re: Claims against C-Saw Enterprises ("C-Saw")

Dear Mrs. Weisner,

We are intellectual property counsel for Funk-tional Enterprises, LLC ("Funk-tional"). As you are aware, our client sells, *inter alia*, foldable and portable ballet flats with a durable sole in an expandable pouch (the "Product"). The pouch is specifically designed to accommodate both the flats and the high heeled shoes for which the flats are intended as a substitute. The Product is offered for sale and sold under the "CitiSoles" trademark (the "Mark"). As you are also aware, Funk-tional has filed for US patent protection in connection with the relevant and protectable aspects of the Product.

It has come to our attention that C-Saw, which until recently sold only rolled, soft soled shoes in a small pouch, has now reproduced the Product. Specifically, C-Saw has begun offering for sale foldable ballet flats with durable soles in a convenient carrying case or pouch which also expands to store the dress shoes for which the flats are intended as substitutes. The C-Saw product looks identical to Funk-tional's Product and infringes our client's rights, which we intend to vigorously defend.

Having misappropriated all aspects of the Product, C-Saw then sought to usurp Funk-tional's business through the theft of its related intellectual property. As part of this orchestrated effort to confuse Funk-tional's customers, C-Saw deliberately selected the name "Spare Soles Metro" for its new product. This name is clearly intended to cause confusion with Funk-tional's Product through the combination of "soles" with an urban description ("Metro" and "Citi"). In addition, within the last two weeks C-Saw changed its advertising, and "coincidentally" now markets its infringing product against a background of a purple city skyline that is nearly identical to the purple city skyline employed for many months by Funk-tional. C-Saw's advertising materials now also duplicate the three step depiction of the Product's manner of intended use which has always been prominently depicted in Funk-tional's marketing materials.

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Moreover, in an effort to suggest to the consuming public that C-Saw was in fact the creator of the Product, C-Saw has improperly affixed a "patent pending" mark to its infringing product. If in fact there is no patent pending on this product, the Patent Act proscribes monetary and other penalties for such deliberate mislabeling. In addition, this improper statement also constitutes a deceptive misrepresentation under Section 43(a) of the Lanham Act.

The nature, extent and timing of this copying confirms C-Saw's concerted effort to confuse consumers, and constitutes a violation of, *inter alia*, Funk-tional's trademark, trade dress, copyright rights and prospective patent rights. Indeed, we have proof of actual incidents of confusion arising out of C-Saw's misconduct. These actions, demonstrating an attempt to misappropriate and profit from the skill and efforts of Funk-tional, also give rise to state law unfair competition claims under both California and New York law.

We take these acts and the blatant violation of Funk-tional's intellectual property rights, which have caused significant and irreparable harm, very seriously. Please be advised that any further attempt by you to offer for sale, sell or deliver product contained in or associated with the offending materials following receipt of this letter will further demonstrate C-Saw's willful infringement. Proceed at your peril.

Given the aforementioned facts, which offer compelling evidence of your willful infringement, we further demand that C-Saw confirm to this office, in a writing signed and verified by an officer of the company, that it will immediately cease and desist from the infringing activity and advise us as to:

(a) The number of units of infringing product manufactured by or for you;

(b) The quantity of units sold by you, the prices at which the units were sold, and the name of every customer who purchased such units;

(c) The quantity of infringing products presently on hand;

(d) The open orders for said products which have been placed by you and the name of each party with whom such orders have been placed;

(e) The source(s) from which you initially acquired the infringing product; and

(f) The source(s) where the products were manufactured.

C-Saw should be aware that several statutory provisions, including Section 504 of the Copyright Act, authorize Courts to assess statutory damages in an amount up to $150,000 for

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each infringement (or actual damages if greater). Moreover, pursuant to these same statutes, Funk-tional's attorneys' fees and costs in any such action are likely to be recoverable.

Please confirm to us by no later than October 20, 2009 that you will comply with this demand. Failing to hear from you by this deadline, we will assume that you intend to continue your infringing activity and have no desire to amicably resolve this dispute. In that case, Funk-tional shall, without further notice to you, institute appropriate legal proceedings against all of the parties involved in the chain of infringement. In this event, we may also move for a preliminary and permanent injunction prohibiting the marketing and sale of the infringing product by you, by televised home shopping networks and by other retailers. We will also seek all damages permitted by law including, but not limited to, monetary damages, statutory damages and attorneys' fees under the Lanham Act, Copyright Act, NY General Business Law and damages available under other applicable state common law and through the United States Customs Service.

The foregoing is without prejudice to the other rights and remedies available to Funk-tional, at law and in equity, all of which are hereby expressly reserved.

Very truly yours,

Michael G. Goldberg

cc: Jennifer D. Silverman, Esq.
Funk-tional Enterprises, LLC

EXHIBIT 5

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-10-19 18:14:26 ET

Serial Number: 77680394 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

CITISOLES

(words only): CITISOLES

Standard Character claim: Yes

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2009-09-01

Filing Date: 2009-02-27

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 113

Attorney Assigned:
HESIK APRIL ANNE

Current Location: M4X -TMO Law Office 113 - Examining Attorney Assigned

Date In Location: 2009-09-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Levitt, Susan

Address:
Levitt, Susan
2 Westminster Road
Danbury, CT 06811
United States
Legal Entity Type: Individual
Country of Citizenship: United States
Phone Number: 203-313-3074

2. Shea, Katelin

Address:
Shea, Katelin
51 Shrub Hollow Road
Roslyn, NY 11576
United States
Legal Entity Type: Individual
Country of Citizenship: United States
Phone Number: 516-633-6385

GOODS AND/OR SERVICES

International Class: 018
Class Status: Active
Shoe bags for travel
Basis: 1(b)
First Use Date: 2009-06-15
First Use in Commerce Date: 2009-07-06

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-09-01 - Notification Of Disapproval - Amendment To Use E-Mailed

2009-09-01 - DISAPPROVAL - AMENDMENT TO USE E-MAILED

2009-09-01 - AMENDMENT OF ALLEGED USE DISAPPROVED

2009-09-01 - Non-Final Action Written

2009-08-26 - Amendment to use processing complete

2009-08-26 - Amendment to Use filed

2009-08-25 - TEAS Amendment of Use Received

2009-05-20 - Notification Of Non-Final Action E-Mailed

2009-05-20 - Non-final action e-mailed

2009-05-20 - Non-Final Action Written

2009-05-20 - Assigned To Examiner

2009-03-10 - TEAS Amendment Entered Before Attorney Assigned

2009-03-10 - TEAS Preliminary Amendment Received

2009-03-04 - Notice Of Pseudo Mark Mailed

2009-03-03 - New Application Office Supplied Data Entered In Tram

2009-03-03 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent
LEVITT, SUSAN
2 WESTMINSTER RD
DANBURY, CT 06811-3429
Phone Number: 203-313-3074

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
09 OCT 20 AM 10:19
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY FAX
AJB DEPUTY

I. (a) PLAINTIFFS

C-SAW ENTERPRISES L.L.C., d/b/a SPARE SOLES

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Buche & Associates, PC, 875 Prospect, Suite 305, La Jolla, CA
858.459.9111

DEFENDANTS

Funk-Tional Enterprises, LLC; Katelin Shea; Susan Levitt

County of Residence of First Listed Defendant New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'09 CV 2326 BY: LAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☒ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
US Patent Laws, 35 U.S.C. Sec. 101, et seq.; Decl. Judgment Act - 28 U.S.C. Sections 2201 & 2202

Brief description of cause:
Declaratory Judgment for Nonintringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 10/19/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 6454 AMOUNT 350.— APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

10/20/09

ORIGINAL

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS006454
Cashier ID: sramirez
Transaction Date: 10/20/2009
Payer Name: JANNEY AND JANNEY

CIVIL FILING FEE
For: CSAW ENTERP. V. FUNK TIONAL
Case/Party: D-CAS-3-09-CV-002326-001
Amount: $350.00

CHECK
Check/Money Order Num: 254942
Amt Tendered: $350.00

Total Due: $350.00
Total Tendered: $350.00
Change Amt: $0.00

There will be a fee of $45.00
charged for any returned check.