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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

<b>TELEBRANDS CORP.,</b>	)	
	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	
	)	<b>ECF Case</b>
<b>NATIONAL EXPRESS, INC.,</b>	)	
<b>BLUE GENTIAN, LLC, and</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>MICHAEL BERARDI,</b>	)	
	)	
Defendants.	)	
	)	
_____	)	

**COMPLAINT**

Plaintiff, Telebrands Corp. (“Telebrands”), by its counsel, for its Complaint against Defendants, National Express, Inc. (“National Express”), Blue Gentian, LLC (“Blue Gentian”) and Michael Berardi (collectively, “Defendants”), states as follows:

## **INTRODUCTION**

This is an action for a declaratory judgment regarding two patents owned and/or licensed by Defendants, namely, U.S. Patent No. 8,291,941 (“the ‘941 patent”) and U.S. Patent No. 8,291,942 (“the ‘942 patent”), which purport to cover the XHOSE product sold by Defendants. In particular, Telebrands is seeking a declaratory judgment that its POCKET HOSE product does not infringe any valid claim of either the ‘941 patent or the ‘942 patent. Telebrands is also seeking a declaratory judgment that the claims of the ‘941 patent and the ‘942 patent are invalid for failing to comply with the requirements of 35 U.S.C. §§ 102, 103 and/or 112.

## **NATURE OF THE ACTION**

1. Telebrands seeks a declaratory judgment that U.S. Patent No. 8,291,941 and U.S. Patent No. 8,291,942 are invalid.
2. Telebrands further seeks a declaratory judgment that it is not infringing any valid claim of the ‘941 patent and the ‘942 patent in connection with the manufacture, use, sale, offer for sale and/or importation into the United States of its POCKET HOSE product.

## **THE PARTIES**

3. Telebrands is a New Jersey corporation with its headquarters located at 79 Two Bridges Road, Fairfield, New Jersey 07004, in this Judicial District.
4. On information and belief, Michael Berardi is an individual residing at 223 Skylark Point, Jupiter, Florida 33458.
5. On information and belief, Blue Gentian is a corporation organized and existing under the laws of the State of Florida and having a principal place of business at 223 Skylark Point, Jupiter, Florida 33458.

6. On information and belief, Blue Gentian and Michael Berardi have licensed the patents in suit, directly or indirectly, to at least one entity which regularly conducts business in New Jersey.

7. On information and belief, National Express is a corporation organized and existing under the laws of the State of Connecticut and having a principal place of business at 2 Morgan Avenue, Norwalk, Connecticut 06851.

8. On information and belief, Defendants regularly conduct business throughout the United States, including in the State of New Jersey.

9. On information and belief, Defendants' actions and statements described in this Complaint were made at each other's direction and/or in concert or participation with each other.

10. On information and belief, Defendants' actions and statements described in this Complaint were made as agents of one another, and for each others' benefit.

### **JURISDICTION AND VENUE**

11. This Court has federal question jurisdiction because this action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

12. Defendants are present in the State of New Jersey, and this Court has personal jurisdiction over them, at a minimum, because they sell and/or offer to sell merchandise, including the XHOSE product, to customers in New Jersey and/or have licensed others to sell and/or offer to sell merchandise, including the XHOSE product, to customers in New Jersey.

13. This Court also has personal jurisdiction over Defendants because on information and belief, Defendants have sufficient contacts with this Judicial District and/or Defendants regularly conduct business within this Judicial District. Upon information and belief, Defendants directly and/or through their agents distribute, offer for sale or license, sell or license and/or advertise their products and services within the State of New Jersey and this Judicial District, and/or have purposefully availed themselves of the privileges and benefits of the laws of the State of New Jersey.

14. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

### **FACTS**

15. Telebrands is a direct marketing company and is engaged in the business of marketing and selling a wide variety of consumer products in this Judicial District and elsewhere through direct response advertising, catalogue, mail order, and Internet sales, and through national retail stores. Telebrands is a recognized leader in the direct response television marketing industry.

16. For over twenty-five years, Telebrands has been a leading developer and marketer of consumer products. Telebrands is widely known through the retail industry for the manner in which it effectively drives retail sells through its nationwide advertising programs. For many years, Telebrands has cultivated relationships with a wide variety of wholesalers, marketers, distributors, sellers, and retailers including, for example, large retail chain stores, catalogues, and Internet sales websites.

17. One product that Telebrands is currently marketing and selling is an expandable hose marketed under the trademark POCKET HOSE. Telebrands' POCKET HOSE product is

sold nationwide through direct to consumer marketing. Telebrands also plans to sell the POCKET HOSE product through national retail outlets and catalogue sales. Telebrands already has contractual agreements in place with many such entities for the POCKET HOSE product, and reasonably expects to engage in more such contractual agreements for its POCKET HOSE product.

18. United States Patent No. 8,291,941, entitled “Expandable and Contractible Hose,” issued October 23, 2012.

19. United States Patent No. 8,291,942, entitled “Expandable Hose Assembly,” issued October 23, 2012.

20. Michael Berardi is the named inventor of the ‘941 patent and the ‘942 patent.

21. On information and belief, Blue Gentian is the assignee from the named inventor of all right and interest in the ‘941 patent and the ‘942 patent.

22. On information and belief, Michael Berardi and/or Blue Gentian granted National Express an exclusive license under the ‘941 patent and the ‘942 patent.

23. On information and belief, National Express markets and sells the XHOSE product with the permission of, and/or on behalf of, Blue Gentian and/or Michael Berardi.

24. On information and belief, Defendants, acting in concert, have made, imported, marketed and/or sold a product under the name XHOSE, which is an expandable hose product.

25. Telebrands’ POCKET HOSE product competes directly with Defendants’ XHOSE product.

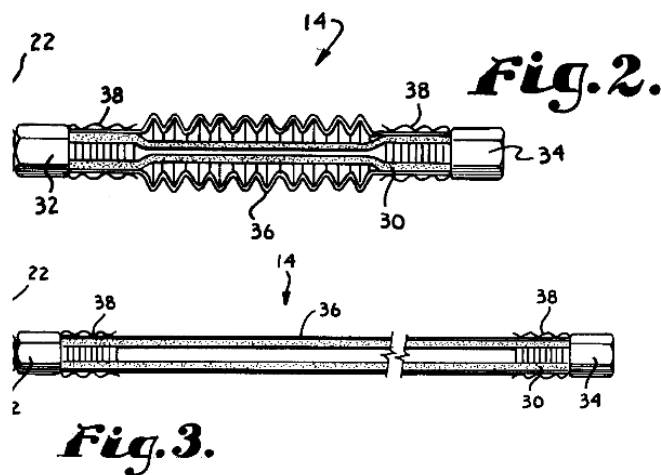
26. On February 25, 2003, United States Patent No. 6,523,539 (“the ‘539 patent”), entitled “Self-Elongating Oxygen Hose For Stowable Aviation Crew Oxygen Mask,” issued to

BE Intelligence Property Inc. of Wellington, Florida. A copy of the '539 patent is attached as Exhibit A.

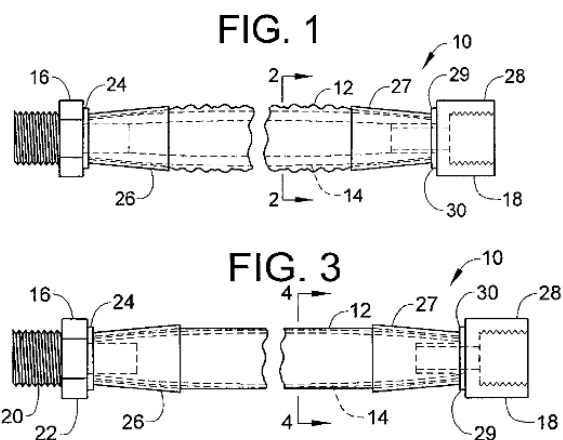
27. The '539 patent discloses an expandable hose and pre-dates the earliest filing date of the '941 patent and the '942 patent. The '539 patent was not disclosed to the Patent Office during the prosecution of the '941 patent or during the expedited prosecution of the '942 patent, and, thus, was not considered by the examiner.

28. The claims of the '941 patent and the '942 patent are invalid under 35 U.S.C. §§ 102 and/or 103 in light of, at least, the '539 patent that the applicant failed to cite to the U.S. Patent and Trademark Office during prosecution of the applications that issued as the '941 patent and the '942 patent.

29. The following is a comparison of Figures 2 and 3 of U.S. Patent No. 5,523,539 and Figures 1 and 3 of the '941 patent:



(U.S. Patent No. 6,523,539)



(the '941 patent)

30. Telebrands' POCKET HOSE expandable hose product does not infringe any valid claim of the '941 patent and the '942 patent.

31. On information and belief, before the '941 patent and '942 patent issued, National Express informed the trade that it intends to enforce these patents with respect to Telebrands' POCKET HOSE product.

32. There is a substantial controversy between Telebrands and Defendants.

33. The controversy is sufficiently immediate and real because the patents just issued and Defendants made statements that they intend to enforce the patents when they issue.

34. Telebrands and Defendants have adverse legal interests.

35. As a result, there is a justiciable controversy warranting declaratory relief.

**COUNT ONE**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 8,291,941)**

36. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

37. The claims of U.S. Patent No. 8,291,941 are invalid for failing to comply with the requirements of 35 U.S.C. §§ 102, 103 and/or 112.

38. Telebrands has no adequate remedy at law.

39. Because of Defendants' statement that they intend to enforce their patents with respect to Telebrands' POCKET HOSE product, there is an actual and justiciable controversy between Telebrands and Defendants regarding the '941 patent.

**COUNT TWO**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 8,291,942)**

40. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

41. The claims of U.S. Patent No. 8,291,942 are invalid for failing to comply with the requirements of 35 U.S.C. §§ 102, 103 and/or 112.

42. Telebrands has no adequate remedy at law.

43. Because of Defendants' statement that they intend to enforce their patents with respect to Telebrands' POCKET HOSE product, there is an actual and justiciable controversy between Telebrands and Defendants regarding the '942 patent.

**COUNT THREE**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 8,291,941)**

44. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

45. This cause of action arises under 35 U.S.C. § 281 *et seq.*

46. Telebrands has not infringed, and is not infringing, any valid claim of U.S. Patent No. 8,291,941.

47. Telebrands has not induced, and is not inducing, infringement of any valid claim of the '941 patent.

48. Telebrands has not contributorily infringed, and is not contributorily infringing, any valid claim of the '941 patent.

49. Telebrands has no adequate remedy at law.

50. Because of Defendants' statement that they intend to enforce their patents with respect to Telebrands' POCKET HOSE product, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '941 patent.



**COUNT FOUR**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 8,291,942)**

51. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

52. This cause of action arises under 35 U.S.C. § 281 *et seq.*

53. Telebrands has not infringed, and is not infringing, any valid claim of U.S. Patent No. 8,291,942.

54. Telebrands has not induced, and is not inducing, infringement of any valid claim of the '942 patent.

55. Telebrands has not contributorily infringed, and is not contributorily infringing, any valid claim of the '942 patent.

56. Telebrands has no adequate remedy at law.

57. Because of Defendants' statement that they intend to enforce their patents with respect to Telebrands' POCKET HOSE product, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '942 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Telebrands respectfully requests the following relief:

- (a) For a declaration that the '941 patent is invalid;
- (b) For a declaration that the '942 patent is invalid;
- (c) For a declaration that Telebrands does not infringe any valid claim of the '941 patent;
- (d) For a declaration that Telebrands does not infringe any valid claim of the '942 patent; and

(e) For an award of such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Telebrands demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: October 23, 2012

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