

MIH International, LLC,
A Delaware Corporation,

Plaintiff,

v.

Comfortland Medical, Inc.,
a North Carolina Corporation,

Defendant.

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Case No. _____

JURY TRIAL DEMANDED

4. Defendant Comfortland Medical, Inc. (“Comfortland”), on information and belief, is a North Carolina corporation with its principal place of business located at 709 A.O. Smith Road, Mebane, North Carolina 27702. Defendant Comfortland may be served by serving its registered agent: Ruben Fernandez, 1827 Milan Street, Durham, North Carolina 27704.

JURISDICTION AND VENUE

5. This is an action for patent infringement of a United States patent. Accordingly, this action arises under the patent laws of the United States of America, 35 U.S.C. §§ 1 *et seq.*

6. Jurisdiction for this action is based on 35 U.S.C. § 271 and 28 U.S.C. §§ 1331 and 1338(a).

7. Upon information and belief, Defendant Comfortland has been and is actively soliciting and doing business in the State of Delaware, and has attempted to derive and/or is deriving financial benefit from doing business with residents of the State of Delaware, including financial benefits directly related to the instant cause of action for patent infringement.

8. Upon information and belief, Defendant Comfortland has committed and continues to commit acts of patent infringement in this district, and, therefore, this Court also has specific jurisdiction of Defendant Comfortland.

9. Promotional and sales material associated with Defendant Comfortland's infringing products, including its "Avalon" family of braces, is included on many pages of its Internet Web Site <http://comfortlandmed.com/>, which is accessible in this judicial district. In addition, Internet advertisements for the sale or distribution of Defendant Comfortland's infringing products are made available in this judicial district on at least the following Internet Web Sites as of the date of filing this action: www.hellotrader.com/comfortland/avalon.html; www.dpmedicals.com/uploads/7/2/5/5/7255757/comfortlandrepdaveperkins.pdf; www.dpmedicals.com/uploads/7/2/5/5/7255757/productoverviewdp.pdf; rockymountfamilypharmacy.com/home-health-care/braces/; sourceortho.net/; www.pinnaclemedsource.com/products/3362; and, www.dpmedicals.com/comfortland.html.

10. Defendant Comfortland's "Avalon" brand infringing braces are manufactured and imported from China, upon information and belief.

11. Defendant Comfortland, upon information and belief, employs a regional representative responsible for generating sales orders for Defendant's infringing products within this judicial district.

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) in that, among other things, the acts of infringement complained of have been committed in this judicial district.

FACTS

13. On August 3, 2010, United States Patent No. 7,765,619 B2 entitled "Corset" was duly and legally issued to inventor Jean-Patrick Jaccard.

14. Inventor Jaccard assigned all rights, title, and interest in the '619 Patent to Sports & Supports Limited, an Irish corporation. Sports & Supports has assigned all rights, title, and interest in the '619 Patent to Plaintiff MIH.

15. Plaintiff MIH sells and distributes products manufactured pursuant to the claims in the '619 Patent. MIH's products are marketed and sold in this district and throughout the United States.

16. Plaintiff MIH is in compliance with all marking and notice provisions of 35 U.S.C. § 287.

FIRST CAUSE OF ACTION (Claim for Patent Infringement)

17. Plaintiff MIH repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

18. Defendant Comfortland has infringed and/or continues to infringe the '619 Patent in that without authority it makes, uses, offers to sell, and/or sells the patented invention within the United States and/or imports into the United States the patented invention.

19. Defendant Comfortland's products that infringe on Plaintiff's '619 Patent, include, but are not limited to, Defendant Comfortland's Avalon family of orthopedic braces, which, on information and belief, are manufactured in China for Defendant Comfortland and then imported into the United States for distribution and sale by Defendant Comfortland.

20. At least as of the filing of this suit, Defendants' infringement of the '619 Patent is knowing.

21. Defendant's infringement of the '619 Patent is willful, deliberate, and intentional pursuant to 35 U.S.C. §§ 284 and 285, based at least on the following facts:

a. Defendant Comfortland's braces are nearly identical in gross physical appearance to the inventions disclosed and claimed in the '619 Patent;

b. Defendant's Avalon braces are manufactured and intended to be used by a person in the same manner as are the braces claimed in the '619 Patent;

c. Plaintiff's braces produced pursuant to the '619 Patent are marked with the '619 Patent number and the existence and identification of the patent was known to Defendant prior to Defendant's manufacture, importation, use, offer of sale, and/or sales of its infringing products;

d. Defendant Comfortland and Plaintiff MIH compete in the same markets for sales of their braces; and

e. Although similar in appearance, Defendant Comfortland's product is constructed of lesser quality material than the patented product sold by Plaintiff MIH, thereby intentionally

causing confusion in the marketplace and permitting Defendant Comfortland to sell its facially similar product for a lower price than Plaintiff MIH's price for its product.

22. Upon information and belief and at least as of the filing of this suit, Defendant Comfortland induced others to manufacture, import, use, sell, and/or offer to sell the infringing products in that Defendant Comfortland knowing that the induced acts of manufacture, importation, use, sale, and/or offer to sell the infringing products constituted patent infringement.

23. On information and belief and at least as of the filing of this suit, Defendant Comfortland jointly infringed the '619 Patent through knowing, significant, active and intentionally actions with one or more unknown other entities to manufacture, import, distribute, offer to sell, sell, and use Defendant Comfortland's infringing product.

24. Defendant Comfortland's actions have constituted and/or continue to constitute contributory infringement of the '619 Patent in violation of 35 U.S.C. § 271(c) and or the active inducement of others under 35 U.S.C. § 271(b) to engage in direct infringement under 35 U.S.C. § 271 (a) with a knowledge of and an intent to induce the specific infringement.

25. By Defendant Comfortland's infringement of the '619 Patent, they have made unlawful gains and profits and Plaintiff MIH, due to the same infringing conduct by Defendant, has been deprived of rights and remunerations that would have otherwise come to Plaintiff, but for the infringement.

26. In addition, Defendant Comfortland's sales of its inferior products in direct competition for and as an alternative to Plaintiff MIH's original and superior effective product is damaging Plaintiff's future sales by causing irreparable and inestimable harm to the reputation of Plaintiff's braces based on the invention of the '619 Patent. Purchases of back braces, such as those under the '619 Patent, are infrequent for any particular individual – a brace is expected to

have a substantial useful life, and back problems often come and go for many individuals. Therefore, if such individual purchases Defendant Comfortland's inferior product, due to its lower price, confusion of likeness, or for whatever reason, then future sales of Plaintiff's patented brace product are highly likely to be negatively impacted. A reasonably expected result is that an average person will not buy the same or similar design brace in the future.

27. Because of the likelihood of negative associations between Defendant Comfortland's inferior brace product, and the likelihood that such negative attitude will affect future sales of Plaintiff MIH's patented brace product, an injunction is necessary to protect Plaintiff MIH from the irreparable harm that is likely to result from Defendant Comfortland's continued sales of its infringing products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MIH, respectfully requests the following relief:

- a. a preliminary injunction enjoining the continuing infringement of the '619 Patent by Defendant Comfortland and, additionally, enjoining any and all such other persons that are manufacturing, importing, offering for sale, and selling the infringing products;
- b. a judgment declaring that Defendant Comfortland and any joint infringers have infringed Plaintiff MIH's '619 Patent;
- c. a judgment declaring the Defendant Comfortland's infringement of Plaintiff MIH's '619 Patent was willful and deliberate;
- d. an accounting for damages;
- e. a judgment awarding Plaintiff MIH treble damages and pre- and post-judgment interest under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '619 Patent;

f. a judgment declaring that this case is exceptional and awarding Plaintiff MIH its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285, and Rule 54(d) of the Federal Rules of Civil Procedure;

g. a permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant Comfortland from further acts of infringement and, additionally, enjoining any and all such other persons that are manufacturing, importing, offering for sale, and selling the infringing products; and,

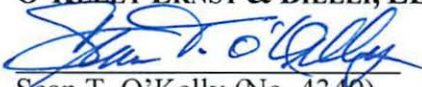
h. a grant of any such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff MIH hereby respectfully demands a jury trial on all claims and issues so triable.

Respectfully submitted,

O'KELLY ERNST & BIELLI, LLC


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*Attorneys for Plaintiff
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