

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

EGYPTIAN GODDESS, INC.,	§	
	§	CIVIL ACTION NO.
Plaintiff,	§	
v.	§	
	§	
DERMALACTIVES, INC.	§	
	§	A JURY IS DEMANDED
Defendant.	§	

COMPLAINT FOR PATENT INFRINGEMENT

Egyptian Goddess, Inc. for its Complaint for Patent Infringement against Defendant Dermalactives, Inc., states and alleges as follows:

I. PARTIES

1. Plaintiff Egyptian Goddess, Inc. (hereinafter "Egyptian Goddess") is a corporation organized and existing under the laws of the State of Texas and doing business in this Judicial District.

2. Defendant Dermalactives, Inc. (hereinafter "Dermalactives") is a corporation organized and existing under the laws of the State of Florida. On information and belief, Dermalactives has offered for sale and sold infringing products in this Judicial District and delivered infringing products into the stream of commerce that it knew would be offered for sale and sold in this Judicial District. Dermalactives therefore is subject to personal jurisdiction in the State of Texas in this Judicial District. Dermalactives may be served with process by serving its registered agent for service of process, Meirav Levi, at 1905 SE 5th Court, Cape Coral, Florida 33990.

II. JURISDICTION AND VENUE

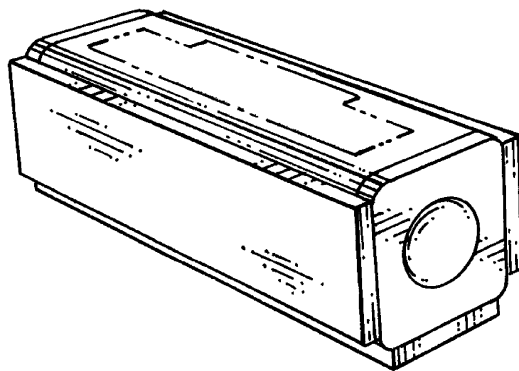
3. This action is for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, § 271 et seq.

4. This Court has jurisdiction of this action under 28 U.S.C. § 1338(a).

5. Defendant Dermalactives is a corporation that has committed acts of patent infringement in this Judicial District. A substantial part of the events or omissions giving rise to the claims occurred in this Judicial District. Accordingly, venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2).

III. DESIGN PATENT INFRINGEMENT

6. Egyptian Goddess is the exclusive licensee of all right, title, and interest in and to United States Design Patent No. D459,548 entitled "Nail Buffer," ("the '548 Patent") duly issued on June 25, 2002 by the United States Patent and Trademark Office, a copy of which is attached hereto as Pleading Exhibit 1. Such right, title, and interest include, without limitation, the right to sue and receive damages for past, present, and future patent infringement.



Egyptian Goddess Design Patent D459,548

7. In *Egyptian Goddess, Inc. v. Swisa, Inc.*, 534 F.3d 665 (Fed. Cir. 2008 (en banc)), the Federal Circuit Court of Appeals held that the comparative infringement analysis between a patented design and an accused design should be made in light of the prior art. Prior art to patented design D459,548 includes the so-called "Falley Block Buffer" and the Nailco triangular patent, both pictured below.



Falley Buffer Block

Nailco Patent

8. The Falley Buffer Block does not have distinctive raised pads and the Nailco Patent is triangular in shape. Neither of these two prior art references, nor any other known prior art references, have the overall distinctive appearance of the patented design D459,548 of (a) three raised buffer pads and (b) a general shape that is square or rectangular in cross section and rectangular in length.

9. Defendant Dermalactives, Inc. has offered to sell and sold in this Judicial District, and offered to sell and sold in the United States, nail buffer products that fall within the scope of the claim of Patent No. D459,548, all in violation of 35 U.S.C. § 271, et seq. The Dermalactives nail buffer shares with patented design D459,548 the distinctive

overall appearance of (a) three raised buffer pads and (b) a general shape that is square or rectangular in cross section and rectangular in length.



Dermalactives Nail Buffer

10. On information and belief, the acts of infringement by Dermalactives described above have been and continue to be intentional and willful.

11. Plaintiff Egyptian Goddess is entitled to damages as a result of Defendant's infringement, as provided by law.

12. On information and belief, Dermalactives has caused irreparable damage to Egyptian Goddess by its acts of infringement as described above and will continue said acts of infringement unless permanently enjoined by this Court.

13. Plaintiff Egyptian Goddess has placed the required statutory marking and notice on all products made and sold by it under Patent No. D459,548.

IV. PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiff Egyptian Goddess prays for a judgment against Defendant as follows:

- a. That U.S. Design Patent No. D459,548 is valid and enforceable;
- b. That Defendant has infringed U.S. Design Patent No. D459,548 and that such infringement was willful;

- c. An award of damages to Plaintiff Egyptian Goddess against Defendant for infringement of U.S. Design Patent No. D459,548 under 35 U.S.C. § 284 or § 289.;
- d. In the event Egyptian Goddess elects to recover damages under 35 U.S.C. § 284, an increase of the sums awarded to Plaintiff Egyptian Goddess to three times the actual damages, pursuant to 35 U.S.C. § 284;
- e. That Dermalactives be permanently enjoined from infringing U.S. Design Patent No. D459,548;
- f. That this case be deemed as exceptional under 35 U.S.C. § 285 due to the intentional and willful nature of Defendant's infringement, and an award to Plaintiff Egyptian Goddess of attorney fees under 35 U.S.C. § 285.
- g. An award of prejudgment and post judgment interest and costs of suit to Plaintiff Egyptian Goddess; and
- h. Such other and further relief as the Court deems proper and just.

V. DEMAND FOR JURY TRIAL

Plaintiff Egyptian Goddess, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury on all issues triable by right by a jury.

Respectfully submitted,

/s/ Robert G. Oake, Jr.
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