

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TELEBRANDS CORPORATION,

Plaintiff,

v.

BHSD TRADING LLC,

Defendant.

Civil Action No. 1:23-cv-225 (MAD/CFH)

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Telebrands Corporation (“Plaintiff” or “Telebrands”) hereby brings this Complaint for patent infringement against Defendant BHSD Trading LLC (“Defendant” or “BHSD Trading”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement of U.S. Patent Nos. 9,581,272 (the “272 Patent”) and 10,174,870 (the “870 Patent”) (collectively, the “Asserted Patents”) in violation of the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

THE PARTIES

2. Plaintiff Telebrands Corporation is a corporation organized and existing under the laws of the State of New Jersey, having a place of business at 79 Two Bridges Road, Fairfield, New Jersey, 07004.

3. Upon information and belief, Defendant BHSD Trading LLC is a corporation organized and existing under the laws of the State of New York, having a principal place of business at 405 2nd Street, Troy, New York 12180. Upon information and belief, BHSD Trading is doing business throughout the United States and within the State of New York.

JURISDICTION AND VENUE

4. Telebrands repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 3 as if set forth herein in their entirety.

5. This Court has subject matter jurisdiction over the patent infringement claims set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Upon information and belief, BHSD Trading is engaged in the business of using in, offering for sale in, selling in, and/or importing into, the United States expandable hoses, including within this District, and is incorporated in this District.

7. BHSD Trading is subject to the general personal jurisdiction of courts of general jurisdiction in New York because BHSD Trading is incorporated in New York and has its principal place of business in New York. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). As such, this Court may exercise jurisdiction over BHSD Trading pursuant to Rule 4(k)(1) of the Federal Rules of Civil Procedure.

8. BHSD Trading is also subject to specific jurisdiction in this case because at least part of Telebrands' claims arise from BHSD Trading's activities in the State of New York and this Judicial District.

9. Upon information and belief, BHSD Trading has its principal place of business in the State of New York and is incorporated in the State of New York. Therefore, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and (d) and 1400(b).

10. Upon information and belief, BHSD Trading has an address in Troy, Rensselaer County, in the Northern District of New York. Therefore, venue is proper within this District.

THE PATENTS-IN-SUIT

11. Telebrands repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 10 as if set forth herein in their entirety.

12. Telebrands is the owner of the '272 Patent, entitled "Garden Hose," which the United States Patent and Trademark Office ("USPTO") duly and lawfully issued on February 28, 2017. A true and correct copy of the '272 Patent is attached hereto as **Exhibit A**.

13. Telebrands is the owner of the '870 Patent, entitled "Expandable and Contractible Garden Hose," which the USPTO duly and lawfully issued on January 8, 2019. A true and correct copy of the '870 Patent is attached hereto as **Exhibit B**.

GENERAL ALLEGATIONS AND BACKGROUND

14. Telebrands repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 13 as if set forth herein in their entirety.

15. Telebrands is a direct marketing company and is engaged in the business of marketing and selling a wide variety of consumer products, through direct response advertising, catalogue, mail order, and Internet sales, and through national retail stores.

16. For over thirty years, Telebrands has been a leading developer and marketer of consumer products. Telebrands is widely known through the retail industry for its success in driving retail sales through its nationwide advertising programs. For many years, Telebrands expended significant human and financial resources cultivating relationships with a wide variety of retailers, *e.g.*, large retail chains, catalogs, and retail websites, which buy Telebrands' products.

17. For over ten years, Telebrands has been marketing and selling its expandable hose, which it currently sells under the trademark POCKET HOSE® and other related marks.

The POCKET HOSE® hose is light in weight, does not kink when unwrapped or uncoiled, can expand up to three times its length when pressurized water is flowing through it, and can automatically contract to a reduced length when the water is released from it. The POCKET HOSE® hose has been and continues to be a massive success in the United States. Telebrands is the owner of all intellectual property rights in connection with the POCKET HOSE® hose including, without limitation, the patent rights asserted in this Complaint.

18. Indicative of the ingenuity and popularity of Telebrands' POCKET HOSE® hose, BHSD Trading has impermissibly promoted and sold and continues to impermissibly promote and sell infringing expandable hose products embodying the inventions protected by the Asserted Patents. Specifically, BHSD Trading impermissibly promotes and sells the Joeys Garden Expandable Garden Hose, which comes in various sizes, including at least 25 feet, 50 feet, 75 feet, and 100 feet (hereinafter the "Accused Products"). A screen shot of BHSD Trading's website, <https://www.joeysgarden.com/>, promoting the Accused Products is attached hereto as **Exhibit C**. A screenshot of Amazon.com's website, https://www.amazon.com/Joeys-Expandable-Garden-Lightweight-Anti-Kink/dp/B08TF694VK/ref=sr_1_2?qid=1676635060&sr=8-2&srs=13689828011, promoting one of the Accused Products is attached hereto as **Exhibit D**.

COUNT I
(INFRINGEMENT OF THE '272 PATENT)

19. Telebrands repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 18 as if set forth herein in their entirety.

20. BHSD Trading has directly infringed and continues to directly infringe, either literally or under the doctrine of equivalents, at least Claim 1 of the '272 Patent by making,

using, offering for sale, and/or selling within the United States, and/or importing into the United States the Accused Products in violation of 35 U.S.C. § 271(a).

21. For example, as set forth in detail in the attached preliminary and exemplary claim chart provided in **Exhibit E**, the Accused Products include all of the limitations of at least Claim 1 of the '272 Patent and, therefore the Accused Products directly infringe at least Claim 1 of the '272 Patent under 35 U.S.C. § 271(a).

22. BHSD Trading has induced others to infringe and continues to actively induce others to infringe at least Claim 1 of the '272 Patent.

23. BHSD Trading's end-user customers, by using the Accused Products, have directly infringed and continue to directly infringe at least Claim 1 of the '272 Patent.

24. Retailers including, for example, Wal-Mart and Amazon.com, have directly infringed and continue to directly infringe at least Claim 1 of the '272 Patent by selling and offering to sell the Accused Products in their retail locations and/or on their websites.

25. Upon information and belief, BHSD Trading had knowledge of the '272 Patent since at least its issuance on February 28, 2017 due to the massive popularity of Telebrand's POCKET HOSE® hose and previous patent litigations regarding family members of the '272 Patent against other manufacturers of similarly infringing expandable hoses. Upon information and belief, as part of a customary due diligence before entering the expandable hose market, BHSD Trading should have and likely did review patents covering expandable hoses and should have and likely did review the '272 Patent prior to the filing of this Complaint. Therefore, BHSD Trading should have known, and has known, that selling, offering to sell, and importing into the United States the Accused Products would cause direct infringement of the '272 Patent.

26. Despite having knowledge of the '272 Patent since at least its issuance, BHSD Trading has sold, offered to sell, and promoted the Accused Products with specific intent to encourage and cause infringement of the '272 Patent by customers and retailers.

27. Upon information and belief, BHSD Trading has actively induced others and continues to actively induce others to infringe the '272 Patent by marketing, offering for sale, and selling the Accused Products, knowing and intending that such products would be used by end users in a manner that infringes the '272 Patent and knowing that retailers would offer to sell and sell the Accused Products. To that end, BHSD Trading provides instructions and information to its customers and the end users that such Accused Products be used to infringe the '272 Patent (*see, e.g., Exhibit C, Exhibit D, and Exhibit E*).

28. Since at least the date of the issuance of the '272 Patent, BHSD Trading has had actual knowledge of the claims of the '272 Patent, and the fact that the Accused Products infringe one or more of those claims, including through its likely copying of the POCKET HOSE® hose. Upon information and belief, BHSD Trading has taken no steps to remedy any infringement.

29. The aforementioned acts by BHSD Trading constitute induced infringement of the '272 Patent in violation of at least 35 U.S.C. § 271(b).

30. BHSD Trading has contributorily infringed and continues to contributorily infringe at least Claim 1 of the '272 Patent.

31. BHSD Trading has sold and offered to sell the Accused Products to practice the invention claimed in at least Claim 1 of the '272 Patent, and has done so with knowledge that the Accused Products are especially made or adapted for use in an infringement of the '272 Patent. *See Exhibit C, Exhibit D, and Exhibit E.*

32. BHSD Trading's Accused Products are not staple articles of commerce suitable for substantial non-infringing use. They are assembled from manufactured components for a specific function having no purpose other than infringement of the '272 Patent.

33. The aforementioned acts by BHSD Trading constitute contributory infringement of the '272 Patent in violation of at least 35 U.S.C. § 271(c).

34. Telebrands has been and continues to be damaged by BHSD Trading's infringement of the '272 Patent, has been and continues to be irreparably harmed by that infringement, and will suffer additional damages and irreparable harm unless this Court enjoins BHSD Trading from further infringement.

35. Due to BHSD Trading's past and ongoing infringement of the '272 Patent, Telebrands is entitled to monetary damages in an amount to be determined at trial, which may include lost profits but in no event less than a reasonable royalty.

36. BHSD Trading's infringement of at least Claim 1 of the '272 Patent has been and continues to be willful and deliberate. As a result, Telebrands is entitled to increased damages pursuant to 35 U.S.C. § 284, and to attorneys' fees and costs incurred in prosecuting this action pursuant to 35 U.S.C. § 285.

COUNT II
(INFRINGEMENT OF THE '870 PATENT)

37. Telebrands repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 36 as if set forth herein in their entirety.

38. BHSD Trading has directly infringed and continues to directly infringe, either literally or under the doctrine of equivalents, at least Claim 1 of the '870 Patent by making,

using, offering for sale, and/or selling within the United States, and/or importing into the United States the Accused Products in violation of 35 U.S.C. § 271(a).

39. For example, as set forth in detail in the attached preliminary and exemplary claim chart provided in **Exhibit F**, the Accused Products include all of the limitations of at least Claim 1 of the '870 Patent and, therefore the Accused Products directly infringe at least Claim 1 of the '870 Patent under 35 U.S.C. § 271(a).

40. BHSD Trading has induced others to infringe and continues to actively induce others to infringe at least Claim 1 of the '870 Patent.

41. BHSD Trading's end-user customers, by using the Accused Products, have directly infringed and continue to directly infringe at least Claim 1 of the '870 Patent.

42. Retailers including, for example, Wal-Mart and Amazon.com, have directly infringed and continue to directly infringe at least Claim 1 of the '870 Patent by selling and offering to sell the Accused Products in their retail locations and/or on their websites.

43. Upon information and belief, BHSD Trading had knowledge of the '870 Patent since at least its issuance on January 8, 2019 due to the massive popularity of Telebrand's POCKET HOSE® hose and previous patent litigations regarding family members of the '870 Patent against other manufacturers of similarly infringing expandable hoses. Upon information and belief, as part of a customary due diligence before entering the expandable hose market, BHSD Trading should have and likely did review patents covering expandable hoses and should have and likely did review the '870 Patent prior to the filing of this Complaint. Therefore, BHSD Trading should have known, and has known, that selling, offering to sell, and importing into the United States the Accused Products would cause direct infringement of the '870 Patent.

44. Despite having knowledge of the '870 Patent since at least its issuance, BHSD Trading has sold, offered to sell, and promoted the Accused Products with specific intent to encourage and cause infringement of the '870 Patent by customers and retailers.

45. Upon information and belief, BHSD Trading has actively induced others and continues to actively induce others to infringe the '870 Patent by marketing, offering for sale, and selling the Accused Products, knowing and intending that such products would be used by end users in a manner that infringes the '870 Patent and knowing that retailers would offer to sell and sell the Accused Products. To that end, BHSD Trading provides instructions and information to its customers and the end users that such Accused Products be used to infringe the '870 Patent (*see, e.g., Exhibit C, Exhibit D and Exhibit F*).

46. Since at least the date of the issuance of the '870 Patent, BHSD Trading has had actual knowledge of the claims of the '870 Patent, and the fact that the Accused Products infringe one or more of those claims, including through its likely copying of the POCKET HOSE® hose. Upon information and belief, BHSD Trading has taken no steps to remedy any infringement.

47. The aforementioned acts by BHSD Trading constitute induced infringement of the '870 Patent in violation of at least 35 U.S.C. § 271(b).

48. BHSD Trading has contributorily infringed and continues to contributorily infringe at least Claim 1 of the '870 Patent.

49. BHSD Trading has sold and offered to sell the Accused Products to practice the invention claimed in at least Claim 1 of the '870 Patent, and has done so with knowledge that the Accused Products are especially made or adapted for use in an infringement of the '870 Patent. *See Exhibit C, Exhibit D, and Exhibit F.*

50. BHSD Trading's Accused Products are not staple articles of commerce suitable for substantial non-infringing use. They are assembled from manufactured components for a specific function having no purpose other than infringement of the '870 Patent.

51. The aforementioned acts by BHSD Trading constitute contributory infringement of the '870 Patent in violation of at least 35 U.S.C. § 271(c).

52. Telebrands has been and continues to be damaged by BHSD Trading's infringement of the '870 Patent, has been and continues to be irreparably harmed by that infringement, and will suffer additional damages and irreparable harm unless this Court enjoins BHSD Trading from further infringement.

53. Due to BHSD Trading's past and ongoing infringement of the '870 Patent, Telebrands is entitled to monetary damages in an amount to be determined at trial, which may include lost profits but in no event less than a reasonable royalty.

54. BHSD Trading's infringement of at least Claim 1 of the '870 Patent has been and continues to be willful and deliberate. As a result, Telebrands is entitled to increased damages pursuant to 35 U.S.C. § 284, and to attorneys' fees and costs incurred in prosecuting this action pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Telebrands prays that this Court enter judgment as follows:

- A. that BHSD Trading has infringed and is infringing each of the '272 Patent and the '870 Patent;
- B. that such infringement was and is willful;
- C. preliminarily and permanently enjoining BHSD Trading, its principal, officers, directors, agents, servants, employees, affiliates, successors and assigns, dealers, retailers,

distributors, manufacturers, and all others in active concert and/or participation with BHSD Trading, from infringing the '272 Patent and the '870 Patent, pursuant to 35 U.S.C. § 283;

D. awarding Telebrands damages for BHSD Trading's direct and indirect infringement of both the '272 Patent and the '870 Patent, in an amount to be ascertained at trial, including at least a reasonable royalty and/or BHSD Trading's lost profits, together with interest and costs, pursuant to U.S.C. § 284;

E. trebling the amount of damages for BHSD Trading's infringement of both the '272 Patent and the '870 Patent, pursuant to U.S.C. § 284;

F. finding the case exceptional and awarding Telebrands reasonable attorneys' fees, pursuant to U.S.C. § 285; and

G. granting Telebrands such other and further relief in law or in equity as this Court deems just or proper.

DEMAND FOR JURY TRIAL

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

DATED: February 17, 2023

Respectfully submitted,

KELLEY DRYE & WARREN LLP

/s/ Neil M. Merkl

Neil M. Merkl (Admitted in N.D.N.Y.)

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