

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

<p>LUV N' CARE, LTD., <i>Plaintiff,</i></p> <p>vs.</p> <p>NUMNUM, LLC., <i>Defendant</i></p>	<p>Civil Action No.: 3:23-cv-279</p> <p>Judge</p> <p>Magistrate Judge</p> <p>JURY TRIAL DEMANDED</p>
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**ACTION FOR PATENT DECLARATORY JUDGMENT,
UNFAIR COMPETITION AND FRAUD**

Plaintiff, Luv n' Care, Ltd (LNC) by this complaint against NumNum, LLC (Num) seeks a declaratory judgment that LNC does not infringe any valid claim of Num's United States Utility Patent No. 11,452,407 ('407 Patent) or Num's United States Design Patent No. D800,515 ('515 Patent).

THE PARTIES

1. Plaintiff LNC is a corporation organized and existing under the laws of the State of Louisiana with its principal place of business at 3030 Aurora Avenue, Monroe, Louisiana 71201.
2. Upon information and belief, Defendant Num is a limited liability company organized and existing under the laws of Georgia having a principal place of business at 448 N. LaSalle Drive, Floor 9, Chicago Illinois 60654.

NATURE OF THE ACTION, JURISDICTION AND VENUE

3. This is a civil action under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) and Patent Laws (35 U.S.C. §§ 100 et seq.) of the United States seeking a declaratory judgment that LNC does not infringe any valid claim of Num's '407 Patent or '515 Patent.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201 and 2202 in that this action arises under the Declaratory Judgment Act and Patent laws of the United States, 28 U.S.C. §§ 2201 & 2202 and 35 U.S.C. §§ 100 et seq., and the state law claims fall within the Court's supplemental jurisdiction.

5. This Court has personal jurisdiction over the Defendant Num who has threatened and charged Plaintiff with patent infringement within this Judicial District thus giving rise to Plaintiff's claims that arise in whole or in part out of Defendant Num's purposeful and intentional conduct in Louisiana and this Judicial District.

6. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in, and a substantial part of the property that is the subject of this action is situated in Ouachita Parish, Louisiana, and this Judicial District.

STATEMENT OF FACTS

7. LNC has been in business for many years as a distributor of innovative, high quality, attractive and effective infant care products.

8. One of the products sold by LNC is the dipper spoon.

9. On October 17, 2022, LNC received a letter from counsel for Num accusing LNC's dipper spoons of infringing Num's '407 and '515 Patents.

10. Num claims to be the owner of all right, title, and interest in and to the '407 and '515 Patents.

11. LNC vigorously denied that LNC's dipper spoons infringed any valid claim of Num's patents and so informed Num's counsel creating an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

12. In an effort to avoid unnecessary litigation, and notwithstanding the denial of Num's infringement charges, LNC nevertheless proposed to change the design of its dipper spoons to avoid any infringement claim more clearly.

13. Over the course of several months, LNC created a number of new non-infringing dipper spoon designs and disclosed those designs to Num's counsel. Num refused to concede that any of LNC's new designs were non-infringing and continued to accuse LNC of infringement.

14. LNC informed Num that LNC was planning to sell its new dipper spoon designs.

15. One of the retail outlets where LNC sells its dipper spoons is Amazon.com.

16. On or about February 8, 2023, Num caused Amazon.com to remove or "take down" LNC's dipper spoons from the Amazon.com marketplace. Amazon.com informed LNC that the take down was based on Num's utility '407 Patent.

17. Num's '407 Utility Patent is directed to a Food Delivery Apparatus, a spoon, and all claims require, among other elements, a **rounded** handle, a food end (to enter into a person's mouth) consisting of an exterior edge and a **non-concave** surface having interior arms, wherein the arms in combination with portions of the non-concave surface together define a food retaining edge, wherein the food retaining edge defines a **hole**. Key elements of all claims are a rounded handle, a non-concave surface and a hole.

18. LNC's new dipper spoons all have flat, not rounded, handles, have concave and convex surfaces, and do not include holes in those surfaces. LNC expressly informed Num of its new non-infringing designs. LNC's new dipper spoons do not infringe Num's '407 Patent.

19. Num's '515 Design Patent also requires a flat surface with very specifically shaped holes.

20. No LNC dipper spoon includes any of the specific shapes disclosed in Num's '515 Patent. LNC's new dipper spoon designs all have concave and convex surfaces and do not include holes. No LNC dipper spoon infringes Num's '515 Patent.

21. Despite having express knowledge of LNC's new non-infringing dipper spoon designs, Num continues to threaten and charge LNC with patent infringement.

22. LNC informed Amazon.com that it would no longer sell or offer to sell the dipper spoons that were subject to the take down and was substituting the new non-infringing designs.

23. Despite Num's knowledge that LNC's new dipper spoon designs did not infringe either of Num's patents, Num continues to falsely claim to Amazon.com that LNC's new dipper spoon designs infringe Num's patents.

24. As a direct result of Num's false and malicious claims, LNC has suffered pecuniary injury and injury to its reputation.

25. Based on the foregoing, a justiciable controversy exists between LNC and Num as to whether LNC's dipper spoons infringe any valid claim of Num's '407 and '515 Patents.

26. Absent a declaration of non-infringement and invalidity, Num will continue to wrongfully allege that LNC infringes Num's '407 and '515 Patents, and thereby cause LNC continued irreparable injury and damage.

COUNT I – DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT

27. LNC incorporates by reference, as if fully rewritten herein, the facts and allegations set forth in the foregoing and following paragraphs.

28. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement.

29. A judicial declaration is necessary and appropriate so that LNC may ascertain its rights regarding its dipper spoon products and the '407 and '515 Patents.

30. LNC is entitled to a declaratory judgment that LNC has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claims of the '407 and '515 Patents under 35 U.S.C. § 271.

COUNT II – DECLARATORY JUDGMENT OF PATENT INVALIDITY

31. LNC incorporates by reference, as if fully rewritten herein, the facts and allegations set forth in the foregoing and following paragraphs.

32. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of invalidity.

33. A judicial declaration is necessary and appropriate so that LNC may ascertain its rights regarding the validity of Num's '407 and '515 Patents and cause Num to cease its wrongful, deliberate, and malicious interference with LNC's ongoing business relationship with Amazon.com.

34. Num's unreasonable interpretation of the scope of the claims of the '407 and '515 Patents renders them invalid under one or more provisions of 35 U.S.C. §§ 102, 103 and 112.

COUNT III – UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (LSA-R.S. 51:1401 ET SEQ.)

35. LNC incorporates by reference, as if fully rewritten herein, the facts and allegations set forth in the foregoing and following paragraphs.

36. LSA-R.S. 51:1405 prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

37. LSA-R.S. 51:1409 provides that “any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal, as a result of the use or employment by another person of an unfair or deceptive method, act, or practice declared unlawful by LSA-R.S. 51:1405, may bring an action individually but not in a representative capacity to recover actual damages.”

38. As a result of the acts described in the preceding paragraphs, Defendant Num is in violation of LSA-R.S. 51:1405.

39. LNC and Num are competitors in the dipper spoon business and are engaged in commerce.

40. Num made statements to Amazon.com asserting that LNC’s new dipper spoon designs infringed one or more of Num’s ‘407 and ‘515 Patents. Those statements constituted statements and assertions of material facts and were made in the conduct of Num’s trade and commerce.

41. At the time Num made those statements and assertions to Amazon.com, Num knew or should have known that LNC’s new dipper spoon designs did not infringe any valid claim of Num’s ‘407 and ‘515 Patents. Num’s statements and assertions to Amazon.com were false, without merit, and made in bad faith for the specific purpose of injuring LNC’s business by diverting sales of dipper spoons from LNC to Num.

42. Num’s intentional submission of false statements and assertions to Amazon.com, knowing that those statement were false, constitutes and unfair and deceptive method, act and practice declared unlawful within the meaning of LSA-R.S. 51:1405.

43. LNC has been injured, damaged, and suffered an ascertainable loss of money as a direct result of Num’s false statements and assertions in violation of LSA-R.S. 51:1405.

COUNT IV – LOUISIANA FRAUD
(LA. C.C. ART. 1953)

44. LNC incorporates by reference, as if fully rewritten herein, the facts and allegations set forth in the foregoing and following paragraphs.

45. La. C.C. art. 1953 defines fraud as a “misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.” The essential elements of intentional misrepresentation” are “(1) a misrepresentation of material fact, (2) made with the intent to deceive, (3) causing justifiable reliance with resulting injury.” *Sys. Eng'g & Sec., Inc. v. Sci. & Eng'g Ass'ns, Inc.*, 2006-0974, p. 3 (La. App. 4 Cir. 6/20/07), 962 So.2d 1089, 1091 (quoting *Goodman v. Dell Publishing Co.*, 1995 WL 428602 (E.D. La.1995)).

46. As a result of the acts described in the preceding paragraphs, Num has committed fraud by submitting a false accusation to Amazon.com that LNC’s dipper spoons infringed Num’s patents causing Amazon.com to withdraw LNC’s dipper spoons from its website.

47. Num further made statements to Amazon.com asserting that LNC’s new dipper spoon designs infringed one or more of Num’s '407 and '515 Patents. Those statements constituted statements and assertions of material facts and were made with the knowledge that they were false and with the intention that Amazon.com would rely on those statements and assertions and continue to withhold LNC’s dipper spoon products from Amazon.com’s website.

48. At the time Num made those statements and assertions to Amazon.com, Num knew or should have known that LNC’s new dipper spoon designs did not infringe and valid claim of Num’s '407 and '515 Patents. Num’s statements and assertions to Amazon.com were false, without merit, and made in bad faith constituting fraud within the meaning of La. C.C. art. 1953 for the purpose of injuring LNC’s business by diverting sales of dipper spoons from LNC to Num.

49. Num's intentional submission of false and fraudulent statements and assertions to Amazon.com, knowing that those statement were false and fraudulent, constitutes fraud within the meaning of La. C.C. art. 1953.

50. LNC has been injured, damaged, and suffered an ascertainable loss of money as a direct result of Num's fraud in violation of La. C.C. art. 1953.

DEMAND FOR JURY TRIAL AND REQUEST FOR RELIEF

Plaintiffs request a jury trial as to all issues upon which it is entitled to a jury trial. **WHEREFORE**, based on the foregoing, Plaintiff respectfully requests that after due proceedings, there be a judgment in its favor and against Defendant Num as follows:

- A. For judgment that Plaintiff LNC has not infringed and is not presently infringing, either directly or indirectly, any valid and enforceable claim of Defendant Num's the '407 and '515 Patents, in violation of 35 U.S.C. § 271;
- B. Adjudging that each of the claims of Defendant Num's '407 and '515 Patents is invalid;
- C. A judgment that Defendant Num and each of its members, managers, agents, counsel, servants, employees, and all of persons in active concert or participation with any of them, be restrained and enjoined from alleging, representing, or otherwise stating that Plaintiff LNC infringes any claims of Num's the '407 and '515 Patents or from instituting or initiating any action or proceeding alleging infringement of any claims of Num's the '407 and '515 Patents against LNC, or any customers, manufacturers, users, importers, or sellers of LNC's dipper spoons;

- D. Declaring Plaintiff LNC as the prevailing party and this case as exceptional, and awarding LNC its reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;
- E. For judgment that Defendant Num's actions constitute unfair trade practices and fraud under Louisiana law and awarding Plaintiff LNC its damages;
- F. For judgment awarding Plaintiff LNC its reasonable attorneys' fees, costs, and expenses incurred in this action; and
- G. For judgment awarding such other and further relief to which Plaintiff LNC is entitled or the Court may deem just and proper.

Respectfully submitted this 1st day of March 2023.

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