

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GOOD SPORTSMAN
MARKETING, LLC
Plaintiff,

vs.

RUGGED CROSS HUNTING
BLINDS, LLC

Defendant.

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CASE NO. 4:23-cv-3243

JURY DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Good Sportsman Marketing, LLC (“GSM”) seeks a declaratory judgment that two patents owned by Rugged Cross Hunting Blinds, LLC (“Rugged”) are not infringed and are invalid.

NATURE OF THE ACTION

1. This is an action for declaratory judgment arising under the patent laws of the United States, Title 35 of the United States Code. GSM seeks a declaratory judgment that two patents are non-infringed and are invalid: 11,399,535 (“the ’535 Patent”) (Exhibit A) and United States Patent No. 10,765,108 (“the ’108 Patent”) (Exhibit B), collectively the “Asserted Patents.”

PARTIES

2. Plaintiff GSM is a company organized and doing business under the laws of Delaware with currently headquartered in Irving, Texas, with prior headquarters in Grand Prairie Texas. Plaintiff sells, advertises, and markets its products nationwide through major retailers such as Amazon, Academy Sports and Outdoors, Bass Pro Shops, Cabela’s, Dick’s Sporting Goods, Home Depot, MidwayUSA, Range USA, Sam’s Club, Sportco, Sportsman’s

Warehouse, and Walmart among others as well as through its own websites (<https://www.walkersgameear.com>). GSM sells a variety of products for outdoor use and recreation. Relevant for this dispute are two brands of ground hunting blinds GSM sells, Muddy and Ameristep. Hunting blinds are shelters used by hunters to prevent animals from detecting the hunters. They come in a variety of shapes, sizes, and colors.

3. Upon information and belief, Defendant Rugged Cross Hunting Blinds, LLC (“Rugged”) is a limited liability company organized and existing under the laws of the State of Florida with a principal place of business at 15206 Tilwood Place, Tampa, FL 33618.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the patent laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction over this action pursuant to 35 USC § 271 *et seq.* and 28 USC §§ 1331, 1338, and 2201-2202. The Court has supplemental jurisdiction over the Texas state law claims because they are within the same case or controversy pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Rugged because it has minimum contacts with Texas and with GSM, a Texas entity, related to its enforcement of the ’108 Patent and ’535 Patent. Specifically, over the last three years, Rugged and GSM have exchanged numerous communications related to Rugged’s attempted enforcement of these patents against GSM, based on Rugged’s allegations that several of GSM’s hunting blinds infringe the patents. These communications constitute an ongoing, arms-length negotiation between the parties related to the patents. In several letters, Rugged attempted to extract a license agreement from GSM, and indicated it was taking the same approach with other alleged infringers. As will be

detailed below, Rugged's first communication was sent to GSM since late 2020. Following that communication, every few months, Rugged has asserted additional patents/patent applications against GSM and/or accused additional GSM products of infringing Rugged's intellectual property, further accumulating contacts with Texas.

7. On August 6, 2020, Rugged sent GSM a cease-and-desist letter, asserting that GSM's Muddy hunting blind used a mesh material that was covered by United States Patent Application No. 15/444,909, which application had been allowed but had not yet issued into a patent. The application later issued as the '108 Patent.

8. On October 1, 2020, GSM's counsel responded to this letter, asserting that the '108 Patent was not infringed and was also invalid as indefinite.

9. On August 29, 2022, Rugged again sent GSM a cease-and-desist letter, this time asserting that four of GSM's Muddy brand hunting blinds were infringing the '535 Patent, in addition to the '108 Patent. In this letter, Rugged offered, in the alternative, to license the patents to GSM and also identified related patent applications that were pending.

10. On September 23, 2022, GSM responded to the August 7, 2022 letter in substantial detail, arguing that none of GSM's Muddy brand blinds infringed the Asserted Patents and also arguing that the Asserted Patents are invalid.

11. On October 10, 2022, Rugged responded to GSM's August 27, 2022 letter, maintaining its infringement and non-invalidity positions. In that letter, Rugged stated as follows:

RCHB remains confident in its claim for patent infringement against your client and is confident that its patents are valid and enforceable. I am also aware of the post grant proceedings available at the USPTO. In fact, this past year our firm successfully defended one of our client's patents in an IPR through final judgment, which was not appealed. **At this point, RCHB has no choice but to file suit against suppliers that are not willing discuss, for example, a licensing arrangement. RCHB obviously prefers the licensing**

route to litigation. RCHB is currently discussing licensing deals with other suppliers and is willing and prefers to talk to GSM. To be sure, however, RCHB is prepared to litigate its patents either in federal court or before the USPTO.

12. GSM responded to the October 10, 2022 letter on November 10, 2022. GSM's 16 page letter further detailed how GSM's products did not infringe and how the '535 Patent was invalid.

13. On November 28, 2022, Rugged sent yet another letter, reiterating its position, and concluding with:

Inasmuch as RCHB has two (2) pending continuation applications, it seems as though GSM is putting off the inevitable. Unless GSM and/or Walmart wants to discuss a licensing arrangement, RCHB does not see the point of the parties going back and forth making these arguments. Now that we both know our positions on these issues, we are better off litigating these issues. If GSM wants to resolve this matter via a licensing arrangement, then contact me. RCHB is prepared to offer a license grant with a reasonable royalty, a favored nation clause and a mutual release.

14. On May 19, 2023, Rugged sent GSM yet another cease-and-desist letter, this time alleging that a wholly separate line of hunting blinds, i.e. the Ameristep line, was also infringing the '535 Patent. Rugged again offered GSM a license, in lieu of GSM ceasing sales of the accused blinds.

15. On June 20, 2023, GSM sent Rugged a 17-page response detailing how the Ameristep blinds were non-infringing and again arguing that the '535 Patent was invalid. Rugged again responded with an offer to license and threatened suit in the alternative.

16. Venue is proper in this district pursuant to 28 USC §§ 1391(b). *See VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583-84 (Fed. Cir. 1990).

FACTUAL BACKGROUND

17. Based on its face, the '108 Patent is titled "Camouflage Material for a Hunting Blind" and issued on September 8, 2020. Rugged is identified as the sole assignee of the '108 Patent.

18. Based on its face, the '535 Patent is titled "Camouflage Material, for a Hunting Blind" and issued on August 2, 2022. Rugged is identified as the sole assignee of the '535 Patent.

19. As detailed above, Rugged has accused GSM's Muddy brand hunting blinds and Ameristep brand hunting blinds of infringing the Asserted Patents.

20. Additionally, on September 27, 2022, Rugged sent a letter to Walmart alleging that the Muddy blinds were infringing the '535 Patent and demanding that Walmart remove these products from its online and physical stores. Exhibit C. In response, Walmart demanded an indemnification from GSM.

21. Most recently, on August 24, 2023, Rugged sent a letter to Bass Pro Shops, another retailer of GSM products, demanding that Bass Pro Shops remove the accused GSM products from its website and physical stores. Bass Pro Shops also demanded an indemnification from GSM. Exhibit D.

22. Additionally, Rugged sued Feradyne Outdoors, LLC for infringement of the '535 Patent on December 5, 2022, in the United States District Court for the Western District of Wisconsin, where Feradyne has a principal place of business. Rugged has also subpoenaed GSM for documents related to that lawsuit.

23. While Rugged has offered to license its patents to GSM, Rugged's most recent communications make clear that the parties will be unable to resolve this dispute and that Rugged intends to sue GSM in federal court.

24. Given that Rugged has already sued one alleged infringer on the '535 Patent and has expressed an intent to sue GSM, there exists a justiciable case and controversy between the parties based on Rugged's accusation of infringement by GSM.

25. Additionally, in light of the cease and desist letters to GSM's customers, there exists a justiciable case and controversy between the parties based on Rugged's accusation of infringement by GSM's customers who are selling GSM's products.

COUNT I
DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE ASSERTED PATENTS

26. GSM repeats and realleges each allegation contained in the foregoing paragraphs as if fully set forth herein.

27. Upon information and belief, Rugged owns rights, title, and interest in the Asserted Patents.

28. Rugged has, in the various communications identified above, accused GSM of infringing Rugged's patents. Thus, an actual, substantial controversy exists between GSM and Rugged concerning GSM's non-infringement of the Asserted Patents.

29. GSM does not infringe, and has not infringed, any valid and enforceable claim of the Asserted Patents literally, under the doctrine of equivalents, directly, indirectly, contributorily, by way of inducement, and/or via any other mechanism of liability under the Patent Act.

30. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., GSM is entitled to a declaration that the asserted claims of the Asserted Patents are not, and have not been, infringed by GSM or, with respect to GSM's products, by customers of GSM.

31. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving the claims of infringement made by Rugged.

COUNT II
(DECLARATORY JUDGMENT OF INVALIDITY OF THE ASSERTED PATENTS)

32. GSM repeats and realleges each allegation contained in the foregoing paragraphs as if fully set forth herein.

33. One or more claims of the Asserted Patents are invalid or void for failing to satisfy one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, including without limitation, for example, sections 101, 102, 103, and/or 112.

34. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., GSM is entitled to a declaration that the claims of the Asserted Patents are invalid.

35. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving the claims of infringement made by Rugged.

COUNT III
(TORTIOUS INTERFERENCE WITH CONTRACT)

36. GSM repeats and realleges each allegation contained in the foregoing paragraphs as if fully set forth herein.

37. GSM has existing contractual relationships with Walmart and Bass Pro Shops whereby these retailers sell GSM's products on their websites and physical stores, nationwide.

38. Rugged is aware of these relationships, as evidenced by the notices Rugged sent to the retailers. By sending demand letters to GSM's retailers, Rugged has knowingly and intentionally interfered with GSM's contracts and relationships with its retailers.

39. Rugged's cease and desist letters to GSM's retailers has resulted in GSM's products being removed from stores nationwide. As a result of Rugged's tortious interference, GSM is losing sales daily.

40. As a result of Rugged's tortious interference, GSM has been damaged in an amount to be determined at trial.

DEMAND FOR JURY TRIAL

41. GSM demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

GSM respectfully requests that this Court enter a judgment in its favor and grant the following relief:

- A. An order declaring that Rugged take nothing.
- B. A declaratory judgment that GSM does not infringe any claims of the Asserted Patents.
- C. A declaratory judgment that the Asserted Patents are invalid.
- D. A judgment that Rugged has tortiously interfered with GSM's contracts with Walmart and Bass Pro Shops and an award of damages as a result of Rugged's tortious interference.
- E. An order finding that this is an exceptional case and an award to GSM of all remedies available under 35 USC § 285, including costs and reasonable attorneys' fees; and

F. An award to GSM of all such other and further relief as this Court or a jury may deem proper and just.

Dated: August 31, 2023

Respectfully submitted,

/s/ J. David Cabello

J. David Cabello

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