

**UNITED STATES DISTRICT COURT
COLORADO DISTRICT COURT
DENVER DIVISION**

CASE NO.: 1:24-cv-03348

VPR BRANDS, LP,

Plaintiff,

v.

O.PEN VAPE LLC,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff VPR BRANDS, LP by and through its undersigned counsel, brings this Complaint against Defendant O.PEN VAPE LLC for Patent Infringement, and in support, alleges as follows:

NATURE OF THE LAWSUIT

1. This action is for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, et seq., to enjoin and obtain damages resulting from defendant's unauthorized manufacture, use, sale, offer to sell and/or importation into the United States for subsequent use or sale of products, methods, processes, services and/or systems that infringe one or more claims of United States Patent Number 8,205,622 entitled "Electronic Cigarette." Plaintiff seeks injunctive relief to prevent defendant from continuing to infringe plaintiff's patent and recovery of monetary damages resulting from defendant's past infringement of the patent.

JURISDICTION AND VENUE

2. This Court has original and exclusive subject matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1338(a); and 35 U.S.C. § 271.

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3. This Court has personal jurisdiction over the Defendant.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391(b)(3) because Defendant has committed acts of infringement and is subject to personal jurisdiction within this judicial district and division.

THE PARTIES

5. Plaintiff, VPR Brands, LP (“VPR”), is a Delaware limited partnership authorized to do business in Florida with a principal place of business at 3001 Griffin Road, Fort Lauderdale, FL 33312.

6. Defendant O.pen Vape LLC (“O.pen”) is a Colorado Limited Liability Company, with its principal place of business at 1058 Delaware Street, Denver, Colorado, 80204 and can be served by serving its registered agent at Timothy Patrick Cullen, at 1178 S. Kalamath Street, Denver, CO 80223.

FACTS

7. VPR is a technology company whose assets include issued U.S. and Chinese patents for atomization-related products, including technology for medical marijuana oil vaporizers, dab pen and flower vaporizer products and components.

8. VPR is engaged in product development for the vapor or vaping market, including e-liquids, vaporizers and electronic cigarettes (also known as e-cigarettes) which are devices which deliver nicotine and or cannabis and cannabidiol (CBD) through atomization or vaping, and without smoke and other chemical constituents typically found in traditional products.

9. VPR is a vaping market leader specializing in vaporizers and accessories for essential oils, cannabis concentrates and extracts (CBD), as well as electronic cigarettes containing nicotine.

10. VPR owns all right, title and interests in, and/or has standing to sue for infringement of United States Patent Number 8,205,622 (the '622 Patent) entitled "Electronic Cigarette." A copy of the '622 Patent is attached hereto as Exhibit 1.

11. The '622 Patent discloses an electronic cigarette consisting of an electronic inhaler and an electronic atomizer.

12. The electronic inhaler contains a rechargeable or non-rechargeable power source such as a battery, which supplies electric power to the electronic inhaler. In addition to the power source, the inhaler also includes an electric airflow sensor to detect air movement generated by a user's inhaling or puffing act. The sensor's role is to collect an airflow signal that triggers the electronic cigarette to supply electric power to the inhaler and atomizer connected through an electric connector.

13. Inside the electronic atomizer are an electric connector, electric heating wire, liquid container, and atomizer cap with an air-puffing hole. The user inhales through the air puffing hole at an end of the electronic cigarette to create an air inflow, which triggers the atomization process that converts a solution to a gas emulating the smoking process.

DEFENDANT'S PRODUCT

14. O.Pen uses, imports, offers for sale, distributes and sells one or more electronic cigarette products that practice all the steps of at least one claim of the '622 Patent.

15. One of O.Pen's electronic cigarette products is known as O.pen 3.0 conceal ("Conceal"). Attached hereto as Exhibit 2 for illustration only is a claim chart demonstrating that Conceal infringes Claim 13 of the '622 Patent.

16. O.Pen's Conceal is an electronic cigarette that contains a rechargeable battery that functions as a power source that supplies electric power to an electronic inhaler. In addition to

the power source, the inhaler also includes an electric airflow sensor to detect air movement generated by a user's inhaling or puffing act.

17. The Conceal also contains an electronic atomizer with an electric connector, electric heating wire, liquid container, and atomizer cap with an air-puffing hole.

18. The user inhales through the air puffing hole at an end of the Conceal to create an air inflow, which triggers the atomization process that converts a solution to a gas emulating the smoking process.

19. O.Pen's electronic cigarette products also include different versions of rechargeable batteries, including O.pen Mushroom Garden and 1.0 Auto-Draw 510-Thread Battery (collectively "O.Pen's Batteries"), and different versions of atomizers sold in the cartridge category ("Cartridges").

20. O.Pen's Batteries function as a power source that supplies electric power to an electronic inhaler. These rechargeable batteries also include an electric airflow sensor to detect air movement generated by a user's inhaling or puffing act.

21. O.Pen's Batteries are designed, marketed, and sold exclusively for use with O.Pen's Cartridges. The Batteries have no end-user function without Cartridges.

22. O.Pen's Cartridges are required to use the Batteries and are electronic atomizers with an electric connector, electric heating wire, liquid container, and atomizer cap with an air-puffing hole.

23. O.Pen's batteries cannot be used without a Cartridge (electronic atomizer).

24. In combination with the Battery and Cartridge as an electronic cigarette, a user inhales through the air puffing hole at the end of the electronic cigarette to create an air inflow,

which triggers the atomization process that converts a solution to a gas emulating the smoking process.

25. The electronic cigarette products that O.pen uses, imports, offers for sale, distributes, and sells, including but not limited to the Conceal, Batteries, and Cartridges products, infringe one or more claims of the '622 Patent.

26. O.Pen also uses, imports, offers for sale, distributes and sells electronic cigarette products under other brand names that are substantially similar to the Conceal product, function in the same way as the Conceal product, and infringe one or more claims of the '622 Patent.

27. Plaintiff has been irreparably harmed by O.Pen's infringement of VPR's valuable patent rights.

28. O.Pen's unauthorized, infringing use of VPR's patented electronic cigarette has threatened the value of their intellectual property because O.Pen's conduct results in VPR's loss of its lawful patent rights to exclude others from importing, making, using, selling, offering to sell and/or importing the patented inventions.

29. O.Pen's disregard for VPR's property rights similarly threatens VPR's relationships with potential licensees of this intellectual property.

30. O.Pen will derive a competitive advantage from using VPR's patented technology without paying compensation for such use.

31. Unless and until O.Pen's continued acts of infringement are enjoined, VPR will suffer further irreparable harm for which there is no adequate remedy at law

COUNT I

DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,205,622

32. VPR realleges paragraphs 1 through 31 of this Complaint, as fully and completely as if set forth verbatim herein.

33. Within the six years preceding the filing of this Complaint, Defendant has directly infringed at least one claim of U.S. Patent No. 8,205,622 by the activities referred to in this Complaint in violation of 35 U.S.C. § 271(a).

34. Without limiting the foregoing, Defendant has infringed at least claim 13 of the ‘622 Patent.

35. Defendant’s activities alleged in this Count have been without license, permission, or authorization from VPR.

36. The activities of Defendant as set forth in this Count, have been to the injury, detriment, and irreparable harm to VPR.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff VPR BRANDS, LP demands judgment and relief against Defendant O.pen Vape LLC and respectfully requests that the Court:

- A. An entry of judgment holding that Defendant has infringed and is infringing the ‘794 Patent;
- B. For an accounting and an award of damages sufficient to compensate VPR for the infringement in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284;
- C. A determination that Defendant’s infringement has been willful, wanton, and deliberate and that the damages against it be increased up to treble on this basis or for any other basis in accordance with the law;
- D. A finding that this case is an exceptional case under 35 U.S.C. § 284 and an award to VPR of its costs and reasonable attorneys’ fees as provided by 35 U.S.C. § 285;

- E. An accounting of all infringing sales and revenues, together with post judgment interest and prejudgment interest from the first date of infringement of the '794 Patent; and
- F. That VPR is entitled to such other and further relief as to the Court appears just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: December 3, 2024

Respectfully submitted,

/s/ Sangheon Han
SANGHEON HAN
Bar Number: 3887802 (TXSD)
sangheon.han@sriplaw.com

SRIPLAW, P. A.
4900 Travis Street Suite 212
Houston, TX 77002
281.417.0850 – Telephone
561.404.4353 – Facsimile

Counsel for Plaintiff VPR Brands, LP