

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Steel City Enterprises Inc,

Plaintiff,

v.

The Individuals, Corporations, Limited
Liability Companies, Partnerships, and
Unincorporated Associations Identified on the
Attached Schedule A,

Defendants.

Case No.: _____

JURY DEMANDED

VERIFIED COMPLAINT

Plaintiff Steel City Enterprises, Inc., by its undersigned attorneys hereby complains of the Individuals, Corporations, Limited Liability Companies, Partnerships, Unincorporated Associations and others identified in the attached Schedule A (“Defendants”), and hereby alleges as follows:

NATURE OF THE CASE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Steel City Enterprises, Inc. (“Steel City”) is a corporation organized under the laws of the State of Pennsylvania with a principal place of business located at 9 Maple Lane, Pittsburgh, PA 15202.

3. Steel City is the owner, by way of assignment, of U.S. Patent No. D977,973 (the ‘973 Patent).

4. The '973 Patent was issued on February 14, 2023.

5. A true and correct copy of the '973 Patent is attached as Exhibit 1.

6. The '973 Patent discloses and claims a new ornamental design for a plug or cap for large beverage containers. In particular, the ornamental design shown and claimed in the '973 Patent is usable as plug or caps for large water containers intended for use with upright water dispensers.

7. Steel City sells a product that embodies the '973 Patent under its "Jug Plug" line of products. The Jug Plug products are available on Steel City's website (www.jugplug.com) and the amazon.com marketplace. Steel City marks its product listings with the '973 Patent.

8. Steel City has not granted a license or any other form of permission to Defendants that would permit them to offer to sell or sell their infringing products.

9. On information and belief, Defendants are one or more individuals and/or business entities who reside in foreign jurisdictions, primarily the People's Republic of China. Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online marketplaces operating under Defendants' one or more Internet stores. The Defendants have targeted the United States, including Illinois, and have offered to sell, and currently offer to sell, and on information and belief, have sold and continue to sell products that infringe upon Steel City's patent rights to consumers within the United States, including Illinois.

10. In particular, Defendants sell products that infringe upon the '973 Patent through online marketplaces and merchant accounts at least on the websites amazon.com, ebay.com, walmart.com, and aliexpress.com and potentially on their own fully interactive websites.

JURISDICTION AND VENUE

11. On information and belief, Defendants either individually or jointly, operate one or more e-commerce stores or merchant accounts listed in Schedule A attached hereto.

12. On information and belief, Defendants are an interrelated group of infringers working in active concert to knowingly and willfully make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use, products that infringe directly and/or indirectly the '973 Patent in the same transaction, occurrence, or series of transactions or occurrences. For example, Defendants all sell and/or offer for sale the same infringing products with minor variations as well as similar if not identical product images and descriptions. Additionally, Steel City believes, based on information currently known, that the Defendants may be owned, operated, and/or in active concert with Steel City's original manufacturer for its own Jug Plug products.

13. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Steel City to learn Defendants' true identities and the exact interworking of their network. In the event that Defendants provide additional credible information regarding their identities, Steel City will take appropriate steps to amend the Complaint.

14. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 1 *et seq.*, 28 U.S.C. § 1338(a)-(b) (exclusive patent claim jurisdiction), and 28 U.S.C. § 1331 (original federal question jurisdiction).

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet store(s) operating under the Online Marketplace

Accounts identified in Schedule A attached hereto. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet stores through which Illinois residents can purchase products featuring Plaintiff's patented design. Each of the Defendants has targeted sales from Illinois residents by operating one or more online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products featuring Plaintiff's patented design to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

16. Joinder of the Defendants is proper pursuant to 35 U.S.C. § 299 because, as outlined *infra*, Defendants' infringing acts arise out of the same transaction, occurrence, or series of transactions or occurrences related to the making, using, importing in the United States, offering for sale, or selling of the same accused product or process. Additionally, as noted *supra*, on information and belief, Defendants are each owned, operated, and/or are in active concert with the same manufacturer of the infringing products.

DEFENDANTS' INFRINGING ACTS

17. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of online marketplaces and user accounts. On information and belief, Defendants regularly create new online marketplace accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their operation, and to avoid being shut down.

18. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores demonstrating a series of interrelated acts of infringement. The Defendant Internet Stores include notable common features beyond selling the exact same infringing products, including the same or similar product images, the accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, lack of contact information, identically or similarly priced items and volume sales discounts, the same incorrect grammar and misspellings, similar hosting services, and the use of the same text and images, including content copied from Plaintiff's original product listings.

19. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online infringers use a variety of other common tactics to evade enforcement efforts. For example, infringers like Defendants will often register new online marketplace accounts under new aliases once they receive notice of a lawsuit. Infringers also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

20. E-commerce store operators like Defendants are also in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

21. Further, infringers such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of Plaintiff's enforcement efforts, such as take down notices. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds

from their PayPal accounts or other financial accounts to off-shore bank accounts outside the jurisdiction of this Court.

22. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use products that infringe directly and/or indirectly the Patent, and continue to do so via the Defendant Internet Stores. Each Defendant Internet Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Infringing Products into the United States, including Illinois.

23. Defendants' infringement of the '973 Patent in the offering to sell, selling, or importing of the Infringing Products was willful.

24. Defendants' infringement of the '973 Patent in connection with the offering to sell, selling, or importing of the Infringing Products, including the offering for sale and sale of Infringing Products into Illinois, is irreparably harming Plaintiff.

COUNT I - INFRINGEMENT OF UNITED STATES DESIGN PATENT
(35 U.S.C. § 271)

25. Steel City hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

26. As shown infra, Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell infringing products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Steel City, have jointly and severally, knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use the same product that infringes directly and/or indirectly the '973 Patent.

27. As shown in the claim chart attached as Exhibit 2, the product being sold by Defendants incorporates each of the design elements claimed in the '973 Patent. Accordingly, the product being sold by Defendants infringes upon the '973 Patent.

28. Defendants offer for sale, sell, and/or import into the United States for subsequent resale or use Infringing Products that infringe directly and/or indirectly the ornamental design claimed in the Patent.

29. Defendants have infringed the Patent through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendants' wrongful conduct has caused Steel City to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented inventions as well as the lost sales and loss of repeat sales stemming from the infringing acts. Steel City is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

30. Unless a preliminary and permanent injunction is issued enjoining Defendants and all others acting on in active concert therewith from infringing the Patent, Steel City will be greatly and irreparably harmed.

31. Steel City is entitled to recover damages adequate to compensate for the infringement, including Defendants' profits pursuant to 35 U.S.C. § 289. Steel City is entitled to recover any other damages as appropriate pursuant to 35 U.S.C. § 284, in no event less than a reasonable royalty.

32. Defendants' infringement of the '973 Patent in the offering for sale, selling, or importing of products that infringe the '973 Patent has been and continues to be willful.

33. Defendants' infringement of the '973 Patent in connection with the offering to sell, selling, or importing of products that infringe the '973 Patent, including such acts into the State of Illinois, is irreparably harming Steel City.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Steel City Enterprises, Inc. respectfully seeks the following relief against Defendants:

- A. A preliminary and permanent injunction enjoining, restraining and ordering Defendants, and their officers, agents, servants, attorneys, and other persons who are in active concert or participation with them:
 - a. To cease making, using, offering for sale, selling and/or importing into the United States for subsequent sale or use any products that infringe upon U.S. Patent No. D977,973.
 - b. To cease aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon U.S. Patent No. D977,973.
- B. Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms or distributors shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of goods that infringe U.S. Patent No. D977,973.
- C. That Judgment be entered against Defendants finding that they have infringed upon U.S. Patent No. D977,973.

- D. Damages for such infringement in an amount to be proven at trial, including Defendants' profits pursuant to 35 U.S.C. § 289 and any other damages as appropriate under 35 U.S.C. § 284, together with interests and costs.
- E. Judgment awarding Plaintiff treble damages under 35 U.S.C. § 284 for Defendants' infringement of U.S. Patent No. D977,973.
- F. A finding that this case is exceptional under 35 U.S.C. § 285.
- G. Plaintiff's attorney's fees and costs.
- H. Any and all other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

DATE: September 5, 2023

Respectfully submitted,

/s/ Edward L. Bishop
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Counsel for Plaintiff, Steel City Enterprises Inc.

VERIFICATION

I, Brendan Kutcher, hereby certify as follows:

1. I am the Chief Executive Officer for Steel City Enterprises Inc. As such, I am authorized to make this Verification on Steel City Enterprises' behalf.
2. I have read the foregoing Verified Complaint and, based on my personal knowledge and my knowledge of information reported to me by subordinates and colleagues who report to me, the factual allegations contained in the Verified Complaint are true.
3. I certify under penalty of perjury under the laws of the United States of America that the foregoing statement made by me are true and correct.

Executed on: 9-5-2023

A handwritten signature in black ink, appearing to read 'BK', is written over a horizontal line.

Brendan Kutcher, CEO