

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LakeSouth Holdings, LLC,

Plaintiff,

vs.

Ace Evert, Inc.,

Defendant.

CASE No.: 3:14-cv-1348

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff LakeSouth Holdings, LLC files this Original Complaint for patent infringement against Ace Evert, Inc., and alleges the following:

THE PARTIES

1. Plaintiff LakeSouth Holdings, LLC (“Plaintiff” or “LakeSouth”) is a Delaware limited liability company with its principal place of business located at 1460 Main Street, Suite 244, Southlake, Texas 76092.
2. Upon information and belief, Defendant Ace Evert, Inc. (“Defendant” or “Ace Evert”) is a California corporation with its principal place of business located at 5576A Ontario Mills Pkwy, Ontario, California 91764.
3. Upon information and belief, Ace Evert is the U.S. subsidiary of Evertrust Group of China.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*
5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).
7. This Court has personal jurisdiction over Ace Evert.
8. Upon information and belief, Ace Evert has and continues to conduct business within the State of Texas and within the Northern District of Texas.
9. Upon information and belief, Ace Evert ships, distributes, offers for sale, sells, and advertises (whether directly or through intermediaries such as retailers), its products in the State of Texas and the Northern District of Texas.
10. Upon information and belief, Ace Evert has purposefully and voluntarily placed one or more of its infringing products into the stream of commerce with the expectation that the infringing products will be purchased and used by consumers in the Northern District of Texas. These infringing products have been and continue to be purchased and used by consumers in the Northern District of Texas.
11. Upon information and belief, Ace Evert has infringed LakeSouth's patent within the State of Texas and within the Northern District of Texas.

THE '713 PATENT

12. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on over 40 U.S. patents.
13. Mr. Kuelbs is the sole inventor of U.S. Patent No. 6,612,713 ("the '713 Patent") entitled "Umbrella Apparatus."
14. On September 2, 2003, the U.S. Patent and Trademark Office ("USPTO") duly and legally issued the '713 Patent.
15. On June 13, 2005, World Factory, Inc. sued Southern Sales & Marketing Group, Inc. ("Southern Sales") for infringing the '713 Patent in the United States District Court for

the Northern District of Texas in a case styled *World Factory, Inc. v. Southern Sales & Marketing Group, Inc.*, Civil Action No. 4:05-cv-00373.

16. In response, Southern Sales challenged the validity of claims 1-5 of the '713 Patent by filing a request for *inter partes* reexamination with the USPTO on August 12, 2005.
17. The USPTO then instituted *inter partes* reexamination no. 95/000,104 to reexamine the '713 Patent.
18. In its request for *inter partes* reexamination, Southern Sales identified five different prior art references in an attempt to invalidate claims 1-5.
19. Complying with its duty of disclosure, World Factory also disclosed all of the potentially relevant prior art references that World Factory was aware of to the USPTO to ensure that the patent examiner had all of the necessary information to fully reexamine the '713 Patent.
20. On January 12, 2011, the examiner found that many of the pending claims were indeed patentable.
21. Southern Sales then appealed the examiner's decision to the Patent Trial and Appeal Board ("PTAB").
22. In a decision dated January 10, 2013, the PTAB affirmed the examiner, holding that none of Southern Sales' arguments had merit.
23. After an extensive and thorough *inter partes* reexamination proceeding, the USPTO issued a reexamination certificate on September 23, 2013.
24. A copy of the '713 Patent is attached as Exhibit A, and a copy of the reexamination certificate is attached as Exhibit B.
25. LakeSouth holds all substantial rights to the '713 Patent.

ACE EVERT'S ACCUSED UMBRELLAS

26. Upon information and belief, Ace Evert is in the business of designing, manufacturing, distributing, selling, marketing, and/or importing patio and outdoor umbrellas.
27. Upon information and belief, Ace Evert makes, uses, offers to sell, sells, and/or imports various patio and outdoor umbrellas.
28. Ace Evert's umbrellas are sold online through at least Amazon and at Wal-Mart stores, including Wal-Mart stores in the Northern District of Texas.
29. Ace Evert makes, uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel ("the Accused Umbrellas"). For example, Wal-Mart offers for sale and sells one of Ace Evert's Accused Umbrellas described as "9 Foot Solar Umbrella" under the Better Homes and Gardens label and identified as Art# BH-13-092-599-02.
30. Upon information and belief, Ace Evert's Accused Umbrellas are offered for sale and sold within the Northern District of Texas. For example, Ace Evert's Accused Umbrellas are offered for sale and sold at Wal-Mart stores within the Northern District of Texas.
31. Ace Evert has infringed and is still infringing the '713 Patent by making, using, offering to sell, selling, and/or importing the Accused Umbrellas.
32. Ace Evert's infringement has harmed and will continue to harm LakeSouth.
33. Ace Evert will continue to infringe the '713 Patent unless enjoined by this Court.

ACE EVERT'S INFRINGEMENT IS ALSO HARMING LAKESOUTH'S LICENSEE

34. World Factory is a Texas corporation with its principal place of business located in the Northern District of Texas at 542 Silicon Drive, Suite 101, Southlake, Texas.

35. World Factory sells a variety of products, including outdoor furnishings, lawn decorations, outdoor recreation products, and solar-powered umbrellas, throughout the United States and within the Northern District of Texas. For example, World Factory's products are available at Home Depot and Ace Hardware stores.
36. LakeSouth has provided World Factory, Inc. ("World Factory") a non-exclusive license to a number of patents, including the solar-powered umbrella '713 Patent.
37. In a letter dated February 21, 2014, World Factory informed Ace Evert about several patents, including the '713 Patent.
38. Ace Evert did not respond to World Factory's February 21, 2014 letter.
39. Ace Evert's infringement is not only harming LakeSouth, but is also harming LakeSouth's licensee, World Factory.
40. Ace Evert's infringement has harmed and will continue to harm World Factory unless enjoined by this Court.

COUNT I - INFRINGEMENT OF THE '713 PATENT

41. LakeSouth repeats and realleges the allegations in paragraphs 1-40 as though fully set forth herein.
42. Ace Evert has infringed, contributed to the infringement of, and/or induced infringement of the '713 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the '713 Patent including, but not limited to, the Accused Umbrellas that include lights and a solar panel such as the umbrella sold at Wal-Mart stores described as "9 Foot Solar Umbrella" under the Better Homes and Gardens label and identified as Art# BH-13-092-599-02.

43. Further discovery may reveal additional infringing products and/or models.
44. Upon information and belief, Ace Evert has known about the '713 Patent at least since it received World Factory's February 21, 2014 letter.
45. Ace Evert's infringement of the '713 Patent has been willful.
46. Ace Evert was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.
47. Ace Evert's infringement of the '713 Patent has damaged and will continue to damage LakeSouth.
48. Ace Evert's infringement of the '713 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

DEMAND FOR JURY TRIAL

49. LakeSouth hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

50. LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:
 - A. Adjudge that Ace Evert infringes the '713 Patent;
 - B. Adjudge that Ace Evert's infringement of the '713 Patent was willful, and that Ace Evert's continued infringement of the '713 Patent is willful;
 - C. Award LakeSouth damages in an amount adequate to compensate LakeSouth for Ace Evert's infringement of the '713 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
 - D. Award enhanced damages by reason of Ace Evert's willful infringement of the '713 Patent, pursuant to 35 U.S.C. § 284;

- E. Award LakeSouth pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs;
- F. Enter an order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Enjoin Ace Evert and all others in active concert with Ace Evert from further infringement of the '713 Patent; and
- H. Award such other relief as the Court may deem appropriate and just under the circumstances.

April 14, 2014

Respectfully submitted,

/s/ Max Ciccarelli

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