

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
_____ DIVISION**

SUNDESA, LLC, a Utah limited liability
company,

Plaintiff,

v.

DISCOUNT SUPPLEMENTS DIRECT
INC., a Virginia corporation,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Sundesa, LLC (“Sundesa”) complains against defendant Discount Supplements Direct Inc. (“DSD”), for the causes of action alleged as follows:

NATURE OF THE ACTION

1. This is an action for infringement of United States Design Patent No. D510,235 (the “Asserted Patent”), a true and correct copy of which is filed concurrently herewith as “Exhibit A.”

THE PARTIES

2. Sundesa is a limited liability company duly organized and existing under the laws of the State of Utah, with its principal place of business located at 250 South 850 East, Lehi, Utah 84043.

3. Sundesa alleges DSD is a corporation organized and existing under the laws of the State of Virginia with its principal place of business located at 3877 Holland Road, Suite 406, Virginia Beach, Virginia 23452.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

5. This Court has original jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over DSD because DSD commits substantial acts of business in this judicial District, including selling its products throughout the District to Virginia residents. This Court also has personal jurisdiction over DSD because DSD is a Virginia corporation.

7. This Court's exercise of personal jurisdiction over DSD is consistent with the Constitutions of the United States and the State of Virginia. DSD is subject to personal jurisdiction in this Court under Virginia's long-arm statute (Va. Code Ann. § 8.01-328.1) and the United States Constitution.

8. Venue is proper in this Court and this Division under at least 28 U.S.C. §§ 1391 and 1400, as well as under E.D. Va. Local Rule 3(C), because DSD is headquartered, and DSD has committed acts of patent infringement, in the Eastern District of Virginia, particularly in Virginia Beach, which is an independent city located within the Norfolk Division of this District.

FACTUAL BACKGROUND

9. Sundesa's technological innovations are protected by, *inter alia*, a portfolio of utility and design patents, including the Asserted Patent.

10. Sundesa is an exclusive licensee of the Asserted Patent and has been granted all rights thereunder, including the right and standing to enforce the Asserted Patent.

11. DSD is in the business of manufacturing and selling fitness supplement, products, and accessories. In particular, DSD sells and offers for sale, *inter alia*, shaker cups, an example of which is pictured below (the “Accused Product”):



12. The design of the Accused Product is substantially the same as the claimed design that is the subject of the Asserted Patent.

13. Furthermore, the design of the Accused Product is so similar to the design that is the subject matter of the Asserted Patent that customers are likely to be deceived and persuaded to buy the Accused Products thinking they are actually buying products protected by the Asserted Patent.

14. On September 29, 2014, Sundesa’s attorneys sent DSD a letter that provided details related to DSD’s infringement of the Asserted Patent.

15. Along with this letter, Sundesa mailed DSD a courtesy copy of the Asserted Patent.

16. DSD has had pre-suit knowledge of the Asserted Patent at least since receipt of Sundesa’s letter dated September 29, 2014.

17. On information and belief, after learning of the Asserted Patent, DSD continued to infringe the Asserted Patent.

18. As appropriate, Sundesa has consistently marked its products with the Asserted Patent since its issuance.

**CAUSE OF ACTION
(Infringement of the Asserted Patent)**

19. By this reference, Sundesa realleges and incorporates the foregoing paragraphs as though fully set forth herein.

20. DSD has infringed, and continues to infringe, the Asserted Patent by offering to sell, selling, or importing, in this District, and elsewhere in the United States, the Accused Product, the design of which is substantially the same as the ornamental design of the Asserted Patent.

21. DSD's actions constitute infringement of the Asserted Patent in violation of 35 U.S.C. § 271.

22. Sundesa has sustained damages and will continue to sustain damages as a result of DSD's aforementioned acts of infringement.

23. Sundesa is entitled to recover damages sustained as a result of DSD's wrongful acts in an amount to be proven at trial.

24. DSD's infringement of Sundesa's rights under the Asserted Patent will continue to damage Sundesa's business, causing irreparable harm, for which there is no adequate remedy at law, unless DSD is enjoined by this Court.

25. DSD has willfully infringed the Asserted Patent, entitling Sundesa to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

26. Alternatively, Sundesa is entitled to recover DSD's total profits from its sales of the Accused Product under 35 U.S.C. § 289.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sundesa, LLC prays for judgment as follows:

- A. A judgment finding DSD liable for infringement of the claim of the Asserted Patent;
- B. Orders of this Court directing DSD to make an accounting for the total number of Accused Products that they made, used, sold, offered for sale, or imported into the United States.
- C. Orders of this Court temporarily, preliminarily, and permanently enjoining DSD, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner the claim of the Asserted Patent, pursuant to at least 35 U.S.C. § 283;
- D. An award of damages adequate to compensate Sundesa for DSD's infringement of the Asserted Patent, in an amount to be proven at trial, or in the alternative, an award of DSD's total profits under 35 U.S.C. § 289;
- E. An award of treble Sundesa's damages, pursuant to at least 35 U.S.C. § 284;
- F. A declaration that this is an exceptional case and that Sundesa be awarded its attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285;
- G. An award of Sundesa's costs in bringing this action, pursuant to all applicable state statutory and common law, including at least 35 U.S.C. § 284;
- H. An award of Sundesa's attorneys' fees, pursuant to all applicable state statutory and common law.
- I. Prejudgment interest, pursuant to at least 35 U.S.C. § 284;

- J. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and
- K. For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Sundesha demands trial by jury on all claims and issues so triable.

DATED: February 23, 2018

/s/ Stephen E. Noona

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