

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

**BTCT INNOVATIONS XV, LLC, and
PRODUCT LABS HOLDINGS, INC.**

Plaintiffs,

v.

JUMP ROPE SYSTEMS, INC.

Defendant

Case No.: 1:21-cv-00379

DEMAND FOR JURY TRIAL

**COMPLAINT FOR DECLARATORY JUDGMENT
OF PATENT NON-LIABILITY AND FOR TORTIOUS INTERFERENCE,
BUSINESS DISPARAGEMENT AND DEFAMATION**

Plaintiffs BTCT Innovations XV, LLC (“BTCT”) and Product Labs Holdings, Inc. (“Product Labs”) (collectively, “Plaintiffs”) respectfully file this complaint for declaratory judgment of patent non-liability, and for tortious interference, business disparagement and defamation, against Defendant Jump Rope Systems, LLC (“JRS” or “Defendant”). In support thereof, Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for (i) declaratory judgment of patent non-liability under the patent laws of the United States, 35 U.S.C. §§ 100, *et. seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and (ii) tortious interference, business disparagement and defamation under the common law of Texas and/or other applicable state.

2. Plaintiffs design, promote and sell a variety of high-quality CrossFit-related fitness gear, including certain speed jump ropes, under the well-accepted WOD Nation brand.

3. Defendant JRS owns two patents relating to jump ropes. On July 17, 2020, the Patent Trial and Appeal Board (“PTAB”) of the United States Patent and Trademark Office (“USPTO”) issued two Final Written Decisions (“the two Judgments”), holding all claims of both patents invalid. Despite the two Judgments, JRS contends that BTCT should pay patent royalties for certain WOD Nation jump ropes sold by Plaintiffs. Worse yet, JRS is now threatening to submit bogus intellectual property complaints to third party Amazon.com, in an effort to damage Plaintiffs’ on-line business and extort unjustifiable royalty payments. Rather than acquiesce to JRS’ coercive tactics, and to protect the reputation of Plaintiffs’ WOD Nation brand with Amazon.com and other third party on-line sales platforms, Plaintiffs now respectfully seek assistance from this Court in the form of declaratory and injunctive relief, as well as damages, attorney fees and costs.

THE PARTIES

4. Plaintiff BTCT Innovations XV, LLC is a Delaware limited liability company having a place of business at The Domain in Austin, Texas.

5. Plaintiff Product Labs Holdings, Inc. is a Delaware corporation having a place of business at The Domain in Austin, Texas. Product Labs is the sole owner of BTCT.

6. On information and belief, Defendant Jump Rope Systems, LLC is a Colorado limited liability company having an address of 500 Front Street, Louisville, Colorado 80027. According to the Colorado Secretary of State, JRS may be served via its registered agent, the law firm of Limpus + Limpus, LLC, with an address of 7723 Arlington Drive, Boulder, Colorado 80303. The law firm of Limpus + Limpus, LLC represents JRS in patent matters.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, 1338(a), 1338(b), and 1367, as well as 28 U.S.C. §§ 2201 and 2202.

8. This Court has personal jurisdiction over Defendant because Defendant has, among other things, purposefully directed its activities to residents of Texas by directly and indirectly advertising, marketing, selling, offering to sell, and distributing competing jump rope products to Texas residents; by actively seeking to enforce its purported patent rights against Plaintiffs by coercing them into paying patent royalties on two patents for which the PTAB has entered Judgments of invalidity; and by actively threatening to cause harm in Texas and elsewhere to Plaintiffs' on-line business by submitting improper and tortious intellectual property complaints to third party retailers such as Amazon.com with regard to Plaintiffs' retail jump products.

9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

10. An actual case and controversy has arisen between the parties under the patent laws concerning whether Defendant is entitled to enforce its two patents (all claims of which are subject to judgments of invalidity issued by the PTAB), whether Plaintiffs have any liability to Defendant for alleged infringement of these two patents by reason of Plaintiffs' sale of certain jump ropes, and whether under the present circumstances, it is tortious for Defendant to submit intellectual property complaints or to make infringement allegations to third party retailers such as Amazon.com.

FACTUAL BACKGROUND

11. The WOD Nation brand was started around 2013 by a fitness enthusiast who found it difficult to obtain high quality CrossFit-oriented exercise equipment. The WOD Nation business quickly grew in fame and customer acceptance, owing in large part to its flagship product—a

certain jump rope known and presently designated on Amazon.com as the WOD Nation “Original Speed Jump Rope. WOD Nation is a well-known brand among CrossFit enthusiasts.

12. Defendant JRS is the owner by assignment of two patents: U.S. Patent No. 7,789,809 (“the 809 patent”) and U.S. Patent No. 8,136,208 (“the 208 patent”). A true and correct copy of the 809 patent is attached as Exhibit A. A true and correct copy of the 208 patent is attached as Exhibit B. Both patents generally relate to certain handle structures in jump ropes.

13. On information and belief, at some time prior to August of 2016, JRS submitted an intellectual property complaint to Amazon.com, accusing at least one WOD Nation branded speed jump rope of infringing at least one of JRS’s patents. On information and belief, and without any evaluation of the merits of the JRS patent assertion, Amazon.com quickly delisted WOD Nation’s leading speed jump rope, thereby threatening the growth and financial viability of WOD Nation.

14. On information and belief, as a result of this existential threat, the WOD Nation business had no choice but to enter into an unfavorable license agreement with JRS. On or about August 9, 2016, third party eFinity Studios, LLC (“eFinity”), the entity that formerly owned the WOD Nation business, executed a certain Patent License Agreement with JRS requiring eFinity pay royalties for each and every original speed jump rope sold in the United States.

15. On information and belief, around that time, JRS also asserted its patents against other jump rope suppliers. For example, on July 26, 2018, JRS filed a patent infringement action against a jump rope supplier known as Rogue Fitness. *See Jump Rope Systems, LLC v. Coulter Ventures, LLC d/b/a Rogue Fitness*, CA 2-18-cv-00731 (S.D. Ohio). The filing of this action prompted Rogue Fitness to initiate two related *Inter partes* review (“IPR”) proceedings at the United States Patent and Trademark Office (“USPTO”). JRS’ Ohio action against Rogue Fitness was stayed pending the resolution of the IPR proceedings at the USPTO.

16. On July 17, 2020, the Patent Trial and Appeal Board (“PTAB”), *i.e.*, the administrative court at the USPTO charged with handling IPR proceedings, issued two Judgments with respect to the two JRS patents.

17. In Case No. IPR2019-00586, the PTAB issued a Judgment holding all claims of the 809 patent invalid. A true and correct copy that that PTAB Judgment is attached as Exhibit C. *See id.* at 68 (“For the reasons discussed above, Petitioner [Rogue Fitness] has shown by a preponderance of the evidence that the challenged claims 1–10 of the ’809 patent are unpatentable.”)

18. Similarly, in Case No. IPR2019-00587, the PTAB issued a Judgment holding all claims of the 208 patent invalid. A true and correct copy that that PTAB Judgment is attached as Exhibit D. *See id.* at 88 (“For the foregoing reasons, we conclude that Petitioner [Rogue Fitness] has established by a preponderance of evidence that claims 1–11 of the ’208 patent are unpatentable.

19. Plaintiff Product Labs is an ecommerce company that, among other things, acquires Internet-based retailers in order to help them grow. Recognizing the value and growth potential of the WOD Nation business, Product Labs formed BTCT as a wholly owned subsidiary, and in March of 2021, BTCT acquired various assets of the WOD Nation business from eFinity. The acquired assets included the WOD Nation brand, as well as the WOD Nation storefront and account on Amazon.com.

20. Upon learning that eFinity had sold certain assets of the WOD Nations business and that eFinity would no longer be making excessive patent royalty payments under the Patent License Agreement, JRS was quick to seek out the new WOD Nation owners with an open hand.

21. Despite the above two adverse Judgments holding all claims of the two JRS patents invalid, JRS presently contends that BTCT's WOD Nation original Speed Jump Rope infringes the two JRS patents, and that JRS is therefore entitled to pursue patent royalties and other remedies from BTCT.

22. BTCT has declined to assume the royalty obligations of the previous Patent License Agreement between eFinity and JRS, for among other reasons, that the JRS patents have been adjudicated invalid.

23. JRS now threatens to submit (and may have already submitted) baseless IP complaints to Amazon.com, in order to extort and coerce BTCT into making unjustifiable patent royalty payments. Any such complaints made to Amazon.com would cause irreparable monetary and reputational damage to Plaintiffs.

COUNT I

Declaratory Judgment of No Patent Liability Infringement

24. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 23 in support of this Count.

25. Plaintiffs have no legal patent liability to JRS by reason of Plaintiffs' Original Speed Jump Rope or otherwise, at least because the properly construed claims of the JRS patents do not cover the Plaintiffs' Original Speed Jump Rope, and/or because all claims of both JRS patents have been adjudicated invalid by the PTAB, and JRS is collaterally estopped from asserting those patents against Plaintiffs or others.

26. There is an actual case and controversy between Plaintiffs and JRS concerning whether JRS is entitled to enforce its two patents (all claims of which are subject to judgments of

invalidity issued by the PTAB) and whether Plaintiffs have any liability to JRS by reason of the two JRS patents and Plaintiffs' sale of its Original Speed Jump Rope.

27. Plaintiffs are entitled to a declaration from this Court that Plaintiffs have no liability under the patent laws to Defendant JRS.

COUNT II
Tortious Interference

28. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 27 in support of this Count.

29. Plaintiff BTCT has an existing agreement with Amazon.com that allows it to sell its WOD Nation Original Speed Jump Rope, as well as multiple other exercise-related equipment.

30. There is a reasonable probability that Plaintiffs will continue to enter into business relationships with various third party purchasers, *i.e.*, Amazon.com customers, to sell WOD Nation Original Speed Jump Ropes.

31. On information and belief, Defendant willfully, intentionally, and without legal justification either already has, or soon will, interfere with Plaintiff BTCT's agreement with Amazon.com, and with Plaintiffs' prospective business relations with Amazon.com customers, by submitting an improper patent infringement complaint to Amazon.com concerning the foregoing WOD Nation Original Speed Jump Rope. In light of the fact that all claims of both JRS patents have previously been adjudicated invalid by the PTAB, any submission of a patent complaint by JRS to Amazon.com is or would be accomplished in bad faith and be objectively baseless.

32. As a proximate cause of Defendant's misconduct, Plaintiffs have or will suffer injury in the form of actual damages, including without limitation lost sales, lost profits, and increased storage costs.

33. On information and belief, Defendant is liable to Plaintiffs for its tortious interference under the state laws of Texas and/or other applicable state.

34. Plaintiffs are entitled to a declaration from this Court that Defendant's assertion of its alleged patents rights by means of submitting any complaint to Amazon.com constitutes tortious interference under the state laws of Texas and/or other applicable state.

COUNT III

Business Disparagement

35. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 34 in support of this Count.

36. By submitting baseless patent infringement claims to Amazon.com relating to Plaintiffs' WOD Nation Original Speed Jump Rope, Defendant has or soon will publish false and disparaging information about Plaintiffs.

37. On information and belief, Defendant's foregoing actual or threatened conduct was or will be committed with malice and without legal privilege. Defendant knew of the falsity of its accusations, and/or acted with reckless disregard concerning it, and/or Defendant acted or will act with ill will and/or with intent to interfere in the Plaintiffs' economic interests in an unprivileged fashion. In light of the fact that all claims of both JRS patents have previously been adjudicated invalid by the PTAB, any submission of a patent complaint by JRS to Amazon.com is or would be accomplished in bad faith and be objectively baseless.

38. Defendant's foregoing misconduct has or will result in special damages to Plaintiffs, including lost sales, lost profits, and increased storage costs.

39. On information and belief, Defendant is liable to Plaintiffs for business disparagement under the state laws of Texas and/or other applicable state.

40. Plaintiffs are entitled to a declaration from this Court that Defendant's assertion of its alleged patents rights by means of submitting any complaint to Amazon.com constitutes business disparagement under the state laws of Texas and/or other applicable state.

COUNT IV

Defamation

41. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 40 in support of this Count.

42. By submitting baseless patent infringement claims to Amazon.com relating to Plaintiffs' WOD Nation Original Speed Jump Rope, Defendant has or soon will make false statements about Plaintiffs to a third party, *i.e.*, to Amazon.com.

43. In light of the fact that all claims of both JRS patents have previously been adjudicated invalid by the PTAB, any submission of a patent complaint by JRS to Amazon.com is or would be negligent and/or purposeful.

44. In light of the fact that all claims of both JRS patents have previously been adjudicated invalid by the PTAB, any submission of a patent complaint by JRS to Amazon.com is or would be accomplished in bad faith and be objectively baseless.

45. Those false statements have or will cause Plaintiffs to suffer reputational harm as an Amazon.com reseller.

46. On information and belief, Defendant is liable to Plaintiffs for defamation under the state laws of Texas and/or other applicable state.

47. Plaintiffs are entitled to a declaration from this Court that Defendant's assertion of its alleged patents rights by means of submitting any complaint to Amazon.com constitutes defamation under the state laws of Texas and/or other applicable state.

JURY DEMAND

Plaintiffs hereby request a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief against Defendant as follows:

A. a judgment that Plaintiffs have no liability to Defendant under the patent laws, including that Plaintiffs' WOD Nation Original Speed Jump Rope does not infringe any of Defendant's patents;

B. a temporary, preliminary and permanent injunction against Defendant enjoining it from accusing Plaintiffs or their products of infringing any of Defendant's rights in any patent or other design right;

C. a judgment awarding damages against Defendant in an amount to be proven at trial;

D. a judgment awarding punitive damages against Defendant;

E. a judgment awarding costs and expenses incurred in prosecuting this action;

F. a judgment awarding attorney fees pursuant to 35 U.S. Code § 285 or as otherwise permitted by law;

G. pre and post-judgment interest at the maximum rate allowable under the law; and

H. such other and further relief as this Court may deem just and appropriate either at law or in equity.

Respectfully submitted:

Dated: April 30, 2021

/s/ Henry Pogorzelski
Henry Pogorzelski
TX Bar No. 24072114
Henry.pogorzleksi@klgates.com
Stewart N. Mesher
TX Bar No. 24032738
Stewart.Mesher@klgates.com
K&L Gates, LLP
2801 Via Fortuna, Suite 350
Austin, TX 78746-7568
Telephone: (512) 482-6800
Fax: (512) 482-6859

Roderick Paul Hatch (*pro hac vice* to be filed)
State Bar No. 24092498
rorry.hatch@klgates.com
1000 Main Street, Suite 2550
Houston, Texas 77002
Telephone: (713) 815-7300
Facsimile: (713) 815-7301

*Attorneys for Plaintiffs BTCT Innovations XV, LLC
and Product Labs Holdings, Inc.*