

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

THULE ORGANIZATION SOLUTIONS, INC.
a Colorado corporation,

Plaintiff,

v.

MERKURY INNOVATIONS LLC,
a New York limited liability company,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Thule Organization Solutions, Inc. ("Thule"), by and through its undersigned attorneys, for its Complaint against Merkury Innovations LLC ("Merkury") states as follows:

PARTIES

1. Thule is a Colorado corporation, having its principal place of business at 6303 Dry Creek Parkway, Longmont, Colorado 80503.

2. Upon information and belief, Merkury is a domestic limited liability company formed under the laws of the state of New York with its principal place of business at 120 West 44th Street, New York, New York 10036. Upon information and belief, Defendant also maintains a place of business at 1800 Maiden Lane, 28th Floor, New York, New York 10038.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

GENERAL ALLEGATIONS

6. Thule incorporates herein by reference each and every allegation in paragraphs 1 through 5.

7. U.S. Design Patent No. D592,400 ("the '400 Patent"), for a "Stretchable Notebook Computer Case," was duly and legally issued on May 19, 2009. A true and correct copy of the '400 Patent is attached hereto as Exhibit 1. By assignment, Thule owns all right, title and interest in and to the '400 Patent.

8. Upon information and belief, sometime after the '400 Patent issued, Merkury began importing and/or manufacturing a flexible storage sleeve like the one shown and described in the '400 Patent.

9. Merkury has offered for sale and sold and continues to sell in the United States flexible storage sleeves that infringe the '400 Patent. Images of Merkury's flexible storage sleeves, including samples of Merkury's TMC "Urban Inspiration" and "Fashionation" line of flexible storage sleeves, are shown in Exhibit 2.

10. Upon information and belief, Merkury has offered to sell and has sold at least one flexible storage sleeve that infringes the '400 Patent in the state of Colorado.

11. Thule, by correspondence dated January 31, 2011, March 7, 2011 and August 4, 2011, informed Merkury of its objection to Merkury offering and selling its flexible storage sleeves in light of Thule's rights in the '400 Patent. True and accurate copies of those letters are attached hereto as Exhibit 3. To date, Merkury has not responded to Thule's March 7, 2011 or August 4, 2011 correspondence, nor has Merkury removed or recalled any of the infringing flexible storage sleeves. Thus, Merkury's infringement of the '400 Patent is continuing and is knowingly and willfully in violation of Thule's rights.

CLAIM FOR RELIEF
(Infringement of the '400 Patent)

12. Thule incorporates herein by reference each and every allegation in paragraphs 1 through 11.

13. Merkury's activities in making, using, selling and/or offering to sell in the United States and/or importing into the United States the flexible storage sleeve constitutes direct infringement of the '400 Patent, in violation of 35 U.S.C. § 271(a).

14. Upon information and belief, Merkury is inducing direct infringement of the '400 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '400 Patent, in violation of 35 U.S.C. § 271(b).

15. Upon information and belief, Merkury is contributing to direct infringement of the '400 Patent by others by directing others to manufacture one or more components which constitute a material part of the invention defined by the claims of the '400 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '400 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

16. Merkury's actions of making, having made, importing, using or selling products which infringe the '400 Patent have been, and are, willful, deliberate and/or in conscious disregard of Thule's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Thule to an award of its attorneys' fees and treble damages.

17. Merkury's infringement of the '400 Patent has caused damage to Thule in an amount to be ascertained at trial.

18. Merkury's infringement of the '400 Patent has caused and will continue to cause irreparable injury to Thule, to which there exists no adequate remedy at law. Merkury's infringement of the '400 Patent will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Thule requests that judgment be entered in its favor and against Merkury as follows:

- A. Declaring that Merkury has infringed United States Design Patent No. D592,400;
- B. Issuing temporary, preliminary, and permanent injunctions enjoining Merkury, its officers, agents, subsidiaries, and employees, and those in privity with or that act in concert with any of the foregoing, from further activities that constitute infringement of United States Design Patent No. D592,400, pursuant to 35 U.S.C. § 283;
- C. Awarding Thule damages arising out of Merkury's infringement of United States Design Patent No. D592,400 in an amount not less than Defendant's profits or for each act of infringement pursuant to 35 U.S.C. § 289, and/or trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

D. Finding that this is an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding reasonable attorneys' fees to Thule; and

E. Awarding Thule such further legal and equitable relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Thule demands a trial by jury on all issues so triable.

DATED: July 11, 2012

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF
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