

Street, Essex Junction, VT 05452. According to the gordini.com website, Gordini develops and manufactures various types of cold weather apparel and accessories, including men's, women's, and children's gloves, hats, headbands, shirts, pants, goggles, socks, and earmuffs, for distribution through dealers and retailers.

JURISDICTION AND VENUE

3. This is a civil action for (i) patent infringement arising under the United States patent statutes, Title 35, United States Code §§ 1 et seq.; (ii) trade dress infringement under Section 43(a) of the Lanham Act, Title 15, United States Code, § 1125(a), and (iii) common law trade dress infringement.

4. This Court has jurisdiction of the subject matter of this action under Title 28, United States Code §§ 1331, 1338(a), and 1367, and Title 15, United States Code § 1121.

5. This Court has personal jurisdiction over Gordini because the defendant is doing and has done substantial business in this judicial district and has committed acts of infringement, and other acts complained of herein, in this judicial district.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Gordini has committed acts of infringement and does business in this District.

BACKGROUND

7. 180s designs, manufactures and sells innovative performance wear, including ear warmers, gloves, and glasses. 180s was founded in 1994 by Brian E. Le Gette and Ronald L. Wilson, II, two University of Pennsylvania Wharton Business School students, who invented and patented the first of its kind wrap-behind-the-head ear warmer. When introduced into the marketplace in 1995, the 180s ear warmer achieved immediate success.

8. 180s' success has been driven largely by its innovative ear warmer products, which are protected by a significant portfolio of patents, including the patents asserted in this action, and a trademark registration and common law trade dress rights protecting the distinctive and non-functional

trade dress embodied in the configuration and appearance of the products. True and correct reproductions of photographs of a “180s” brand ear warmer are attached as Exhibits A and B. In addition to the features protected by the trademark registration, the “180s” ear warmer also includes distinctive trade dress in some or all of the following elements: the overall shape of the product, the wrap-behind-the-head design, the fabric selection, the overlap of one ear portion over the other in the collapsed configuration, the color scheme of the fabric, and the narrow band connecting the larger ear pieces.

9. 180s has invested considerable effort in promoting its ear warmer products and the associated trade dress. Since at least as early as 1995, 180s has consistently and widely marketed and advertised its ear warmer products by highlighting their distinctive trade dress. As a result, the ear warmer trade dress has become widely recognized by consumers and has acquired secondary meaning in the minds of the consuming public such that it serves as an indicator of the source of the ear warmer product, and therefore represents a valuable asset to 180s.

10. The ear warmer trade dress, while enormously valuable as a source indicator, is not essential to the use or purpose of the products. Moreover, 180s’ exclusive rights in its trade dress do not put competitors at a significant non-reputation related disadvantage.

11. Gordini manufactures and sells products, some of which compete with products manufactured and sold by 180s, including “Lobz[®],” a wrap-behind-the-head earmuff. Gordini’s Lobz[®] product contains many of the same elements as the 180s brand ear warmer trade dress.

12. On December 27, 2005, United States Patent No. 6,978,483 (“the ‘483 patent”), entitled “Apparatus and Method for Making an Ear Warmer and an Ear Warmer Frame,” was duly and legally issued to Matthew Isom, et al. The ‘483 patent has been assigned to 180s, Inc. A true and correct copy of the ‘483 patent is attached as Exhibit C.

13. On May 9, 2006, United States Trademark Registration No. 3,089,225 (“the ‘225 Registration”) was duly and legally issued to 180’s Inc. A true and correct copy of the ‘225 Registration

is attached as Exhibit D.

14. On June 19, 2007, United States Patent No. D545,001 (“the ‘001 Patent”), entitled “Ear Warmer Having an External Frame,” was duly and legally issued to Brian Edward Le Gette et al. The ‘001 Patent has been assigned to 180s, Inc. A true and correct copy of the ‘001 patent is attached as Exhibit E.

15. 180s, Inc. is the sole owner of the entire right, title, and interest in the ‘483 and ‘001 Patents, and 180s, LLC is an exclusive licensee under the ‘483 and ‘001 Patents.

16. 180s Inc. is the sole owner of the entire right, title, and interest in the trade dress as shown in the ‘225 Registration. The remaining trade dress rights in 180s’ ear warmers have been assigned to 180s, Inc. from 180s, LLC. These collective trade dress rights are exclusively licensed to 180s, LLC.

17. True and correct reproductions of photographs of a Lobz[®] earmuffs product and packaging are attached as Exhibits F and G. As shown in Exhibit F, Gordini Lobz[®] earmuffs are similar to the 180s ear warmer products in at least the following ways: the overall shape of the product, the wrap-behind-the-head design, the fabric selection, the overlap of one ear portion over the other in the collapsed configuration, the color scheme of the fabric, and the narrow band connecting the larger ear pieces. This similarity in design would cause confusion to an ordinary observer as to the manufacturer of the product. As shown in Exhibit G, the design and packaging of the Gordini Lobz[®] earmuffs portray the product in a manner confusingly similar to the trade dress of the ear warmers owned by 180s.

18. On information and belief, before manufacturing and selling the Lobz[®] earmuffs product, Gordini had prior knowledge of 180s’ brand ear warmers and 180s’ ‘483 and ‘001 Patents.

COUNT ONE—INFRINGEMENT OF THE ‘483 PATENT

19. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. 180s, Inc. is the sole owner of the entire right, title, and interest in the ‘483 Patent, and

180s, LLC is an exclusive licensee under the '483 Patent.

21. Gordini has infringed one or more claims of the '483 Patent under Section 271 of Title 35 of the United States Code by making, using, selling, and/or offering to sell in the United States and/or importing into the United States its Lobz[®] earmuffs product, which embodies the inventions claimed in the '483 Patent.

22. On information and belief, Gordini will continue to infringe the '483 Patent unless enjoined by this Court.

23. On information and belief, the infringement of the '483 Patent by Gordini has been willful.

24. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by the actions of Gordini, which will continue unless Gordini is enjoined by this Court.

COUNT TWO—INFRINGEMENT OF THE '001 PATENT

25. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 18 of this Complaint as though fully set forth herein.

26. 180s, Inc. is the sole owner of the entire right, title, and interest in the '001 Patent, and 180s, LLC is an exclusive licensee under the '001 Patent.

27. Gordini has infringed the '001 Patent under Sections 271 and 289 of Title 35 of the United States Code by making, using, selling, and/or offering to sell in the United States and/or importing into the United States its Lobz[®] earmuff product, which embodies the inventions claimed in the '001 Patent.

28. Gordini has applied the patented design of the claim of the '001 Patent, or a colorable imitation thereof, to an article of manufacture for the purpose of sale and/or has sold or exposed for sale an article of manufacture to which such design or colorable imitation has been applied, such that an ordinary observer would be led to believe that the Gordini Lobz[®] earmuff product is a 180s ear warmer product.

29. On information and belief, Gordini will continue to infringe the '001 Patent unless enjoined by this Court.

30. On information and belief, the infringement of the '001 Patent by Gordini has been willful.

31. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by the actions of Gordini, which will continue unless Gordini is enjoined by this Court.

**COUNT THREE—TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. 1125(a)
(LANHAM ACT §43(a))**

32. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 18 of this Complaint as though fully set forth herein.

33. After Plaintiffs established protectable trade dress rights in their ear warmer products under common law, and on information and belief after the issuance of the '225 Registration, Gordini began selling the Lobz[®] earmuffs product having trade dress confusingly similar to the trade dress of the ear warmer products sold by 180s, LLC, aspects of which are protected by the '225 Registration, which trade dress is owned by 180s, Inc. and exclusively licensed to 180s, LLC.

34. The trade dress of the Lobz[®] earmuffs product is likely to cause confusion, mistake, or deception as to the source or sponsorship of the product.

35. Gordini had constructive notice of 180s, Inc.'s ownership of the trade dress disclosed in the '225 Registration as of May 9, 2006, the date of registration, pursuant to 15 U.S.C. § 1072. On information and belief, Gordini had knowledge of the entirety of the trade dress of the ear warmer products sold by 180s, LLC, and intentionally sold the Lobz[®] earmuffs product having trade dress confusingly similar to such trade dress, in knowing, deliberate, and willful disregard of Plaintiffs' trade dress rights.

36. The actions of Gordini described above, and specifically, without limitation, Gordini's use of the Plaintiffs' trade dress for ear covering products, constitute trade dress infringement in violation of Section 43(a) of the Lanham Act.

37. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by the actions of Gordini, which will continue unless Gordini is enjoined by this Court.

COUNT FOUR—COMMON LAW TRADE DRESS INFRINGEMENT

38. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 18 and 32 through 37 of this Complaint as though fully set forth herein.

39. The actions of Gordini described above, and specifically, without limitation, Gordini's use of the Plaintiffs' trade dress for ear covering products, constitute common law trade dress infringement.

40. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by the actions of Gordini, which will continue unless Gordini is enjoined by this Court.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief:

- A. a preliminary and permanent injunction against Gordini, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '483 Patent;
- B. a preliminary and permanent injunction against Gordini, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '001 Patent;
- C. a preliminary and permanent injunction against Gordini, their respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the Plaintiffs' trade dress;
- D. a judgment holding Gordini liable for infringement of the '483 Patent;

- E. a judgment holding Gordini liable for infringement of the '001 Patent;
- F. a judgment holding Gordini liable for infringement of the Plaintiffs' trade dress;
- G. an accounting of damages resulting from the infringement by Gordini of the '483 Patent, together with prejudgment and postjudgment interest;
- H. an accounting of damages and award of the profits of Gordini resulting from the infringement by Gordini of the '001 Patent, together with prejudgment and postjudgment interest;
- I. an accounting and award of the profits of Gordini and Plaintiffs' damages resulting from the infringement of Plaintiffs' trade dress by Gordini;
- J. that the infringement by Gordini of the '483 Patent be adjudged willful and Plaintiffs' damages be trebled pursuant to Title 35, United States Code, § 284;
- K. that the infringement by Gordini of the '001 Patent be adjudged willful and Plaintiffs' damages be trebled pursuant to Title 35, United States Code, § 284;
- L. that this be adjudged an exceptional case and that the Plaintiffs be awarded their attorneys' fees pursuant to Title 35, United States Code, § 285; and
- M. that the Court grant the Plaintiffs such other relief as it deems just and equitable.

Dated: January 22, 2008

Respectfully submitted by:

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs 180s, Inc. and 180s, LLC, hereby demand a trial by jury of all issues triable of right by a jury.

Dated: January 22, 2008

COOLEY GODWARD KRONISH LLP

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