

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DE BEERS UK LIMITED, a company)
incorporated under the laws of England)
and Wales,)

Plaintiff,)

vs.)

KOHL’S CORPORATION, a Wisconsin)
corporation,)

and)

BRILLIANT JEWELERS/MJJ INC.,)
a New York corporation,)

and)

DOES 1 through 10,)

Defendants.)

Case No.: _____

COMPLAINT

Plaintiff De Beers UK Limited (herein “De Beers” or “Plaintiff”) for its Complaint against Defendants Kohl’s Corporation (“Kohl’s”) and Brilliant Jewelers/MJJ Inc. (“Brilliant Jewelers” and collectively with Kohl’s “Defendants”), asserts the following:

THE PARTIES

1. De Beers UK Limited is incorporated under the laws of England and Wales. De Beers is an exclusive licensee of all rights to United States Patent No. D601,913 (hereinafter the “913 Patent”) (copy attached as Exhibit A) and United States Patent No. D602,799 (hereinafter the “799 Patent”) (copy attached as Exhibit B). In connection with its exclusive license

agreement with the patent owner, De Beers is authorized to commence and prosecute claims for infringement of the '913 Patent and '799 Patent.

2. Upon information and belief, Defendant Kohl's is a corporation organized under the laws of Wisconsin, having a principal place of business in Menomonee Falls, Wisconsin. Kohl's has and is currently doing business in this judicial district and is subject to the personal jurisdiction of this Court.

3. Upon information and belief, Defendant Brilliant Jewelers is a corporation organized under the laws of New York, with a principal place of business in New York, New York. Upon further information and belief, Brilliant Jewelers has been and is doing business in this judicial district and is subject to the personal jurisdiction of this Court.

4. The true names and/or capacities, whether individual, corporate, associate or otherwise, of Defendants named DOES 1 through 10, are unknown to Plaintiff, and are therefore sued by such fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when same has been ascertained. Plaintiff is informed and believes, and on that basis alleges, that these DOE Defendants have acted with other Defendants to engage directly or indirectly in the manufacture, import, sale or offering for sale in the United States, the products accused herein of infringement.

5. Upon information and belief, Defendants have acted as agents of one or more of each other during some or all of the times relevant to the subject matter of this Complaint.

JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction under Title 28 U.S.C. §§ 1331 and 1338, and the Missouri Long Arm Statute, RSMo § 506.500. Defendants have made, have made,

imported into, offered for sale, used and/or sold infringing products in the State of Missouri and this district.

7. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400(b), because Defendants have committed acts of infringement in this district.

A. Plaintiff and the Patented Designs

8. De Beers is a leader and innovator in the diamond and jewelry industry. De Beers has expended significant time and effort to design and produce a variety of jewelry designs incorporating diamonds.

9. Commencing at least as early as 2007, De Beers has expended significant time, effort and resources in connection with the creation of a collection of jewelry sharing a common design theme. These designs are offered for sale under the EVERLON™ Diamond Knot Collection (the “Collection”) brand and sold through a network of licensed retail outlets. De Beers commercially launched the EVERLON™ Collection in the United States in or around September 2009.

10. The Collection is De Beers’ original design concept and style, and has attracted significant consumer and trade attention.

11. Utilizing its network of official licensees, De Beers has developed intensive marketing and advertising campaigns. De Beers has expended a significant amount of money marketing the Collection and, through these efforts, De Beers enjoys significant goodwill and reputation in the marketplace relative to the Collection.

12. As part of the Collection, De Beers commissioned the creation of an ornamental design for a knot ring (hereinafter the “Knot Ring”). As another component of the Collection, De Beers commissioned the creation of an ornamental design for a bangle bracelet (hereinafter

“Bangle Bracelet”). Both designs are subject to legally issued patents which are valid and enforceable.

13. The ‘913 Patent titled “Knot Ring” issued on October 13, 2009. The application for the ‘913 Patent was filed August 1, 2008. A true and accurate copy of the ‘913 Patent is attached hereto as Exhibit A. De Beers and its business partners have entered into licensing agreements through which authorized retail outlets to sell the products embodying the ‘913 Patent.

14. The ‘799 Patent titled “Bangle Bracelet” issued on October 27, 2009. The application for the ‘799 patent was filed August 1, 2008. A true and accurate copy of the ‘799 Patent is attached hereto as Exhibit B. De Beers and its business partners have entered into licensing agreements through which authorized retailers to sell the products embodying the ‘913 Patent.

15. The ‘913 Patent claims priority to a counterpart European Patent Application No. 000963673-0005, filed July 2, 2008.

16. The ‘799 Patent claims priority to a counterpart European Patent Application No. 000963673-0012, filed July 2, 2008.

17. Plaintiff De Beers has the right to sue and recover for past, present and future infringement of both the ‘913 and ‘799 Patents, and to obtain the relief sought herein.

18. Since at least September, 2009, De Beers and its licensed retailers have manufactured, marketed and sold jewelry covered by the ‘913 and ‘799 Patents, namely a “Knot Ring” and a “Bangle Bracelet,” in the United States.

B. Infringing Activities by Defendants Kohl's and Brilliant Jewelers

19. Plaintiff is informed and believes that Defendant Brilliant Jewelers manufactures a series of jewelry pieces under the name the "Love Knot Collection," exclusively for sale at Kohl's department stores.

20. At least two pieces in the "Love Knot Collection" appear to be direct copies of, or substantially similar to, the '913 patent and the '799 patent, respectively. Specifically, Plaintiff believes that the Defendants' "Rhodium-Plated Sterling Silver Diamond Love-Knot Ring" (with various sized diamonds) (representative copies attached as Exhibit C) infringes the '913 Patent. Additionally, Plaintiff believes that the Defendants' "Rhodium-Plated Sterling Silver Diamond Love Knot Bangle Bracelet" (with various size diamonds) (representative copies attached as Exhibit C), infringes Plaintiff's '799 Patent.

21. Upon information and belief, Defendants are selling, marketing and offering for sale these infringing products at Kohl's locations in the Western District of Missouri and within the jurisdiction of this Court.

22. Plaintiff is further informed and believes, and on that basis alleges, that Defendants were aware of and copied Plaintiff's patented designs when it created the "Love Knot Collection."

23. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringing products are of inferior quality, contain inferior diamonds and are priced much lower than the De Beers' Knot Ring and Bangle Bracelet. The products, however, are substantially similar and virtually identical to Plaintiff's '913 Patent and '799 Patent, respectively, which creates confusion in the minds of consumers as to the source of the goods. Plaintiff now finds itself unable to control the quality of Defendants' goods, which if left unchallenged could undermine the reputation of the De Beers' EVERLON™ Diamond Knot Collection.

24. For the reasons noted above, De Beers believes Kohl's and Brilliant Jewelers are violating De Beers' rights under both the '913 and '799 Patents.

COUNT ONE
(Infringement of the '913 Patent by Defendants)

25. Plaintiff realleges and incorporates each of the allegations contained in paragraphs 1 through 24, as though fully set forth herein.

26. The acts of Kohl's and Brilliant Jewelers alleged herein constitute infringement of the '913 Patent in violation of the patent laws of the United States, Title 35 of the United States Code, under §§ 271 and 281-285.

27. Neither of the Defendants have obtained a license or any other authorization from the Plaintiff to manufacture, make, have made, import, sell and/or offer for sale in the United States, products manufactured through use of the '913 patented design.

28. By reason of the acts of Defendants alleged herein, Plaintiff De Beers has suffered, is suffering and will continue to suffer irreparable damage, and unless Defendants are restrained from continued wrongful acts, the damage to De Beers will continue.

29. Defendants have also exhibited wanton and willful disregard of Plaintiff's '913 Patent rights. As such, said infringement was deliberate, thus making this an exceptional case within the meaning of 35 U.S.C. § 285.

30. On information and belief, Defendants, and each of them, also contributed to the infringement of the '913 Patent, by actively inducing others to infringe said Patent.

31. Plaintiff has no adequate remedy at law.

COUNT TWO
(Infringement of the '799 Patent by Defendants)

32. Plaintiff realleges and incorporates each of the allegations contained in paragraphs 1 through 31, as though fully set forth herein.

33. The acts of Kohl's and Brilliant Jewelers alleged herein constitute infringement of the '799 Patent in violation of the patent laws of the United States, Title 35 of the United States Code, under §§ 271 and 281-285.

34. Neither of the Defendants have obtained a license or any other authorization from the Plaintiff to manufacture, make, have made, import, sell and/or offer for sale in the United States, products manufactured through use of the '799 patented design.

35. By reason of the acts of Defendants alleged herein, Plaintiff De Beers has suffered, is suffering and will continue to suffer irreparable damage, and unless Defendants are restrained from continued wrongful acts, the damage to De Beers will continue.

36. Defendants have also exhibited wanton and willful disregard of Plaintiff's '799 Patent rights. As such, said infringement was deliberate, thus making this an exceptional case within the meaning of 35 U.S.C. § 285.

37. On information and belief, Defendants, and each of them, also contributed to the infringement of the '799 Patent, by actively inducing others to infringe said Patent.

38. Plaintiff has no adequate remedy at law

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That this Court adjudge and decree that Defendant Kohl's has infringed one or more claims of the '913 Patent;

B. That this Court adjudge and decree that Defendant Brilliant Jewelers has infringed one or more claims of the '913 Patent;

C. That this Court adjudge and decree that Defendant Kohl's has infringed one or more claims of the '799 Patent;

D. That this Court adjudge and decree that Defendant Brilliant Jewelers has infringed one or more claims of the '799 Patent;

E. That this Court permanently enjoin Defendants, their agents, attorneys, servants, successors, assigns, employees, and all those in privity or in active concert and participation with Defendants, or either of them, from infringing the '913 Patent;

F. That this Court permanently enjoin Defendants and their agents, attorneys, servants, successors, assigns, employees, and all those in privity or in active concert and participation with Defendants, or either of them, from infringing the '799 Patent;

G. That this Court require Defendants to compensate Plaintiff adequately for the damages caused by their infringement of the '913 Patent, together with interest and costs;

H. That this Court require Defendants to compensate Plaintiff adequately for the damages caused by their infringement of the '799 Patent, together with interest and costs;

I. That this Court adjudge and decree this case is exceptional and award Plaintiff its reasonable attorneys' fees and expenses against Defendant Kohl's, pursuant to 35 U.S.C. § 285;

J. That this Court adjudge and decree this case is exceptional and award Plaintiff its reasonable attorneys' fees and expenses against Defendant Brilliant Jewelers pursuant to 35 U.S.C. § 285; and

K. That this Court assess costs, other expenses and such other and further relief as the Court may deem just and proper.

Dated: August 25, 2010

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

By: 

Andrea M. Kimball, MBN 61516
Teresa A. Ascencio, MBN 60327
Brian R. McGinley, MBN 46353
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: 816-460-2400
Fax: 816-531-7545
akimball@sonnenschein.com
tascencio@sonnenschein.com
bmcginley@sonnenschein.com

ATTORNEYS FOR PLAINTIFF