

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

INTP, INC., a Florida corporation,

CASE NO. 04-60784-CIV-MARRA
Magistrate Judge Seltzer

Plaintiff,

vs.

WESTINGHOUSE ELECTRIC CORPORATION,
a Delaware corporation,

KMART CORPORATION,
a Delaware corporation, and

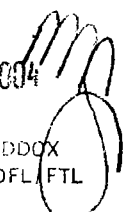
INTERNATIONAL DEVELOPMENT
CORPORATION, a Texas corporation

Defendants.

NIGHT BOX
FILED

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CLARENCE MADDOX
CLERK, USDC/SDFL/FTL



**INTERNATIONAL DEVELOPMENT CORPORATION'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)**

Defendant International Development Corporation ("IDC") brings this motion to dismiss or, in the alternative, to transfer this cause to the United States District Court for the Northern District of Texas.

IDC filed suit against INTP, Inc. ("INTP") in the United States District Court for the Northern District of Texas, Dallas Division, on April 22, 2004. As IDC explains herein, the present action, which was filed by INTP on June 16, 2004, is duplicative of the Texas case, and presents overlapping issues and the potential for conflicting outcomes. Further, INTP has filed the present action in a court that lacks personal jurisdiction over IDC. Accordingly, the present action should be dismissed or, in the alternative, transferred to the Northern District of Texas.

I. BACKGROUND

IDC and INTP are competing companies in the home lighting business. INTP and IDC



both market signage products having the general shape of rocks. Upon learning of IDC's sale of certain products to Kmart Corporation ("Kmart"), INTP sent a letter to Kmart and IDC alleging, without a legitimate basis, that IDC's sale of its own rock-shaped sign to Kmart constituted infringement of INTP's alleged "copyright" in its own rock-shaped sign product, and ordering Kmart to conduct no further business with IDC under threat of a lawsuit. Investigation revealed that INTP did not, in fact, hold a copyright on its rock-shaped sign product, although it did appear to hold a copyright registration on a catalog, which was registered as a "literary work." As a result of INTP's letter to IDC's valued customer, Kmart, and the baseless nature of the allegations made therein, IDC filed a civil action in the United States District Court for the Northern District of Texas against INTP for tortious interference with existing contract, tortious interference with prospective contract, tortious interference with a business relationship and for a declaratory judgment of non-infringement of copyright. This litigation is currently pending.

After receiving a courtesy copy of IDC's filed complaint, INTP filed this action, alleging, *inter alia*, copyright and trade dress infringement by IDC, Kmart Corporation and Westinghouse Electric Corporation. IDC moves this Court to transfer the present action to the Northern District of Texas owing to the fact that there is prior pending litigation between the principal parties arising from the same facts, and the balance of equities weighs strongly in favor of transferring the action to that venue.

II. ARGUMENT AND AUTHORITIES

A. **This Action Should be Dismissed Pursuant to the "First to File Rule" Because There is Prior Pending Litigation in Another Forum Between the Principal Parties Regarding Overlapping Issues**

It is well-accepted that the forum in which an action is first filed is given priority over subsequent actions, unless there is a strong showing of balance of convenience in favor of the second forum or there are special circumstances which justify giving the priority to the second

action. *See Tingley Systems, Inc. v. Bay State HMO Mgmt.*, 833 F. Supp. 882, 887-888 (S.D. Fla. 1993). These principles are consistent with the doctrine of federal comity, which requires the federal district courts to refrain from interfering with each others' affairs in order to avoid duplication of judicial resources and conflicting decisions. *See id.* at 887 (citing *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180 (1952)).

INTP's claims in this action are baseless, as INTP holds neither valid copyright nor trade dress rights in the design of its useful articles. It is well-established that useful articles are not proper subject for copyright protection. *See Norris Industries, Inc. v. International Tel. & Tel. Corp.*, 696 F.2d 918 (11th Cir. 1983) ("wire-spoked automobile wheel cover was a 'useful article' within meaning of copyright law, and thus not eligible to be copyrighted"). Further, there is nothing creative or distinctive about the rock shape of INTP's product, and the rock shape does not enjoy "secondary meaning" in the marketplace. Finally, to the extent that there is any similarity between the two products, it is only so much as necessarily occurs owing to the shared idea of a rock shape.

Without respect to the absence of merits of INTP's claims, there is litigation presently pending between the parties in the Northern District of Texas, litigation was already pending at the time of filing of the present lawsuit by INTP. A copy of the complaint in that action and related papers are attached as Exhibit A to this motion. The "first to file" rule presumes that the IDC tortious interference and declaratory judgment action has priority over INTP's copyright claim in this Court, since IDC's suit was filed first and the two cases involve the same central facts and issues. *Cf. Tingley Systems*, 833 F. Supp. at 887-888 ("it is well accepted that the forum where an action is first filed is given priority over subsequent actions, unless there is a showing of balance of convenience in favor of the second forum or there are special

circumstances...”). Although INTP’s claims involve a trade dress aspect in addition to a copyright aspect, the facts underlying INTP’s claim for trade dress infringement are the same as those underlying its claim of copyright infringement. Accordingly, this case should be transferred to the Northern District of Texas in the absence of special circumstances.

Although the “first-to-file” rule establishes a presumption in favor of transfer, the Court may retain jurisdiction over the cause of action where special circumstances exist or the balance of interests clearly weighs against a transfer. In deciding whether the requested transfer will be in the interest of justice and for the convenience of the parties and witnesses, the Court must “strike a balance on convenience between those elements which weigh in favor of transferring ... and those which favor allowing the plaintiff’s choice of forum to stand undisturbed.” *Tingley Systems*, 833 F. Supp. at 885 (quoting *Umbriac v. American Snacks, Inc.*, 388 F.Supp. 265, 269 (E.D. Pa.1975)). While a consideration of any number of factors may be relevant to the question of transfer, ultimately the resolution of the question is for the Court’s discretion. *See Tingley Systems*, 833 F. Supp. at 885. As discussed in more detail below the balance of interests would, in fact, favor transfer to the Northern District of Texas even in the absence of the earlier-filed litigation.

B. This Case Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(2) Because the Court Lacks Personal Jurisdiction over Defendant IDC

A court may only compel a party to defend a lawsuit if it is subject to personal jurisdiction within the forum. *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). A federal district court has personal jurisdiction over a non-resident defendant only to the limits of the long-arm statute of the forum state as interpreted by the courts of the forum state and the Due Process Clause of the Constitution of the United States as interpreted by the regional circuit. A state long-arm statute furnishes a mechanism for obtaining

personal jurisdiction in federal as well as state courts. *See* Fed.R.Civ.P. 4(k)(1)(A). In the present action, Plaintiffs have the burden to prove the existence of personal jurisdiction over IDC. *See Jet Charter Service Inc. v. Koeck*, 907 F.2d 1110, 1112 (11th Cir.1990) (11th Cir.).

“A plaintiff seeking to subject a nonresident defendant to jurisdiction of the court must do more than allege facts that show a *possibility* of jurisdiction.” *Jet Charter*, 907 F.2d at 1112 (emphasis added), *cert. denied*, 499 U.S. 937, 111 S.Ct. 1390, 113 L.Ed.2d 447 (1991). To determine whether personal jurisdiction exists over a nonresident defendant, federal courts must engage in a two-part analysis. *See Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir.1990); *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829, 855 (11th Cir. 1990). First, the court must determine whether the Florida Long Arm Statute permits the assertion of jurisdiction. Second, the court must determine whether the Defendant has sufficient “minimum contacts” with this jurisdiction to satisfy the Due Process Clause of the Fourteenth Amendment such that “maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *Madara*, 916 F.2d at 1514.

Although Plaintiffs do not allege any particular provision under the Florida Long Arm Statute as a basis for the court's jurisdiction, it is assumed that they assert jurisdiction pursuant to section 48.193. *See* Fla.Stat. Ann. § 48.193(1); Fla.Stat. Ann. § 48.193(2).

1. IDC is Not Amenable to Suit under the “Specific Jurisdiction” Prong of Florida's Long Arm Statute

Section 48.193(1) addresses specific jurisdiction, permitting jurisdiction over defendants who engage in certain enumerated acts which give rise to the particular litigation. It provides, in pertinent part:

(1) Any person, whether or not a citizen or a resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his

personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state. . . .

(f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state if, at or about the time of the injury ... (1) [t]he defendant was engaged in solicitation or service activities within this state ... or (2) [p]roducts, material, or things processed, serviced, or manufactured by the defendant anywhere were used ... within this state in the ordinary course of commerce, trade, or use.

Id.

In the present case, IDC is not subject to personal jurisdiction under section 48.193(1). IDC does not have substantial business contact with Florida. IDC is not, and has not been “engaging in, or carrying on a business or business venture in this state,” nor does it have “an office or agency in this state.” *See Declaration of John Browder*, attached hereto as Exhibit B. ¶¶ 2-12.

Similarly, as IDC has not been present in the State of Florida, it cannot be said to have “committed a tortious act” in this state. Even if this Court were to find that IDC has engaged in some form of tortious activity, in order for personal jurisdiction to attach under the “tortious activity” provision of the Florida Long Arm Statute, the Plaintiff must demonstrate that the nonresident defendant committed a substantial aspect of the alleged tort in Florida. *See Cable/Home Communication Corp.*, 902 F.2d at 857.

In the present case, Plaintiff cannot demonstrate that IDC committed the substantial portion of any tort in the State of Florida. Every aspect of the allegedly tortious conduct undertaken by IDC took place outside this jurisdiction. Orders for IDC’s accused products are received in Texas and payment is made to Texas. None of these orders have been received from Florida nor has any payment been received from Florida. *See Declaration of John Browder*, Exhibit B. ¶ 12, 13.

Finally, Plaintiff cannot demonstrate that the Court has jurisdiction pursuant to Florida

Long Arm Statute section 48.193(1)(f). Even if Plaintiff could establish that it suffered an injury within this jurisdiction, it cannot show that such injury was caused by an act or omission of IDC done while IDC was soliciting activities in the State of Florida or while products manufactured by IDC were being used within this state in the ordinary course of commerce, trade, or use.

2. IDC is Not Amenable to Suit under the “General Jurisdiction” Prong of Florida's Long Arm Statute

Section 48.193(2) provides that the court may exercise jurisdiction over a defendant who is engaged in “substantial and not isolated activity within the state ... whether or not the claim arises from that activity.”

As discussed above, IDC is not engaged in any significant level of activity within the State of Florida.

- IDC is a corporation organized under the laws of the State of Texas with its principal place of business in Southlake, Texas. *Exh. B, ¶ 2.*
- IDC does not now have, nor has it in the past had, any business operations located in the State of Florida. *Exh. B, ¶ 3.*
- IDC does not have any employees located within the State of Florida. *Exh. B, ¶ 5.*
- IDC does not have a registered agent for service of process in the State of Florida. *Exh. B, ¶ 6.*
- IDC has not registered to do business in the State of Florida. *Exh. B, ¶ 7.*
- IDC does not own or lease, nor has it ever owned or leased, real estate in the State of Florida. *Exh. B, ¶ 8.*
- IDC does not pay taxes to the State of Florida, nor to its knowledge is it obligated to do so. *Exh. B, ¶ 9.*

- IDC does not now maintain, nor has it ever maintained, a listing in any telephone directory in the State of Florida. *Exh. B, ¶ 10.*
- IDC does not now maintain, nor has it ever maintained, a bank account in the State of Florida. *Exh. B, ¶ 11.*
- IDC has never sold any of the accused products, or delivered any of the accused products to, the State of Florida. *Exh. B, ¶ 12.*

In *Madara*, the Eleventh Circuit determined that in an unrelated cause of action, the court would not exercise personal jurisdiction over a nonresident defendant whose “presence” within the jurisdiction was based solely on concerts and sales of products within the forum. *See Madara*, 916 F.2d at 1516 n. 7. The court stated that “if a defendant could be sued on an unrelated cause of action because of concerts and record sales, then he likely would be amenable to suit in all the states of the union on any cause of action. We reject without further discussion the possibility that Hall is generally present in Florida for jurisdictional purposes based on these contacts.” *Id.*

Even if the Court were to determine that IDC's attenuated contacts with Florida constituted activity sufficient to give rise to IDC under the Florida Long Arm Statute, the court still could not exercise personal jurisdiction over IDC because the Constitutional prong of the two-part analysis cannot be satisfied under the facts of this case.

3. IDC is Not Amenable to Suit under the Due Process Clause

The Florida Supreme Court has acknowledged that “the mere proof of any one of the several circumstances enumerated in section 48.193 as the basis for obtaining jurisdiction of nonresidents does not automatically satisfy the due process requirement of minimum contacts.” *Cable/Home Communication Corp.*, 902 F.2d at 857. To exercise personal jurisdiction over a

nonresident defendant in conformity with the due process requirements of the federal constitution, the Court must determine that the defendant has established minimum contacts with the forum state such that the exercise of personal jurisdiction would not offend “traditional notions of fair play and substantial justice.” *International Shoe*, 326 U.S. at 316.

Determining minimum contacts requires an examination of the “quality and nature” of the nonresident defendant's activity. *See Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1948); *Cable/Home Communication Corp.*, 902 F.2d at 858. The key to any constitutional inquiry into personal jurisdiction is foreseeability. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985); *Sun Bank, N.A. v. E.F. Hutton & Co.*, 926 F.2d 1030, 1034 (11th Cir.1991). The due process clause requires that a Defendant have “fair warning” that a particular activity may subject him to the jurisdiction of the forum. *See Burger King*, 471 U.S. at 472; *Madara*, 916 F.2d at 1516. The “fair warning” requirement is satisfied when a nonresident defendant “purposefully directs” his activities to forum residents and the resulting litigation derives from the alleged injuries that “arise out of or relate to those activities.” *Burger King*, 471 U.S. at 472 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)); *Cable/Home Communication Corp.*, 902 F.2d at 857. To comport with due process foreseeability, the Court must determine that the Defendant “purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Hanson*, 357 U.S. at 253; *Madara*, 916 F.2d at 1516-17; *Sun Bank*, 926 F.2d at 1034. This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of “random, fortuitous, or attenuated contacts.” *Burger King*, 471 U.S. at 475.

This cause of action did not arise out of IDC’s solicitation of business in Florida. Nor did

this cause of action arise out of IDC purposefully directing its activities towards Florida, or purposefully availing itself of the laws of Florida.

Determining whether “traditional notions of fair play and substantial justice” would permit the Court to exercise jurisdiction constitutes the final step in determining whether the court may exercise personal jurisdiction over a nonresident defendant. *See Burger King*, 471 U.S. at 475. While this determination is based on equitable considerations and conducted separately from the minimum contacts analysis, a particularly weighty finding under one branch of the analysis can compensate for a weaker finding on the other branch. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987); *Burger King*, 471 U.S. at 477-78; *Madara*, 916 F.2d at 1517. It would offend traditional notions of fair play and substantial justice to hale into this jurisdiction a party which could not and did not have fair warning that a sale of products to a customer in Michigan would subject it to the jurisdiction of this Court. Accordingly, it would not comport with traditional notions of fair play and substantial justice to exercise personal jurisdiction over IDC.

C. Alternatively, This Case Should be Transferred Pursuant to 28 U.S.C. § 1404(a)

Even in the absence of the pending earlier-filed litigation, a transfer would be appropriate under 28 U.S.C. § 1404(a). To meet the requirements of § 1404(a), the proposed transferee district, the Northern District of Texas, must be a district in which the INTP claims could have been brought originally, and the balance of interests must weigh in favor of the proposed transfer district. *See Tingley Systems*, 833 F. Supp. at 885 (citing *Wm. A. Smith Contracting Co., Inc. v. Travelers Indemnity Co.*, 467 F.2d 662, 664 (10th Cir. 1972)).

1. INTP’s Claims Could Have Been Brought in Texas

The first requirement is clearly met by IDC in that INTP’s claims could have been brought in the Northern District of Texas. IDC is a defendant in this action and resides in

Texas. Further, a civil action involving IDC and INTIP is presently pending before the U.S. District Court for the Northern District of Texas. The other defendants to the Florida litigation are not thought to be particularly any more amenable to suit in Florida than in Texas.

2. The Balance of Interests Weighs in Favor of Transfer

In regard to the second requirement, that the balance of interests must weigh in favor of the proposed transferee district, IDC submits the following factors as being determinative of its motion to transfer this case to the United States District Court for the Northern District of Texas:

1. IDC's principal claims against INTIP for tortious interference arise out of Texas law, such that it would not make sense for the Texas case to be transferred to Florida.
2. This Court lacks personal jurisdiction over IDC under Florida's Long Arm Statute, Fla.Stat. § 48.193 (1991), because IDC does not have sufficient contacts with Florida. Attached as Exhibit B to this Motion is the affidavit of John Browder establishing that IDC does not have substantial contacts with the State of Florida. *See Affidavit of John Browder*, Exh. B, ¶¶ 2-12.
3. By allowing this action to proceed in Florida while a related action proceeded in Texas, duplicative lawsuits would exist which would be a waste of time, energy, and money for both parties and the court system.
4. INTIP's principal claims against IDC arise out of federal copyright and trademark law, which can be litigated in any federal forum.
5. International Development Corporation and its employees are located in Texas and the activity related to the purchase and sale of the accused product by IDC did not occur in Florida. *See Affidavit of John Browder*, Exh. B, ¶¶ 2-5, 12-13.
6. It would be very time consuming and expensive to require the IDC personnel to travel

to Florida to testify as witnesses.

7. It would be very disruptive to IDC's business to have IDC's employees to be absent due to travel to Florida.

Given that the pending tortious interference action in Texas involves the same central facts and issues as the instant case, it would be more expeditious to try all claims involving the same parties and issues in the same forum. This would conserve judicial resources, promote judicial economy and avoid the problems related with duplicative actions being filed in different districts.

In addition to weighing considerations regarding the convenience of the parties and witnesses, this Court must weigh the considerations of cost, judicial economy, expeditious discovery and trial process. *See Tingley Systems*, 833 F. Supp. at 888. It is in the interest of justice to permit suits involving the same parties and issues to proceed before a single court and not proceed simultaneously in two forums. *See Tingley Systems*, 833 F. Supp. at 888. Thus, because IDC filed its Texas tortious interference action first, the instant action should be transferred to Texas and consolidated with the pending Texas action, as the two cases involve the same central facts and issues. By transferring this action, the court would benefit both parties, in that:

[T]he two actions could be consolidated before one judge thereby promoting judicial efficiency, pretrial discovery could be conducted in a more orderly manner, witnesses could be saved the time and expense of appearing at trial in more than one court, duplicative litigation involving the filing of records in both courts could be avoided eliminating unnecessary expense and the possibility of inconsistent results could be avoided.

Tingley Systems, 833 F. Supp. at 887 (quoting *Pall Corp. v. Bentley Lab., Inc.*, 523 F.Supp. 450, 453 (D.Del.1981)).

Avoidance of the parties' and witnesses' inconvenience and expense in this respect, as

well as preserving judicial economy and resources, mandates that in the interest of justice this action should be transferred to the Northern District of Texas. Further, this action should be consolidated with the pending action involving the parties in the Northern District of Texas.

III. CONCLUSION

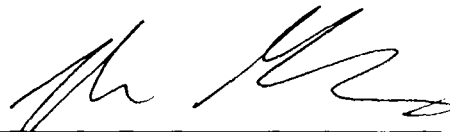
For all the reasons set forth above, IDC respectfully requests that the present motion be granted and that this action be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) or, in the alternative, transferred to the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted,

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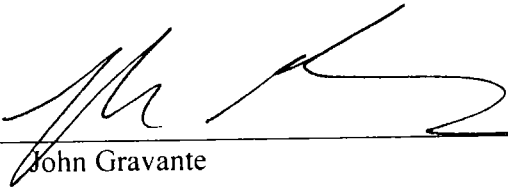
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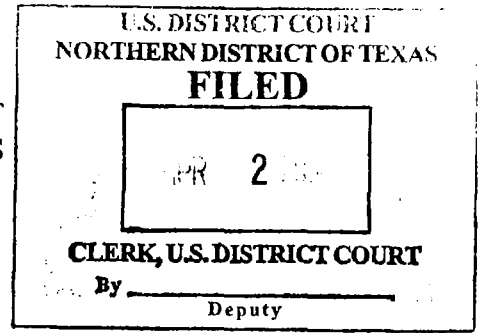
Kenneth R. Hartmann
Florida Bar No. 664286
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by U.S. mail this 25th day of July, 2004, to Connis O. Brown, Esq. and Seth P. Robert, Esq., **BROWN ROBERT, LLP**, 101 N.E. 3rd Avenue, 2nd Floor, Fort Lauderdale, FL 33301.

By: 
John Gravante

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



INTERNATIONAL DEVELOPMENT
CORPORATION

Plaintiff,

v.

INTP, Inc.

Defendant.

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304 CV - 854 P

CIVIL ACTION NO. _____

**COMPLAINT FOR FALSE AND MISLEADING REPRESENTATIONS,
TORTIOUS INTERFERENCE WITH CONTRACTUAL AND BUSINESS
RELATIONSHIPS AND DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

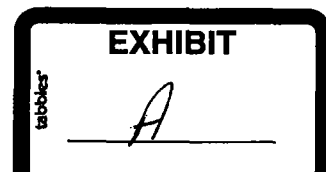
NOW COMES Plaintiff, International Development Corporation ("IDC"), and files this Complaint against Defendant INTP, Inc. ("INTP"), and in support of same alleges the following:

**I.
NATURE OF ACTION**

1. By this action, IDC seeks injunctive relief, compensatory and enhanced damages and an award of reasonable attorneys' fees and court costs by reason of (i) defendant INTP's false and misleading representations, in violation of 15 U.S.C. § 1125(a)(1)(B) and (ii) defendant INTP's tortious interference with existing and prospective contracts and business relationships between IDC and its customers and potential customers. IDC further seeks a declaratory judgment from this court that neither IDC nor its existing or potential customers has infringed any valid copyright owned by INTP.

**COMPLAINT FOR FALSE AND MISLEADING REPRESENTATIONS,
TORTIOUS INTERFERENCE WITH CONTRACTUAL AND BUSINESS
RELATIONSHIPS AND DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

PAGE - 1



**II.
PARTIES**

2. Plaintiff International Development Corporation is a Texas corporation, having its principal place of business in Southlake, Texas, and conducting business throughout the State of Texas and in this judicial district.

3. Upon information and belief, defendant INTP, Inc. is a Florida corporation, having a principal place of business in Fort Lauderdale, Florida. This cause of action arises out of acts of INTP directed at the State of Texas. On information and belief, INTP regularly and systematically conducts business and commits the acts complained of herein in the State of Texas and in this judicial district.

**III.
JURISDICTION AND VENUE**

4. The cause of action for false advertising arises under the Laws of the United States, 15 U.S.C. § 1125; and this Court has subject matter jurisdiction of such actions and claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This court has jurisdiction over IDC's copyright-related declaratory judgment claims under 28 U.S.C. §§ 2201 and 2202 and 17 U.S.C. § 101 *et seq.* This court has jurisdiction over IDC's state law claims under 28 U.S.C. §§ 1338(b) and 1367 and pursuant to the doctrine of pendent jurisdiction. Venue is based upon the provisions of 28 U.S.C. § 1391(b) and (c). There is diversity of citizenship between the parties and, on information and belief, the amount in controversy exceeds \$75,000, such that this court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.

**IV.
FACTS OF THE CASE**

5. IDC and INTP are in the business of manufacturing and marketing solar-powered lighting products, including solar-powered lighted house numbers, which they market to the trade, including but not limited to retailers.

6. On information and belief, INTP has misrepresented, and is misrepresenting, to one or more customers and potential customers of IDC, during the course of promotion of INTP's products, that certain products being offered for sale by INTP were and are "copyrighted," and that the sale of products by IDC and purchased by one or more of IDC's customers constitutes an infringement of INTP's copyrights, when IDC's products in question were neither copyrighted nor subject to copyright.

7. On information and belief, INTP has misrepresented, and is misrepresenting, to one or more customers of IDC, during the course of promotion of INTP's products, that certain products being offered for sale by INTP were "patented," when such products were not, in fact, patented.

8. INTP has willfully and intentionally threatened IDC and one or more customers and potential customers of IDC with a lawsuit for copyright infringement arising out of the sale of products purchased by such customers from IDC.

9. As a result of INTP's threats, IDC's customers and potential customers have a reasonable apprehension that they will be sued by INTP for copyright infringement if they purchase the products from IDC.

10. At the time of INTP's threats and misrepresentations, IDC had ongoing business relationships with its customers, including existing sales contracts and a high likelihood of

entering into proposed sales contracts.

11. Absent interference by INTP, IDC had a reasonable probability of entering into proposed new sales contracts with existing and prospective customers.

12. The IDC products complained of by INTP do not, in fact, infringe any cognizable right of INTP. The threats made by INTP against IDC's existing and potential customers do not have a reasonable basis in law, and on information and belief were and are willfully and intentionally made with knowledge that they were and are legally baseless, with malice and with the intent to disrupt the existing business relationships, the existing contractual relationships and potential contractual relationships between IDC and IDC's existing and potential customers.

13. INTP knew, or had reason to know, that its threats of litigation would interfere with existing and potential contracts between IDC and IDC's existing and potential customers.

14. IDC has been damaged by the baseless threats and misrepresentations made by INTP to IDC's existing and potential customers.

**V.
FALSE AND MISLEADING REPRESENTATIONS**

15. Paragraphs 1 through 14 are incorporated herein for the purpose of providing the initial factual allegations for this cause of action.

16. The above misrepresentations of fact made in commercial advertising and promotion of INTP's products constitutes false and misleading description of fact, and false and misleading representation of fact, as to the nature, characteristics, and qualities of INTP's goods, with such misrepresentations being designed to influence, and having the effect of influencing, the purchasing decisions of those to whom these misrepresentations are directed. These misrepresentations constitute a violation of 15 U.S.C. § 1125(a)(1)(B), and unless restrained, will

continue to occur, to the damage of plaintiff IDC.

**VI.
TORTIOUS INTERFERENCE WITH
EXISTING CONTRACT**

17. Paragraphs 1 through 14 are incorporated herein for the purpose of providing the initial factual allegations for this cause of action.

18. INTP's acts constitute tortious interference with IDC's existing contracts with IDC's existing customers, in violation of Texas law.

**VII.
TORTIOUS INTERFERENCE WITH
PROSPECTIVE CONTRACT**

19. Paragraphs 1 through 14 are incorporated herein for the purpose of providing the initial factual allegations for this cause of action.

20. INTP's acts constitute tortious interference with IDC's proposed contracts with IDC's existing and potential customers, in violation of Texas law.

**VIII.
TORTIOUS INTERFERENCE WITH
BUSINESS RELATIONSHIP**

21. Paragraphs 1 through 14 are incorporated herein for the purpose of providing the initial factual allegations for this cause of action.

22. INTP's acts constitute tortious interference with the business relationships between IDC and IDC's customers, in violation of Texas law.

**IX.
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF COPYRIGHT**

23. Paragraphs 1 through 14 are incorporated herein for the purpose of providing the

initial factual allegations for this cause of action.

24. In the present case, INTP asserts copyright protection on its products, which are useful articles not constituting proper subject matter for copyright protection. The copyrights asserted by INTP cover only photographs and drawings of INTP's products registered as literary works, and not the design of the products themselves.

25. IDC has not reproduced, performed, displayed, distributed copies of, or prepared derivative works based upon, any validly-copyrighted work of INTP.

26. INTP's threats of litigation, without action, against IDC's existing and potential customers have created a cloud over the business relationships between IDC and its existing and potential customers.

27. The dispute between IDC and INTP represents an actual controversy within the jurisdiction of this Court.

28. IDC seeks a judicial declaration from this Court to confirm its rights and legal status. In this case, there is a real controversy regarding the copyrights alleged by INTP, coupled with a clear manifestation that the declaration sought will be of practical value in resolving the entire controversy between the parties regarding such. Accordingly, IDC is entitled to a declaratory judgment from this court that INTP has no valid copyright on the design of its products and the products of IDC and the acts of IDC and its existing and potential customers complained of do not constitute infringement of any valid copyrights owned by INTP.

WHEREFORE PLAINTIFF PRAYS:

(a) That INTP, and its agents, servants, attorneys, employees, successors, and assigns, and any and all persons, firms, associations, and corporations, wholly or acting by, through or under any of the defendants, or in aid or in conjunction with any of the defendants, and those in privity therewith, during the pendency of this action, and thereafter permanently, be enjoined and restrained from:

(i) engaging in acts of false advertising, including but not limited to making representations that unpatented and uncopyrighted products are patented and/or copyrighted;

(ii) tortiously interfering with existing contracts between IDC and any other party;

(iii) tortiously interfering with potential contracts between IDC and any other party; and

(iv) tortiously interfering with business relationships between IDC and any other party.

(b) That this Court declare that no product of IDC or act of IDC or its existing or potential customers infringes any copyright of INTP;

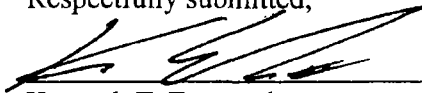
(c) That judgment be entered against INTP for any and all damages sustained and suffered by IDC, including enhanced damages, by reason of the acts complained of herein. IDC is not informed and is unable to state at this time the exact amount of profits and damages due it.

(d) That plaintiff recover its costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117; and

(e) That plaintiff have such other and further relief as the Court may deem just, equitable and proper in the premises.

Date: APRIL 22, 2004

Respectfully submitted,



Kenneth T. Emanuelson
Texas Bar No. 24012591
Kenneth R. Glaser
Texas Bar No. 07999000

GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Tel: 214-999-3000
Fax: 214-999-4667

ATTORNEYS FOR PLAINTIFF
INTERNATIONAL DEVELOPMENT
CORPORATION

United States District Court

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SUMMONS IN A CIVIL ACTION

International Development Corporation

v.

INTP, Inc.

CASE NUMBER:

304 CV - 854 P

To: (Name and Address of Defendant)

INTP, Inc. d/b/a World Source
4700 West Prospect Road, Suite 103,
Ft. Lauderdale, FL 33309.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEYS (name and address)

Kenneth T. Emanuelson
Kenneth R. Glaser
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201

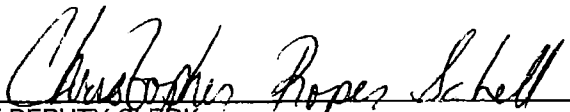
an answer to the complaint which is herewith served upon you, within 20 (twenty) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK OF COURT

CLERK

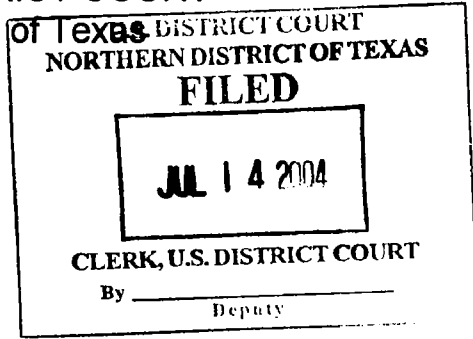
APR 22 2004

DATE


BY DEPUTY CLERK

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
NORTHERN District of Texas**



Case Number: 3:04-CV-854-P

Plaintiff:
INTERNATIONAL DEVELOPMENT CORPORATION
vs.
Defendant:
INTP, INC.

For:
GARDERE WYNNE SEWELL LLO

Received by JOSEPH RICH C.P.S. on the 28th day of June, 2004 at 10:38 am to be served on **INTP INC., D/B/A WORLD SOURCE, C/O CONNIS O. BROWN, ATTORNEY, 101 NE THIRD AVENUE, SECOND FLOOR, FORT LAUDERDALE, FLORIDA 33301**. I, CHRIS YEOMAN, being duly sworn, depose and say that on the 29 day of JUNE, 2004 at 11:15A m., executed service by delivering a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT, CERTIFICATE OF INTERESTED PERSONS AND CIVIL FILING NOTICE** in accordance with state statutes in the manner marked below:

() PUBLIC AGENCY: By serving _____ as _____ of the within-named agency.

() SUBSTITUTE SERVICE: By serving _____ as _____

() CORPORATE SERVICE: By serving _____ as _____

OTHER SERVICE: As described in the Comments below by serving Connis Brown as Attorney for Defendant

() NON SERVICE: For the reason detailed in the Comments below.

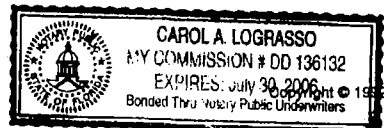
COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 6th day of July 2004 by the affiant who is personally known to me.
Carol A. Lograsso
NOTARY PUBLIC

[Signature]
PROCESS SERVER # 762
Appointed in accordance with State Statutes
JOSEPH RICH C.P.S.
129 N.E. Prima Vista Boulevard
Port St. Lucie, FL 34983
(772) 340-0011

Our Job Serial Number: 2004004459



RETURN OF SERVICE

Service of the Summons and Complaint was made by me¹ DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: _____
- Left copies thereof at the defendant's house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- Returned unexecuted: _____
- Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

Date

Signature of Server

Address of Server

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

INTP, INC., a Florida corporation,

Plaintiff,

CASE NO. 04-60784-CIV-MARRA
Magistrate Judge Seltzer

vs.

WESTINGHOUSE ELECTRIC CORPORATION,
a Delaware corporation, KMART
CORPORATION, a Delaware corporation, and
INTERNATIONAL DEVELOPMENT
CORPORATION, a Texas corporation

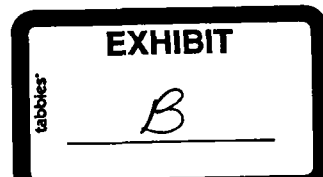
Defendants.

DECLARATION OF JOHN BROWDER

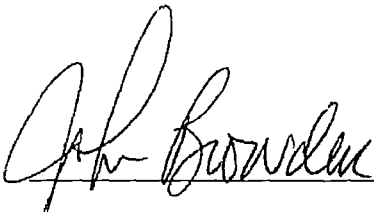
On this day, before me the undersigned authority, personally appeared John Browder, known to me to be the person whose name is subscribed hereto and under oath states:

“My name is John Browder. I am over the age of eighteen (18) years, of sound mind, and am not party to or interested in the above styled and numbered cause. I have personal knowledge of every fact and statement contained in this Declaration and each is true and correct.

1. I am the President of International Development Corporation (IDC).
2. IDC is a corporation organized under the laws of the State of Texas with its principal place of business in Southlake, Texas.
3. IDC does not now have, nor has it in the past had, had any business operations located in the State of Florida.
4. IDC does not maintain any place of business in the State of Florida.
5. IDC does not have any employees located within the State of Florida.
6. IDC does not have a registered agent for service of process in the State of Florida.



7. IDC has not registered to do business in the State of Florida.
8. IDC does not own or lease, nor has it ever owned or leased, real estate in the State of Florida.
9. IDC does not pay taxes to the State of Florida, nor to its knowledge is it obligated to do so.
10. IDC does not now maintain, nor has it ever maintained, a listing in any telephone directory in the State of Florida.
11. IDC does not now maintain, nor has it ever maintained, a bank account in the State of Florida.
12. IDC has never sold any of the products alleged to be infringing, or delivered any such accused products to, the State of Florida.
13. IDC has never received any payments for accused products from any customers located in the State of Florida.



 John Browder

THE STATE OF TEXAS §
 §
 COUNTY OF TARRANT §

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public, on this _____ day of July, 2004, by John Browder.

NOTARY SEAL
