UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

INTP, INC., a Florida corporation,

Plaintiff,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, a Delaware corporation,

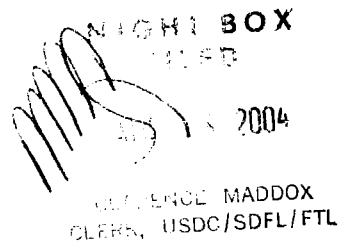
KMART CORPORATION, a Delaware corporation, and

INTERNATIONAL DEVELOPMENT CORPORATION, a Texas corporation

Defendants.

/

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



KMART CORPORATION'S AND WESTINGHOUS ELECTRIC CORPORATION'S JOINT MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)

Defendants Kmart Corporation ("Kmart") and Westinghouse Electric Corporation ("Westinghouse" and, collectively, "Defendants") bring this joint motion to dismiss or, in the alternative, to transfer this cause to the United States District Court for the Northern District of Texas.

Defendant International Development Corporation ("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, about two months before the present action was filed by INTP. As Defendants explain 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's complaint fails to establish INTP's ownership of the alleged rights

and asserts copyright protection over non-copyrightable subject matter. 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, 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 Kmart, 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 and Westinghouse. Defendants move 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 Tingley Systems*, 833 F. Supp. 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, 922-23 (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 IDC and INTP in the Northern District of Texas, which 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, Inc. v. Bay State HMO Mgmt.*, 833 F. Supp. 887-888 (S.D. Fla. 1993) ("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, Inc. v. Bay State HMO Mgmt.*, 833 F. Supp. 882, 885 (S.D. Fla. 1993) (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. Plaintiff's Copyright Claims Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6) Because the Plaintiff's Complaint Fails to State a Copyright Claim for which Relief can be Granted

If the Court determines that this action should not be transferred to the Northern District of Texas, the Court should dismiss INTP's copyright claim on the grounds that INTP does not own a copyright on the products in question and the products in which copyright is being asserted are, in fact, not copyrightable under the Copyright laws of the United States.

1. INTP's Complaint Reveals that it Does Not Own a Copyright on the Rock-Shaped Product

INTP's complaint does not assert that the rock-shaped products were created by INTP or any employee of INTP. Nor does INTP's complaint assert that INTP acquired the rights to the rock-shaped products by virtue of any contractual assignment or transfer of ownership from the creator. INTP asserts in its complaint that the rock-shaped products were commissioned by INTP from Hong Kong Star Industries, Ltd. as "works made for hire" and that INTP acquired its ownership of the "copyright" on the rock-shaped products by virtue of this arrangement. INTP's characterization of its ownership of the alleged copyright is contrary to the explicit provisions of the copyright laws of the United States.

Under 17 U.S.C. § 101, a "work made for hire" is defined as:

> (1) a work prepared by an employee within the scope of his or her employment; or
>
> (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

INTP's complaint does not—and cannot—allege that Hong Kong Star Industries, Ltd. is an "employee" of INTP. The work can only be considered a "work made for hire," therefore, if it

fits into one of the nine listed categories. Upon a review of the nine categories, it is clear that the rock-shaped product does not fit into any of the nine categories listed in 17 U.S.C. § 101. Accordingly, the rock-shaped product cannot be considered a "work made for hire," and INTP's complaint fails to establish that INTP holds any proprietary rights in the design of the rock-shaped products. *See Community For Creative Non-Violence v. Reid*, 490 U.S. 730 (1989) (sculptural work created by an independent contractor not a "work made for hire" under 17 U.S.C. §101).

2. INTP's Complaint Fails to Identify the Existence of Copyrightable Subject Matter

The rock-shaped products at issue in this action constitute "useful articles" under the Copyright Act of 1976, 17 U.S.C. § 101. Under the copyright laws of the United States, useful articles are not copyrightable. "Congress has repeatedly rejected proposed legislation that would make copyright protection available for consumer or industrial products." *Norris Industries, Inc. v. International Tel. & Tel. Corp.*, 212 U.S.P.Q. 754 (N.D. Fla. 1981) (quoting *Esquire, Inc. v. Ringer,* 591 F.2d 796, 800 (D.C. Cir. 1978)).

Under the Copyright Act, of 1976, which codified the pre-existing law regarding the non-copyrightability of useful articles, only features of a useful article which are capable of independent existence are eligible for copyright protection. Specifically, 17 U.S.C. § 101 provides:

> "Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates

> pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article."

In a similar vein, 17 U.S.C. § 102(b) provides that:

> In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

The bill which contained the 1976 Copyright Act originally contained provisions which would have explicitly provided for copyright in industrial designs. These provisions were expressly deleted from the final bill in order to secure passage of the bill. *See Norris,* 212 U.S.P.Q. at 754-755; H.R. Rep. No. 1476, 94th Cong., 2d Sess. 50 (1976). The deletion of these provisions resulted from strong objections to the creation of an entirely new form of intellectual property, as well as concern over the anti-competitive effects inherent in granting a 75- to 100-year monopoly over the designs of consumer goods. *See Norris,* 212 U.S.P.Q. at 754-755; Cong. Rec. H10873-74 (September 22, 1976). By way of contrast, design patents provide for a limited 14-year monopoly in the design of a consumer good, a much more attenuated term as compared to that of copyright. *See* 35 U.S.C. § 173. The grant of copyright protection on the design of useful articles would make design patent protection completely superfluous. If INTP wished to protect the design of its product, it could have acquired a design patent. To Defendants' knowledge, INTP has not done so.

In accordance with 17 U.S.C. § 101, only those aspects which can be separately identified and which are capable of existing independently can be copyrighted. *See Norris,* 212 U.S.P.Q. at 754-755; H.R. Rep. No. 1476, 94th Cong. 2d Sess. 50 (1976), U.S. Code Cong. Admin. News 1976, p. 5668. The shape of the body of INTP's rock-shaped product is not

conceptually or physically separable from the product itself because the product does not exist if the body is deleted. Thus, there exist no features which meet the requirement of independent existence.

INTP asserts that the existence of copyrightable subject matter is evidenced by the existence of its federal copyright registration number TX-5-547-208 ("the Registration"). What INTP glosses over is the fact that the Registration it asserts covers the content of INTP's catalog as a literary work, not the ornamental shape of its rock-shaped product as a sculpture. If INTP wished to protect the rock-shaped product as a sculpture, the proper avenue would have been to seek registration of the product as an alleged work of visual art using copyright office form VA (visual arts) rather than copyright office form TX (literary works).

INTP's position in this litigation is almost identical to that of the plaintiff in *Galiano v. Harrah's Operating Co.*, 71 U.S.P.Q.2d 1265 (E.D. La. 2004). In that case, the plaintiff asserted a copyright in costumes based on a copyright registration for illustrations of the costumes. The court found this attempt to copyright the uncopyrightable to be deceptive, and possibly even a misuse of the copyright office. In response to the plaintiff's assertion of copyright protection of its costumes based on its registration on illustrations of the costumes, the court had the following to say: "[Plaintiff] misses the point. Two dimensional artwork for costumes is copyrightable. As addressed supra, the clothing/uniform designs depicted by that artwork in the Collection is not copyrightable." In the same vein, while a catalog containing photographs of INTP's product may be copyrightable, a registration on a catalog containing such photographs does not equate to a copyright on the product itself. Accordingly, INTP has no copyright to assert against Defendants and its claims on this point must be dismissed for failing to state a claim upon which

relief may be granted.

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 Defendants in that INTP's claims could have been brought in the Northern District of Texas. IDC is a defendant in this action residing in Texas and has already moved for a transfer to the Northern District of Texas. Kmart and Westinghouse are not particularly any more amenable to suit in Florida than in Texas. Further, a civil action involving IDC and INTP is presently pending before the U.S. District Court for the Northern District of 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, Defendants submit 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. This Court lacks personal jurisdiction over the principal defendant, IDC, under Florida's Long Arm Statute, Fla.Stat. § 48.193 (1991), because IDC does not have sufficient contacts with Florida. Accordingly, if this litigation is maintained in this

forum, it will have to proceed without one of the central parties to the dispute. *See IDC's Motion to Dismiss or, in the alternative, to Transfer,* filed July 26, 2004.

2. IDC's principal claims against INTP for tortious interference arise out of Texas law, such that it would not make sense for the Texas case to be transferred to Florida.
3. If this action were allowed 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. INTP's principal claims against Defendants 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 IDC's Motion to Dismiss or, in the alternative, to Transfer, filed July 26, 2004.*

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, Defendants respectfully request that the present motion be granted and that this action be dismissed 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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Counsel for IDC, Inc.

By: _____
Kenneth R. Hartmann
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John Gravante, III
Fla. Bar. No. 617113

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by U.S. mail this 9th day of August, 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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 2
CLERK, U.S. DISTRICT COURT
By _____ Deputy

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

INTERNATIONAL DEVELOPMENT CORPORATION	§	
Plaintiff,	§	3 04 CV - 854 P
v.	§	CIVIL ACTION NO._____
INTP, Inc.	§	
Defendant.	§	

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.

EXHIBIT
A

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.

Respectfully submitted,

Date: APRIL 22, 2004

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ATTORNEYS FOR PLAINTIFF
INTERNATIONAL DEVELOPMENT
CORPORATION

AO 440 (Rev 1/90) Summons in a Civil Action

United States District Court

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SUMMONS IN A CIVIL ACTION

International Development Corporation

v.

INTP, Inc.

CASE NUMBER: 3 04 CV - 8 5 4 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

Christopher Ropes Schell
BY DEPUTY CLERK

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
NORTHERN District of Texas

DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUL 14 2004
CLERK, U.S. DISTRICT COURT
By _____ Deputy

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 _____.

(X) 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.

NOTARY PUBLIC

CAROL A. LOGRASSO
MY COMMISSION # DD 136132
EXPIRES: July 30, 2006
Bonded Thru Notary Public Underwriters

PROCESS SERVER # 262
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

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RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
AME 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.