

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

RUGGED CROSS HUNTING BLINDS, LLC.,

No.: 3:22-CV-00690

Plaintiff/Counter-Defendant,

v.

FERADYNE OUTDOORS, LLC

Defendant/Counterclaimant,

**UNOPPOSED MOTION FOR LEAVE
TO JOIN AS A DEFENDANT, DBR FINANCE INC.**

COMES NOW Plaintiff, Rugged Cross Hunting Blinds, LLC (“RCHB”), by and through their undersigned attorneys pursuant to Federal Rule of Civil Procedure 20 and hereby files this Unopposed Motion for Leave to join DBR Finance Inc. (“DBR”) (formerly known as Outdoor Product Innovations, Inc. (“OPI”) as a Defendant in this action and in support of this motion, states:

1. This case originated on or about December 5, 2022, by Plaintiff filing its initial Complaint (Doc. 1) against Defendant, FeraDyne Outdoors, LLC, (“FeraDyne”) for patent infringement of U.S. Patent No.: 11,399,535 entitled “Camouflage Material, for a Hunting Blind” (hereinafter the “‘535” Patent”).
2. RCHB filed its Amended Complaint (Doc. 14) against Defendant, FeraDyne on January 26, 2023.

3. On February 8, 2023, FeraDyne filed its Answer, Affirmative Defendants and Counterclaim (Doc. 17) against Plaintiff. Plaintiff filed its Answer and Affirmative Defenses to the Counterclaim (Doc. 22) on February 28, 2023.

4. On February 9, 2023, the parties attended a preliminary pretrial conference before U.S. Magistrate Judge Stephen Crocker.

5. This Court entered a Preliminary Pretrial Conference Order (Doc. 20) (the “Order”) on February 13, 2022.

6. The Order includes the deadline of March 31, 2023 for amendments to the pleadings. The Parties had until that date to amend pleadings or add parties without leave of the Court.¹

9. The Amended Complaint includes allegations that OPI/DBR manufactured and sold the Rhino 180 hunting blind, which is the product accused of infringing claims of the ‘535 Patent. (Doc. 14, ¶ 28).

10. Plaintiff further alleges that on August 25, 2022, Plaintiff sent letter to OPI/DBR alleging infringement of the ‘535 Patent. (Doc. 14, ¶ 31).

11. The Amended Complaint further alleges that upon information and belief that “FeraDyne acquired all assets and liabilities of OPI,” and that in October 2022, the Plaintiff “received information that FeraDyne had acquired OPI.” (Doc. 14, ¶¶ 31-32).

12. After the March 31, 2023, deadline for amending the pleadings, Plaintiff received document discovery from FeraDyne and DBR that confirmed that FeraDyne acquired assets of DBR relating to DBR’s manufacture and sale of the Rhino 180 hunting blinds.

¹ In this instance, Plaintiff has not missed a deadline, but is simply seeking leave of Court to add DBR as a Defendant.

13. In addition, on May 5, 2023, Plaintiff received discovery from DBR that its sale of its assets included a specific amount of inventory of the Rhino 180 hunting blinds ordered or manufactured by DBR.

14. To that end, FeraDyne has confirmed that the Rhino 180 blinds that it sells are the same structurally and functionally as those manufactured and sold by DBR. In response to Plaintiff's Interrogatory 8, of its First Set of Interrogatories, FeraDyne replied:

INTERROGATORY NO. 8: Describe any structural and functional differences between the Accused Product sold by FeraDyne and the Rhino 180 blind sold by OPI.

OBJECTION: FeraDyne objects to this Interrogatory as vague and ambiguous.

ANSWER: FeraDyne affirmatively states that from October 24, 2022 to the present, FeraDyne has sold the Rhino 180 blind without making any product changes.

15. Accordingly, Plaintiff seeks leave of this Court to join DBR to this case as a Defendant.

16. The parties are currently in the initial stages of discovery. Both parties have served Requests for Production of Documents and Interrogatories and the parties have responded.

17. The Plaintiff has served subpoenas for production of documents on two non-parties, DBR Finance Inc and Tru-View LLC. Only a single deposition has been taken including a Rule 30(b)(6) deposition of Tru-View LLC.

18. In addition, the Plaintiff and Defendant have scheduled an early court-sponsored mediation for July 25, 2023, before U.S. Magistrate Judge Andrew Wiseman.

19. Undersigned counsel for Plaintiff has conferred in good faith with counsel for Defendants, who has reviewed this motion and counsel for Defendant does not oppose this Motion or the relief requested in this Motion.

MEMORANDUM OF LAW

Fed. R. Civ. P. 20(a)(2) provides that: “Persons may be joined in one action as defendants if:

- (A) Any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) Any question of law or fact common to all defendants will arise in the action

Courts are “strongly encouraged” to join claims, parties, and remedies, and the [r]ules are construed towards “entertaining the broadest possible scope of action consistent with fairness to the parties.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966). Joinder of parties is especially favored where it will “promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.” *Thomas v. Chestnutt Hill Apartments*, No. 10-C-328, 2010 U.S. Dist. LEXIS 127014, at *3 (E.D. Wis. Nov. 22, 2010). Whether multiple claims arise from the same transaction, occurrence, or series of transactions or occurrences depends on “whether there is a logical relationship between the operative facts and claims of a lawsuit.” *Insolia v. Philip Morris, Inc.*, 186 F.R.D. 547, 549 (W.D. Wis. 1999). The 'logical relationship' standard should be construed in favor of the “promotion of efficiency, convenience, and fundamental fairness. *Id.*

Here, there is a logical relationship between Plaintiff’s claims against FeraDyne and against DBR. Initially, Plaintiff sued FeraDyne for infringement based on FeraDyne’s sale of the Rhino 180 hunting blinds. The Rhino brand originally belonged to DBR (then known as OPI), and RCHB had communicated with DBR about the Rhino blinds via the above-referenced letter of August 25, 2022.

Within two months after this letter was sent, FeraDyne and DBR entered into an asset purchase agreement on or about October 24, 2022 which included the sale of assets related to

DBR's manufacture and sale of alleged infringing Rhino 180 blinds, including an existing DBR inventory of Rhino 180 hunting blinds. Accordingly, this asset purchase logically connects DBR to the dispute between Plaintiff and FeraDyne.

Questions of law and fact, at least with respect to infringement of the Rhino 180 blinds, are common to both FeraDyne and DBR. As pointed out above, FeraDyne has stated that, "...from October 24, 2022 to the present, FeraDyne has sold the Rhino 180 blind without making any product changes" to those same blinds sold by DBR. In a separate trial, a different court would necessarily have to resolve the same questions of law and fact currently at issue regarding FeraDyne's infringement of Plaintiff's '535 Patent.

Denying joinder in this instance would burden the judicial system with a duplicitous case and would be inconvenient for all parties involved. Forcing Plaintiff to bring a separate action against DBR would run the risk of a different court applying different construction to the patent claims and ultimately risk inconsistent judgments. The value of avoiding these strains to the judicial system and risks to the clarity of the judgment outweighs any delay caused by joining DBR to the current lawsuit.

Plaintiff has not delayed its filing nor has this filing been made in bad faith. Although this motion is submitted after March 31, 2023, the deadline to amend the pleadings without leave of the court, Plaintiff did not have the requisite knowledge of the asset purchase agreement to properly include DBR as a defendant until the discovery process. Before discovery, Plaintiff only knew generally of FeraDyne's acquisition of DBR's assets.

The Plaintiff understands that adding DBR as a defendant may require altering the scheduled deadlines and possibly the trial date of June 10, 2024, although the Court may be able to may be able to keep this trial date. However, the Plaintiff respectfully suggests that adding

DBR, in the end, may be a more efficient use of judicial resources in resolving this patent dispute regarding the Rhino 180 blinds manufactured and sold by both FeraDyne and DBR.

WHEREFORE, Plaintiff RCHB respectfully requests this Court grant leave to the Plaintiff to join DBR Finance Inc. in this action as a Defendant.

DATED this 15th day of June, 2023.

Respectfully Submitted,

WOLTER, VAN DYKE, DAVIS PLLC
1900 Summit Tower Blvd., Suite 140
Orlando, FL 32810
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
Email: rwolter@savvyiplaw.com
Email: adavis@savvyiplaw.com
Attorneys for Plaintiff

/s/ Robert L. Wolter

Robert L. Wolter
Florida Bar No. 0906344
Amber N. Davis
Florida Bar No: 0026628

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been electronically filed through the Court's CM ECF system this 15th day of June, 2023, which will send notice by electronic mail to: Craig S. Krummen, Esquire (krummenc@gtlaw.com); Greenberg Traurig, LLP, 90 South 7th Street, Suite 3500, Minneapolis, MN 55402..

/s/ Robert L. Wolter

Attorney