NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

DAVID A. TROPP,
Plaintiff-Appellant,

v.

CONAIR CORPORATION, HP MARKETING CORP. LTD., L.C. INDUSTRIES, LLC, MASTER LOCK COMPANY LLC, SAMSONITE CORPORATION, TITAN LUGGAGE USA, TRAVELPRO INTERNATIONAL INC., AND TRG ACCESSORIES, LLC,
Defendants-Appellees,

AND

BRIGGS & RILEY TRAVELWARE LLC,
Defendant-Appellee,

AND

VF OUTDOOR, INC., BROOKSTONE COMPANY, INC., AND BROOKSTONE STORES, INC.,
Defendants-Appellees,

AND

DELSEY LUGGAGE INC.,
Defendant-Appellee,

AND

EBAGS, INC.,
Defendant-Appellee,

AND

MAGELLAN'S INTERNATIONAL TRAVEL CORPORATION,
Defendant-Appellee,

AND

TUMI, INC.,
Defendant-Appellee,

and

WORDLOCK, INC.,
Defendant-Appellee,

AND

EAGLE CREEK, A DIVISION OF VF OUTDOOR, INC., AND OUTPAC DESIGNS INC.,
Defendants.

2011-1583

Appeal from the United States District Court for the Eastern District of New York in Case No. 08-CV-4446, Judge Eric N. Vitaliano.

Decided: November 15, 2012

RONALD D. COLEMAN, Goetz Fitzpatrick LLP, of New York, New York, for plaintiff-appellant. With him on the brief was JOEL G. MACMULL.

WILLIAM L. PRICKETT, Seyfarth Shaw LLP, of Boston, Massachusetts, for defendants-appellees Conair Corporation, et al.

PETER I. BERNSTEIN, Scully, Scott, Murphy & Presser, of Garden City, New York, for defendant-appellee Briggs & Riley Travelware LLC. On the brief was ANTHONY J. DIFILIPPI, Abelman, Frayne & Schwab, of New York, New York.

BRIAN A. CARPENTER, Buether Joe & Carpenter LLC, of Dallas, Texas, for defendants-appellees Brookstone Stores, Inc., et al.

CHRISTOPHER F. LONEGRO, Ober, Kaler, Grimes & Shriver, of Baltimore, Maryland, for defendant-appellee Delsey Luggage Inc.

JANET CULLUM, Cooley Godward Kronish, LLP, of New York, New York for defendant-appellee eBags, Inc. With her on the brief was CAROLYN JUAREZ. Of counsel was LORI R. MASON, of Palo Alto, California.

ROBERT J. KENNEY, Birch, Steward, Kolasch & Birch, of Falls Church, Virginia, for defendant-appellee Magellan's International Travel Corporation.

NEIL P. SIROTA, Baker Botts, LLP, of New York, New York, for defendant-appellee Tumi, Inc. On the brief was JENNIFER C. TEMPESTA.

THOMAS F. FITZPATRICK, Goodwin Procter LLP, of Menlo Park, California, for defendant-appellee Wordlock, Inc.

Before RADER, *Chief Judge*, LOURIE, *Circuit Judge*, and DANIEL, *Chief District Judge*[1].

RADER, *Chief Judge*.

David A. Tropp sued Defendants-Appellees, eighteen manufacturers and distributors of luggage, for infringement of United States Patent Nos. 7,021,537 (the '537 patent) and 7,036,728 (the '728 patent) in connection with their use of a dual-access luggage lock system designed and licensed by Travel Sentry, Inc. ("Travel Sentry"). In September 2010, the United States District Court for the Eastern District of New York awarded declaratory judgment of non-infringement of the '537 and '728 patents to Travel Sentry. *Travel Sentry, Inc. v. Tropp* (*Travel Sentry I*), 736 F. Supp. 2d 623, 639 (E.D.N.Y. 2010). The district court then dismissed the present case as barred by collateral estoppel based on the decision in *Travel Sentry I*. *Tropp v. Conair Corp.*, No. 08-cv-4446, 2011 U.S. Dist. LEXIS 88559 (E.D.N.Y. Aug. 10, 2011). Tropp appeals, and this court has jurisdiction pursuant to 28 U.S.C. § 1295(a).

This court recently vacated and remanded the *Travel Sentry I* decision for a determination of whether Travel Sentry is liable for indirect infringement under the standard set forth in this court's *en banc* opinion in *Akamai Techs. Co. v. Limelight Networks, Inc.*, 692 F.3d 1301 (Fed. Cir. 2012). *Travel Sentry, Inc. v. Tropp* (*Travel Sentry II*), No. 2011-1023, -1367, 2012 U.S. App. LEXIS 22691, at *25 (Fed. Cir. Nov. 5, 2012). Because *Travel Sentry II* vacated the decision that formed the basis of the district court's application of collateral estoppel, that doctrine no longer applies. Therefore, this court vacates

[1] The Honorable Wiley Y. Daniel, Chief District Judge, United States District Court for the District of Colorado, sitting by designation.

the dismissal of the present action and remands for further proceedings.

VACATED AND REMANDED