

Amazon Didn't Infringe Pillowcase Design Patent, Jury Says

By **Vin Gurrieri**

Law360, New York (October 29, 2015, 8:01 PM ET) -- Amazon won a verdict in Washington federal court on Thursday that it did not infringe five design patents asserted against it by offering to sell knockoff versions of animal-shaped pillowcases.

After a four-day trial, the jury determined that Amazon.com Inc. didn't offer to sell products on its website that infringed the patents belonging to Milo & Gabby LLC. The products include pillowcases in the shape of ponies, cats, dogs, rabbits and dinosaurs.

Among its findings, the jury concluded that Milo & Gabby didn't prove it was likely that Amazon offered to sell the alleged infringing products or that the company set prices for the purportedly infringing products.

"We are obviously disappointed but not surprised, given that the trial proceeded with the jury being repeatedly informed, 'the judge has already determined Amazon does not sell the products at issue,'" Philip Mann of Mann Law Group, an attorney for Milo & Gabby, said in an emailed statement Thursday. "In any event, we now go forward to the Federal Circuit for a review of the entire matter."

Milo & Gabby filed its complaint in October 2013, alleging that Amazon knowingly sold and offered to sell knockoffs of its pillowcases to customers who believed they were buying the actual products. Customers who bought the inferior products then posted bad ratings on Amazon's website, leading to further harming of Milo & Gabby's reputation, according to the complaint.

In a Sept. 28 filing by Amazon, the company noted that the case has been narrowed to the claim at hand after numerous other allegations were rejected by the court as part of motions to dismiss or for summary judgment, including claims for unfair competition under the Washington Consumer Protection Act and Lanham Act violations. The court has also dismissed Milo & Gabby's claims of willful and indirect patent infringement, according to the filing.

The September filing by Amazon also motioned the court to order Milo & Gabby to remove language posted on the company's website that says the retailer "quickly" removed the pillowcases from its online store after the suit's filing and the line, "Isn't that an admission of guilt in itself?" Amazon also objected to other "one-sided" and "inaccurate" statements about the case on Milo & Gabby's site, arguing they could taint the trial's jury.

But U.S. District Judge Ricardo S. Martinez **subsequently denied** the request just prior to trial while

noting that both sides would have a chance to ask jurors about their familiarity with them, including their individual websites.

Thursday's verdict also came a day after Amazon asked Judge Martinez for judgment as a matter of law on Milo & Gabby's direct infringement claim, saying the patent holder failed to prove that Amazon offered to sell the accused products.

Alternatively, Amazon's motion asked the court for judgment on Milo & Gabby's request for compensatory damages under Section 284 of the Patent Act.

Milo & Gabby is represented by Philip P. Mann and Timothy J. Billick of Mann Law Group and John Whitaker of Whitaker Law Group.

Amazon is represented by Vanessa S. Power, Brian C. Park and Nathan C. Brunette of Stoel Rives LLP and John M. Hughes and Joseph W. Doman of Bartlit Beck Herman Palenchar & Scott LLP.

The case is Milo & Gabby LLC et al. v. Amazon Inc., case number 2:13-cv-01932, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Kevin Penton. Editing by Christine Chun.