UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRAGEL INTERNATIONAL, INC.,)
)
Plaintiff,)
)
vs.) Case No. 2:14:cv-7691
)
CHARLOTTE RUSSE, INC,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF FRANCES HARDER
GLENDALE, CALIFORNIA
WEDNESDAY, SEPTEMBER 21, 2016
9:15 A.M.

Reported by:
KAYLA LOTSTEIN
CSR No. 13916

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VIDEOTAPED DEPOSITION OF FRANCES HARDER, taken on behalf of Plaintiff, at 9:15 a.m., Wednesday, September 21, 2016, at 655 North Central Avenue, Suite 400, Suite 2300, Glendale, California, before Kayla Lotstein, Certified Shorthand Reporter No. 13916 of the State of California, pursuant to Notice.

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Also Present:
Manni Sidhu, Videographer

I N D E X

E X H I B I T S

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Q. So for purposes of my question now, I'd like you to open the expert report that you entered in the Charlotte Russe case on infringement. So that would be, I believe, Exhibit 1.
A. For Charlotte Russe?
Q. Yes.
A. Yeah.
Q. And in particular I'd like to refer you to page 7, which talks about the asserted claims. Do you see that?
A. Yes.
Q. Okay.
A. B?
Q. Yes. Now, we were -- we were talking about the connector on the patented product; correct?
A. Correct.
Q. And you said it was -- I don't want to put words in your mouth -- but complex engineering went in to making the product, in terms of molding the connector to the silicone?
A. And getting the heat right, yes.
Q. Okay. Now, where in the claims in the case does it talk about how the connector is adjoined to the breast form?
A. As far as I'm aware, they didn't put that in

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to the patent application.
Q. Okay. So that's an --
MR. KOSTOLANSKY: Could --
THE WITNESS: Yeah. Let me read it.
MR. KOSTOLANSKY: Why don't you read the claims before you answer his question --
THE WITNESS: Okay.
MR. KOSTOLANSKY: -- since he's asking you about the claims.
THE WITNESS: Okay.
MR. KOSTOLANSKY: Let's have the question read back when she's done reading.
THE WITNESS: In Claim 1 it does have pressure-sensitive adhesive layer.
(Reporter clarification.)
THE WITNESS: It does have a pressure-sensitive adhesive layer for securing the breast forms to the breast of the wearer. Okay?
And then the connector adapter to adjoin the breast forms together within the connector is positioned between inner side of each breast forms.
BY MR. KROUB:
Q. Okay. So what is the pressure-sensitive adhesive layer have to do with the connector?
A. It doesn't --

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Q. Okay.
A. -- at the time.
Q. Okay. And is there anything in the description of the connector in Claim 1 of the '296 patent that has anything to do with heat or how the connector is actually manufactured on these products?
A. No.
Q. So, in fact, in your opinion, any connector between -- that's adapted to adjoin the breast forms together would infringe the patent; correct?
A. I don't know. I mean, I know that to make this particular piece it would have to be heat rather than stitched.
Q. Okay. But would a stitched connector that would be adapted to adjoin the breast forms together infringe Claim 1?
A. It may do.
Q. In fact, Claim 1 is not limited to heat-placed connectors; correct?
A. Correct.
Q. Okay. And Claim 1 is completely silent about all the effort that goes into manufacturing these products; correct?
A. Correct.
Q. In fact, Claim 1 is not -- is not directed to

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manufacturing of the products at all; correct?
MR. KOSTOLANSKY: Object to the form.
THE WITNESS: It's a description of what the end result is, but it doesn't explain exactly how the garment is made.
MR. KROUB: Right. So, in your opinion, the claim covers the end product as a whole.
THE WITNESS: Correct.
BY MR. KROUB:
Q. Okay. How it's made is not considered by the claim.
MR. KOSTOLANSKY: Object to the form.
THE WITNESS: Well, I think having silicone gel -- I mean, we're not going into exactly what the chemical formation of the silicone is.
BY MR. KROUB:
Q. Right. So any silicone gel would be -- fall within the scope of the claim; correct?
A. Well, the way -- the volume of the silicone gel -- they're not describing the weight of the silicone.
Q. Right. So that means any silicone gel would infringe; correct?
A. It would.
Q. In fact, a product that has both silicone and

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form -- and foam could infringe; correct?
A. It could.
Q. All right. And the -- then, similarly, there's no description of what the pressure-sensitive adhesive has to be; correct? It just says any pressure-sensitive adhesive layer.
MR. KOSTOLANSKY: Object to the form.
THE WITNESS: Correct.
BY MR. KROUB:
Q. What about in Claim 2? Does Claim 2 talk about heat or anything involved in the manufacturing of the product?
A. No.
Q. Claim 2 just talks about the connector being able to cooperatively engage with the other piece in the connector?
A. Correct.
Q. Okay. And similar question for Claim 5. Claim 5 doesn't talk about the manufacturing process for the products at all; correct?
A. Correct.
Q. It just says that the connector is permanently attached to the breast forms.
A. Correct.
Q. Okay. So the actual -- would you say that the

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invention as claimed is a complex invention or something simple to somebody of -- skilled in the art like yourself?
A. You mean by just reading the description?
Q. Yeah, just the claim.
A. Well, the claim itself, then you have to come and produce the actual goods, so then you -- you have to find somebody who's got the right equipment to make it and to do all the things that go into producing it.
Q. Right. But I'm talking about the invention. The idea itself. Is it a complex idea or a simple idea?
MR. KOSTOLANSKY: Object to the form.
THE WITNESS: Well, I think it sounds simple, but I think it's quite complex to produce it.
BY MR. KROUB:
Q. Okay. So the -- but the production is not part of the invention, right --
A. Yeah.
Q. -- because it's not in the claim?
A. Correct.
Q. Okay. So the actual invention itself, you would agree, sounds simple?
A. Correct.
Q. And somebody of skill in the art, let's say, that was starting with a pair of silicone breast forms,

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would they have -- strike that.
Someone of skill in the art, starting with these materials, these different components, would have been able to put them all together; correct.
A. But they didn't.
Q. Well, would someone with skill in the art been able to do so?
A. I mean, things always look more obvious when they're done and invented. So it's like the wheel.
Q. But I'm trying to isolate. So what -- in your mind, what's the actual invention described in the claims?
A. Putting all those pieces together. So coming up with the idea of producing a silicone cup with adhesive -- a silicone cup. And then attaching the connector in the center that would then hold it or you can manipulate it any way you want so you get the look and feel that you want.
Q. Right. Connectors were known in the bra industry prior to the patent; right?
A. Correct.
Q. And silicone breast forms were known in the industry prior to the patent; right?
A. Correct.
Q. So if someone had told you the idea -- my idea

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is I'm going to take silicone breast forms and add a connector, as an expert, would you have been able to easily understand what they were trying to accomplish?
A. If it was explained to me, yeah.
Q. Well, just that explanation.
A. Explanation if it was a silicone cup that was adhesive and they had a connector and --
Q. I want to add a connector.
MR. KOSTOLANSKY: Objection. Counsel's interrupting the witness. Please allow her --
MR. KROUB: And you're interrupting me.
THE COURT REPORTER: Please speak one at a time.
MR. KOSTOLANSKY: I'm interrupting you because I had no choice but to interrupt.
MR. KROUB: Yeah, you had a choice.
MR. KOSTOLANSKY: You had a choice.
MR. KROUB: Okay.
THE WITNESS: So let's go back.
BY MR. KROUB:
Q. Let's go back. If someone had told you, Ms. Harder, here's a pair of silicone breast forms. I want to add a connector to them. Would you have told them that they were crazy at the time?
A. No.

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Q. Okay. Would the foam bra also have the same benefit to a user as the silicone bra with respect to the pressure-sensitive adhesive layer?
A. Just to -- in regards to the pressure sensitive; correct.
Q. It would?
A. As far as I'm aware.
Q. Right. And similarly, for the connector that's on both, those connectors would provide the same benefits?
A. As far as -- well, the way they advertise it, they put it on one side, and they put it on the other, and they connect it so they can bring the cleavage together.
Q. Right. But both the foam bra and the silicone bra could be used to enhance cleavage?
A. Correct.
Q. And it's the connector that allows them to do so?
A. Correct.
Q. Okay. So the place where we have a difference is with respect to the use of silicone as opposed to foam for the breast form itself; correct?
A. For the decision of the consumer.
Q. Right. And in your opinion, the silicone

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provides a more natural look and feel than the foam?
A. In my view, yes.
Q. Okay. And that's your view for every customer or some customers?
A. I can't speak for every customer.
Q. Okay. Are you speaking for yourself as a woman who may or may not use these products when you say one looks more natural than the other?
A. No. I'm talking as an expert. So if I were to -- like we do in casting for a fashion show and we ask the models to walk, I think you would have a much more natural look with a model wearing a silicone cup as opposed to the foam one if they had a -- depending on what she had over it.
Q. Right.
A. She might have a thin fabric over it, and so the silicone may be more beneficial to the look of her body.
Q. Okay. What if they were wearing the same dress?
A. Depends on the thickness, again, of the fabric. So if you had a thin fabric, you may find that the stitching on the bra here would show through. Or if it was a low-cut garment, you may see the edge of the sewing on the foam cup; whereas the silicone one may be

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look -- it would be harder to see.
Q. Okay. And could -- could these foam products -- have you seen them made without stitching?
A. I think -- I don't know. I don't recall. I know we have different examples we can bring in afterwards.
Q. Okay. If there was a foam product that didn't have stitching, then it wouldn't have the difference with the silicone?
A. The difference in the silicone is, of course, it's giving you much more volume. So there's a thickness involved in, obviously, breast enhancement, giving it a better volume as opposed to the foam which is thinner.
Q. Okay. Could the foam be made thicker?
A. Could be made thicker.
Q. Okay. And in your example of the models, would it be important to maybe ask the models which one felt more natural to them?
A. Why would I be asking that? Sorry.
Q. Well, you're trying to determine which one provides a more natural look and feel, and you said that the opinion of the wearer is important to that calculation; right?
A. Correct.

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Q. So if the models were wearing the bras, would you normally ask them which one they think provides a more natural look and feel?
A. For the most part, they don't wear a bra, actually, on the runway. But I know from my daughter's point of view when I made her wedding dress and we chose these particular cups for it that this gave it a much more natural look than the foam ones.
Q. And when you -- for your daughter's wedding dress, she wore the Bragel product?
A. Yes.
Q. Okay. Did she wear the Walmart version or the NuBra version?
A. She bought it from Victoria's Secrets.
Q. Okay. And is that the same as -- was that a Made in U.S.A. or made in China product?
A. I think it was made in China.
Q. You think it was. And do you remember how much she paid for that?
A. No. She bought it. I didn't.
Q. So that was her decision what bra to buy?
A. Correct.
Q. Now where in the patent claim -- and feel free to refer back to Exhibit 1 -- does it talk about natural look and feel?