

JUDGE RAKOFF

13 CV 2030

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

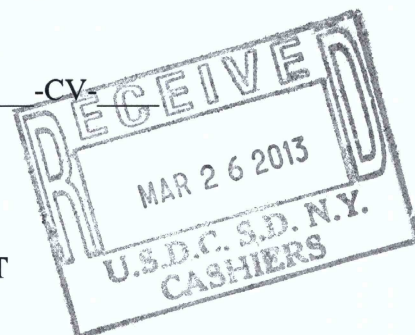
CALLET WORLD, LLC,

Plaintiff,

vs.

AUGUST HAT COMPANY INC. d/b/a HEX
and APPLE INC.*Defendants.*CASE NO.: -CV-

ECF CASE

COMPLAINT**JURY TRIAL DEMANDED**

Plaintiff, Callet World LLC ("Callet World"), by and through its attorneys, Malek Schiffrin LLP, complains and alleges as follows against defendants August Hat Company, Inc. d/b/a Hex and Apple Inc.:

NATURE OF THE ACTION

1. Callet World changed the mobile device case industry in 2009 when it introduced the popular Callet, a product that changed the way people view mobile device cases. Reviewers, analysts and consumers immediately recognized the Callet as a "must have." Before the Callet, cell phone covers tended to have a singular design with uninteresting design features that did not allow for additional flexibility. The Callet was radically different. In one small and lightweight piece, it offered the same sophisticated mobile phone protection in an elegantly designed product with a distinctive design and eye-catching sleeves that allowed a user to consolidate their personal effects and that gave the Callet an unmistakable look.

2. The Callet design features were carried over to mobile phone cases for products such as the iPhone and the Blackberry, some of the most ubiquitous communications products on the market today.

3. Callet World's creative achievements have resulted in intellectual property protection for Callet World's innovations, including a design patent. Nevertheless, Callet World's innovations have been the subject of widespread emulation by its competitors, who have attempted to capitalize on Callet World's innovations by imitating Callet World's elegant and distinctive product design. One of the principal imitators is August Hat Company, Inc. d/b/a/ Hex ("Hex"), which recently introduced the Hex Solo Wallet Case and HEX X Pretty Sweet Solo Wallet Case line of mobile phone cases to compete with the Callet for the widely popular iPhone. On information and belief, instead of pursuing independent product development, Hex has chosen to slavishly copy Callet World's elegant and distinctive product design, in violation of Callet World's valuable intellectual property rights. As alleged below in detail, Hex has made its mobile phone cases work and look like Callet World's products through widespread patent infringement. Hex's knock off design is sold by many retailers including by defendant Apple Inc. ("Apple").

4. By this action, Callet World seeks to put a stop to Hex's and Apple's illegal conduct and obtain compensation for the violations that have occurred thus far.

THE PARTIES

5. Plaintiff Callet World LLC is a New York limited liability company having its principal place of business at 32 East 32nd Street, New York, New York 10001.

6. Defendant August Hat Company, Inc., is a California Corporation doing business as Hex with an address at 3051 Sturgis Road, Oxnard, California 93030. Defendant August Hat

Company, Inc. has designated Roque Valladares, having an address at 3051 Sturgis Road, Oxnard, California 93030, as its agent for service of process.

7. Defendant Apple Inc. is a California corporation having its principal place of business at 1 Infinite Loop, Cupertino, California 95014. Defendant Apple Inc. has designated CT Corporation System with an address at 111 Eighth Avenue, New York, New York 10011 as its agent for service of process.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks).

9. This Court has personal jurisdiction over Hex and Apple because Hex and Apple have committed and continue to commit acts of infringement in violation 35 U.S.C. § 271, and place infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of New York, including in this District. The acts by Hex and Apple have caused and continue to cause injury to Callet World within this District. Upon information and belief, Hex and Apple have derived and continue to derive substantial revenue from the sale of infringing products within this District, expect their actions to have consequences within this District, and derive substantial revenue from interstate and international commerce.

10. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and (c) because Hex and Apple transact business within this District and offer for sale in this District products that infringe the Callet World patent. In addition, venue is proper because Callet World's principal place of business is in this District and Callet World suffered harm in this District. Moreover, a substantial part of the events giving rise to the claim occurred in this District.

FACTUAL ALLEGATIONS

CALLET WORLD'S INNOVATIVE DESIGN

11. Callet World is a designer and manufacturer of cases for mobile communication devices. As a result of its research and development, Callet World has developed innovative designs that have changed the face of the mobile phone case industry in a way that has broadly appealed to consumers.

12. In 2009, Callet World introduced the Callet mobile phone case. The Callet combined in one small and lightweight case the protection functions and user interface accessibility required of a mobile phone case into an elegant design that gave the Callet an immediately recognizable look.

13. As a direct result of its innovative and distinctive design, the Callet was an instant success, and it immediately became uniquely associated with Callet World as its source. Reviewers universally praised the Callet as a “must have for 2011”. News outlets reported the Callet as “great” and an “unbeatable gift.” Star Magazine praised the Callet as a “Hot Accessory” on its hot list and celebrity users celebrated the Callet as “perfect for those always on the go...”

14. After introducing the Callet, Callet World continued to innovate and achieve success with a series of designs that were more sophisticated and advanced versions of the Callet. In its early years on the market, Callet World sold a substantial number of Callet units. Callet World's Callet products have been extensively advertised throughout the United States, including network television, the Internet, and magazines, with the vast majority of the advertisements featuring photographs of the distinctive design of the Callet products. Callet

World's advertising expenditures for the Callet products were substantial for a company of its size.

CALLET WORLD'S INTELLECTUAL PROPERTY RIGHTS

15. Callet World has protected its innovative designs through a design patent issued by the United States Patent and Trademark Office. The Callet World design patent covers the many ornamental features of Callet World's devices, such as the phone cover with integral card holder on the outwardly facing side of the phone cover. Callet World owns all right, title, and interest in and to the asserted design patent D653,656 (the "D'656 Patent"), a copy of which is attached as Exhibit 1.

HEX'S AND APPLE'S INFRINGING PRODUCTS

16. Hex and Apple have imported into or sold HEX Solo Wallet Case and HEX X Pretty Sweet Solo Wallet Case in the United States, a product that infringes Callet World's design patent. On information and belief, rather than innovate and develop its own unique style, Hex and Apple have chosen to copy or misappropriate Callet World's innovative style and design in its infringing products.

17. Defendants' Solo Wallet Case and Pretty Sweet Solo Wallet Case products are exemplary. The copying is so pervasive, that the defendants' products appear to be Callet World products with the same rectangular shape with rounded corners, integral card holder on the outwardly facing side of the phone cover, and gently curving edges on the back and side. Hex had many options in developing its products. Indeed, earlier Hex products did not embody the same Callet World designs. On information and belief, Hex chose to infringe Callet World's

patent rights through the design of its Solo Wallet Case, Pretty Sweet Solo Wallet Case and similar products and it did so willfully.

Infringement of Callet World's Patents

18. Defendants' infringement of the Callet World design patent identified in this Complaint provides defendants with a unique design for their products that was the result of Callet World's innovation, not defendants. Moreover, as the side-by-side comparison shown below reveals, defendants have misappropriated Callet World's patented case design in the accused products, including the Solo Wallet Case depicted below. Defendants have not obtained permission from Callet World to use its inventions in the identified design patent.



19. An ordinary observer, giving such attention as a purchaser usually gives, would consider the Solo Wallet Case and Pretty Sweet Solo Wallet Case to be substantially the same as the design of the D'656 Patent.

FIRST CLAIM FOR RELIEF

(For Infringement of the 'D656 Patent)

20. Callet World incorporates and realleges paragraphs 1 through 19 of this Complaint.

21. Defendants have infringed and continue to infringe the 'D656 Patent by using, selling and/or offering to sell in the United States, and/or importing into the United States one or more of the products identified in this Complaint, which embody the design covered by the 'D656 Patent.

22. As a result of defendants' acts and omissions complained of herein, Callet World has been damaged.

PRAYER FOR RELIEF

WHEREFORE, Callet World prays for relief, as follows:

- (a) A judgment that defendants have infringed the claim of Callet World's asserted patent;
- (b) An order and judgment preliminarily and permanently enjoining defendants and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of Callet World's asserted patents;

(c) A judgment awarding Callet World all damages adequate to compensate for defendants' infringement of Callet World's asserted patent, and in no event less than a reasonable royalty for defendants' acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(d) A judgment awarding Callet World all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

(e) Actual damages suffered by Callet World as a result of defendants' unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

(f) Restitutionary relief against defendants and in favor of Callet World, including disgorgement of wrongfully obtained profits and any other appropriate relief;

(g) Costs of suit and reasonable attorneys' fees; and

(h) Any other remedy to which Callet World may be entitled to under law.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Callet World hereby demands trial by jury on all issues raised by the Complaint.

DATED: March 26, 2013

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US00D653656S

(12) **United States Design Patent**
Charnas et al.

(10) **Patent No.:** **US D653,656 S**
 (45) **Date of Patent:** **** Feb. 7, 2012**

(54) **PHONE COVER WITH INTEGRAL CARD HOLDER**

(75) Inventors: **Brandon Charnas**, East Hills, NY (US);
Kenneth Goldie, Boston, MA (US);
Hunter Gellin, New York, NY (US);
Shawn Vardi, New York, NY (US)

(73) Assignee: **Callet World LLC**, Great Neck, NY (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/361,155**

(22) Filed: **May 6, 2010**

(51) **LOC (9) CL.** **14-03**

(52) **U.S. CL.** **D14/250**

(58) **Field of Classification Search** D14/250–253,
 D14/440, 203.7, 217, 496, 203.3; D3/201,
 D3/218, 269, 301, 273, 303; D13/103; 220/4.02;
 224/191, 240, 241, 245, 682–683; 248/309.1;
 361/679.56; 379/426, 433.11, 455; 455/575.1,
 455/575.8; 190/100; 206/305, 320

See application file for complete search history.

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SmrtCase Glide Hard Case for iPhone 3G and 3GS, <URL:http://www.mygearstore.com/smrtcase-glide-hard-case-for-iphone-3g-and-3gs-pink>, retrieved from internet Aug. 10, 2011.*

(Continued)

Primary Examiner — Rob M Spear

Assistant Examiner — Carla Wright

(74) *Attorney, Agent, or Firm* — Kirschstein, et al.

(57)

CLAIM

The ornamental design for a phone cover with integral card holder, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a phone cover with integral card holder according to our new design;

FIG. 2 is a front elevational view thereof;

FIG. 3 is a top plan view thereof;

FIG. 4 is a left side elevational view thereof;

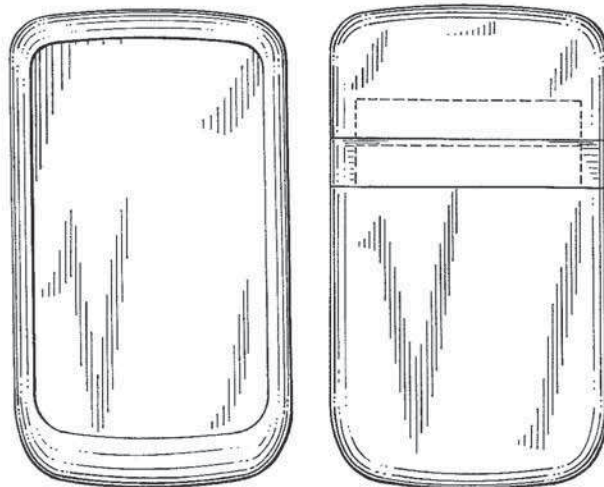
FIG. 5 is a right side elevational view thereof;

FIG. 6 is a rear elevational view thereof; and,

FIG. 7 is a bottom plan view thereof.

In FIG. 1, the broken lines and the unshaded region on the front of the case depict an unclaimed cell phone. In FIG. 6, the broken lines and the unshaded regions that are bounded by broken lines depict unclaimed cards.

1 Claim, 3 Drawing Sheets



OTHER PUBLICATIONS

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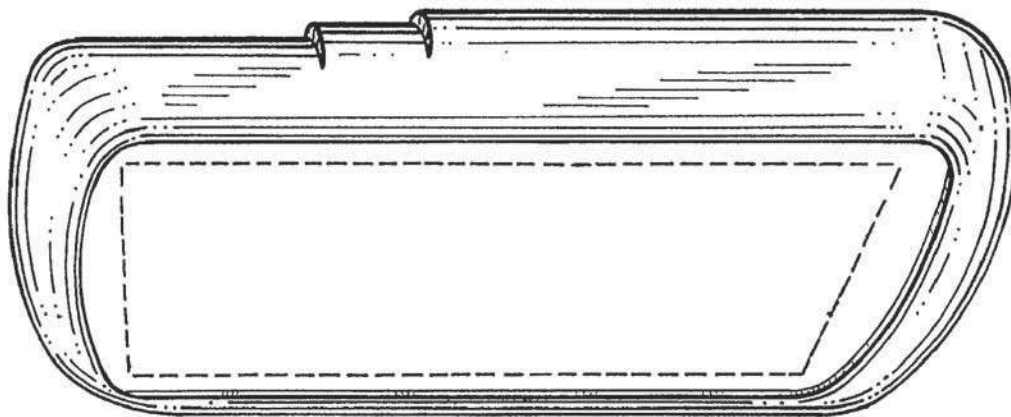
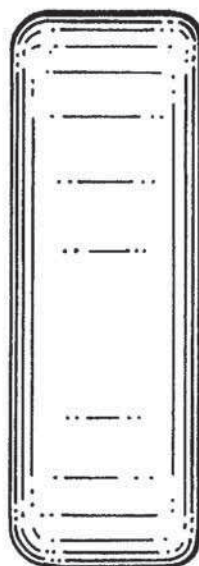


FIG. 1

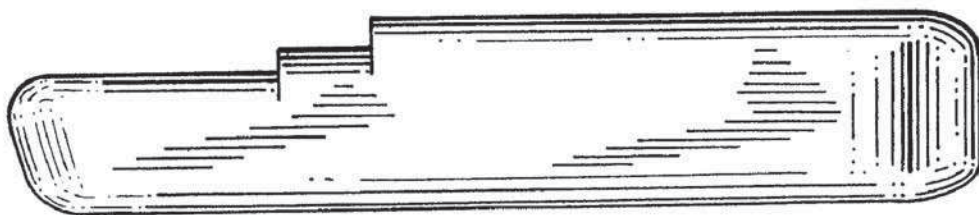


FIG. 4

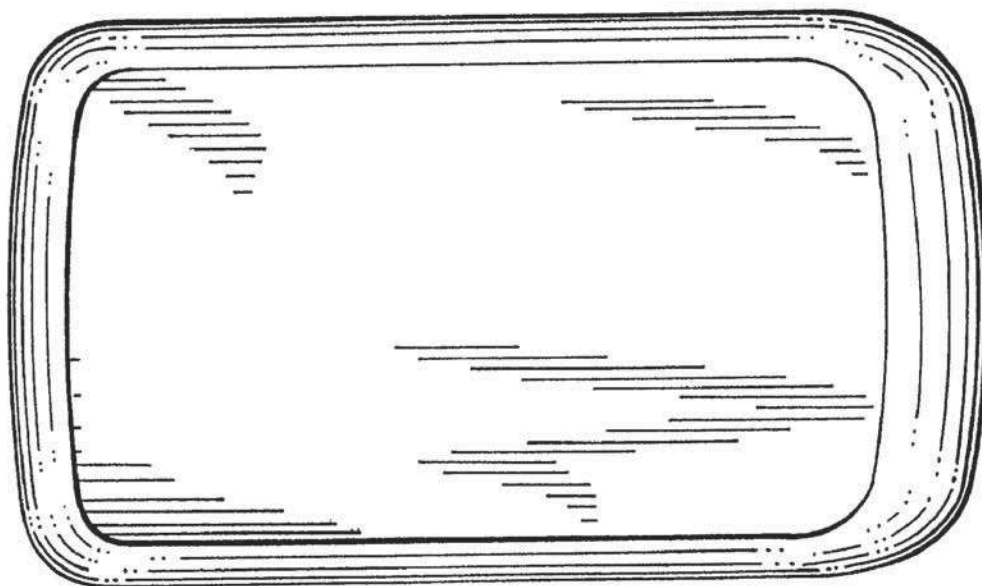


FIG. 2

FIG. 5

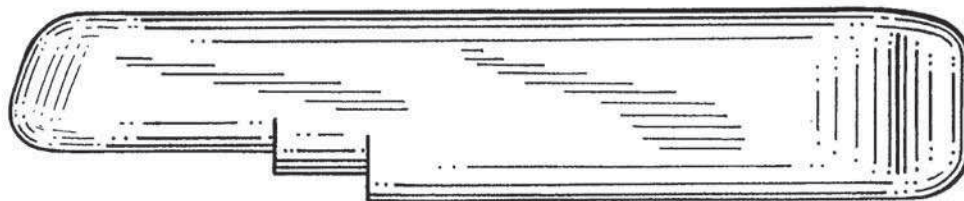


FIG. 6

