

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ALPHA TECHNOLOGY U.S.A.
CORPORATION, d/b/a FUTURECOW, a
Florida corporation,

Plaintiff,

CASE NO.: 6:13-cv-1062-ORL-37-TBS

v.

JURY TRIAL DEMANDED

MLSNA DAIRY SUPPLY, INC. d/b/a
MTECH DAIRY SOLUTIONS, a
Wisconsin corporation and
PHIL MLSNA, an individual,

Defendants.

2013 JUL 15 AM 9:48
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

FILED

COMPLAINT

Plaintiff, ALPHA TECHNOLOGY U.S.A. CORPORATION, d/b/a FUTURECOW ("Plaintiff" or "FutureCow"), by and through its undersigned counsel, files this Complaint against MLSNA DAIRY SUPPLY, INC. d/b/a MTECH DAIRY SOLUTIONS ("MDS") and PHIL MLSNA ("Mr. Mlsna") (collectively referred to as "Defendants") as follows:

NATURE OF THE ACTION

1. This is a patent infringement, tortious interference, unfair and deceptive trade practices and breach of contract action to stop Defendants' willful infringement of Plaintiff's United States Patent No. 8,402,920 entitled "*System and Method for Cleaning Teats of a Milk-Producing Animal*" (the "'920 patent") (a copy of which is attached hereto as Exhibit "A") and to stop Defendants' willful and malicious acts of tortious interference with contractual relationships and potential advantageous business relationships, breach of contract and unfair and

deceptive trade practices. Plaintiff seeks injunctive relief and monetary damages against Defendants.

PARTIES

2. Plaintiff, ALPHA TECHNOLOGY U.S.A. CORPORATION, d/b/a FUTURECOW, is a corporation organized and existing under the laws of Florida. Plaintiff maintains its principal place of business at 1340 Bennett Drive, Longwood, Florida 32750.

3. Defendant, MLSNA DAIRY SUPPLY, INC. d/b/a MTECH DAIRY SOLUTIONS, is a Wisconsin corporation organized and existing under the laws of the state of Wisconsin. MDS has a principal place of business located at 1126 Front Street, Cashton, Wisconsin, 54619.

4. Defendant, PHIL MLSNA, is the owner of MLSNA DAIRY SUPPLY, INC. d/b/a MTECH DAIRY SOLUTIONS and personally participated in, directed, controlled and financially benefitted from the unlawful conduct alleged herein.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 154(d), 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over the state law claims of tortious interference, breach of contract and unfair and deceptive trade practices under 28 U.S.C. §1367.

6. This Court has personal jurisdiction over Defendant, MDS, pursuant to Fla. Stat. §48.193(1)(b), §48.193(g) and §48.193(2) because MDS committed a tortious act within this State, caused injury to Plaintiff who is domiciled in this State, breached a contract in this State

by failing to perform acts required by the contract to be performed in this State and is engaged in substantial and not isolated activity within this State.

7. This Court has personal jurisdiction over Defendant, Mr. Mlsna pursuant to Florida Statute §48.193(b), §48.193(g) and §48.193(2) because Mr. Mlsna in his capacity as an officer/director/manager of MDS committed a tortious act within this state, caused injury to Plaintiff who is domiciled in this State, breached a contract in this State by failing to perform acts required by the contract to be performed in this State and is engaged in substantial and not isolated activity within this State.

8. Venue is proper in the this District pursuant to 28 U.S.C. §§ 139(b)(1) and (2) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district, because Defendants have committed a tort and breached a contract causing injury to Plaintiff, who is located in this very District and because Defendants, as former dealers for Plaintiff, have signed contracts in relation to distribution of Plaintiff's FutureCow Teatscrubber® and contracts related to ongoing services provided by Plaintiff wherein the Choice of Law provision indicates that the laws of the State of Florida shall apply.

FACTUAL BACKGROUND

9. FutureCow manufactures, markets, and distributes teat-scrubbing equipment, disinfectants, comfort brushes and other related products for use on dairy cows inside the United States, including the Middle District of Florida, as well as internationally. The teat scrubbing equipment that is manufactured and marketed by FutureCow is called the FutureCow Teatscrubber® (also referred to as the "FutureCow system").

10. FutureCow invested significant time, resources, labor and money in research and development of past and current versions of its FutureCow Teatscrubber®. Some of the features

developed by FutureCow include, but are not limited to: (1) optimizing the speed of the drive motor, which influences the spin rate of the teat scrubbing brushes to allow for the best combination of animal comfort, soil removal and milk letdown; (2) changing the brush material in order to clean the cow with more animal comfort while maintaining cleaning efficiency; (3) replacing and enlarging the brushes to allow for more surface area of the brush to come in contact with smaller cow teats; (4) significantly improving the reliability of the scrubber due to minimal drive motor wear on parts and wasted energy lost as heat; and, (5) developing a unique sanitizing cleanser that is both effective and easy to remove from the teat.

11. Many of these improvements made by FutureCow are disclosed and/or claimed in Plaintiff's '920 Patent, which issued on March 26, 2013. *See* Exhibit "A."

12. FutureCow has dealers all across the United States and abroad that sell, install and service the FutureCow system. Indeed, MDS is a former dealer for FutureCow and sold the FutureCow Teatscrubbers to dairy farms; however, MDS later terminated its dealer relationship with FutureCow. After terminating the dealer relationship, Defendants manufactured a knockoff of the FutureCow system and are now offering for sale and selling the knockoff at a cheaper price to FutureCow's current and prospective customers, while at the same time falsely stating that MDS has the original teatscrubber and everyone else copied them.

13. The business relationship between MDS and FutureCow began in December of 2011 when Mr. Mlsna contacted the President of FutureCow, Kevin Dole, and told Mr. Dole that he not only owned his own dairy named MDS dairy, but he also owned a dairy supply dealership in Cashton, Wisconsin. Mr. Mlsna represented that MDS was a DeLaval dealer. Mr. Mlsna made it clear during the conversation that he was interested in becoming a FutureCow dealer and selling the FutureCow Teatscrubber®.

14. From December 2011 to February 2012, MDS sold and installed 4 FutureCow Teatscrubber® systems. During that timeframe, Mr. Dole disclosed to Mr. Mlsna, FutureCow's confidential business information including names of existing and potential customers (i.e. dairy farms) and names of various dairy farms that FutureCow had ongoing negotiations with, in and outside of Wisconsin.

15. Some of the additional confidential business information disclosed to Mlsna was Plaintiff's pricing, testing and performance information as well as information pertaining to the patent application for the '920 Patent, that at that time, had yet to be published.

16. Defendants were made readily aware of the patent application through both verbal and written correspondence. Not only was the patent application number cited in the User Manual provided to Defendants with each system that it installed (*See* Exhibit "B"), but Defendants cited to the patent application and Plaintiff's rights to such intellectual property in their own contracts with the dairy farms. *See* Exhibit "C."

17. In February of 2012, FutureCow entered into a business relationship with GEA, one of the largest suppliers of process technology and components for the food and energy industries. Shortly thereafter, MDS stopped purchasing teatscrubbers from FutureCow and began the process of manufacturing its own teatscrubber which infringes one or more claims of the '920 Patent.

18. At that time, MDS and Mr. Mlsna owed FutureCow \$4,314.56 for Plaintiff's monthly services charges, which included all parts and chemicals for four (4) different customers for the month of February 2012. True and correct copies of the past due invoices wherein customer information has been redacted are attached hereto as Exhibit "D."

19. As of today's date, Defendants have not paid the invoices and Plaintiff has been damaged as a result of the non-payment.

20. Defendants unilaterally cancelled the contracts with the above-mentioned dairies, installed Defendants' infringing system at three (3) of the dairies and ceased paying Plaintiff its monthly services fees.

21. Upon information and belief, in January of 2013, Mr. Mlsna and MDS were at the Midwest Farm Show in Lacrosse, Wisconsin and during the trade show, Mr. Mlsna displayed to potential customers (some of which were current or prospective customers of FutureCow) old broken parts and told such customers that they were FutureCow parts when in fact they were not. Mr. Mlsna and MDS made such claims to harm the reputation of FutureCow and to attempt to interfere with FutureCow's business and prospective business relationships with such customers.

22. Recently, it has been brought to the attention of FutureCow that Mr. Mlsna has been visiting FutureCow's current customers and offering for sale a teatscrubber (also referred to as the MTech" system) that infringes one or more claims of the '920 patent. Upon information and belief, the MTech system is being sold under the name MTech Dairy Solutions and has recently been offered for sale at a trade show under that name. *See Exhibit "E."*

23. Upon information and belief, Champion Milking Systems, LLC is a reseller for MDS of the MTech system and is offering for sale and selling the infringing system. A true and correct copy of an advertisement offering the MTech system for sale is attached hereto as Exhibit "F."

24. Defendant MDS, through the direction, control, with the financial benefit and with the actual knowledge of Mr. Mlsna, are selling such infringing products for much less than

FutureCow while at the same time making disparaging comments about FutureCow and the FutureCow system which has caused and will continue to cause irreparable harm to FutureCow.

25. Defendant, MDS, through the participation, direction, control, and with the financial benefit and with the actual knowledge of Mr. Mlsna is manufacturing, offering for sale and selling the MTech system to customers all throughout the United States, including in this judicial district that infringes one or more of the claims of the '920 patent literally and/or through the doctrine of equivalents.

26. Upon information and belief, Defendant, MDS, through the participation, direction, control of, and with the actual knowledge of Mr. Mlsna, is inducing infringement at least through the use and distribution of the marketing materials mentioned above (Exhibit F) as well in a YouTube video found at the following link <http://www.youtube.com/watch?v=DzJNXf1614o>.

27. Upon information and belief, Mr. Mlsna, on behalf of MDS visited several dairies, all current and/or prospective customers of FutureCow's, in an effort to interfere with FutureCow's business relationships with these dairies and has been making false and misleading statements about FutureCow and the FutureCow system, including, but not limited to, that the MTech system is better and requires less maintenance than the FutureCow system; that the MTech system is the "original teatscrubber system" and everyone else copied MTech; and that MDS has a patent that is about to issue for the MTech system.

28. A review of the USPTO website indicates that there are no published patent applications wherein the inventor is Phil Mlsna or the owner is MDS. Each of these statements are false, misleading and an unjustified interference with Plaintiff's business and its relationships with its customers and prospective customers.

29. Several of the dairies visited by Defendants is a customer and/or prospective customers learned through the confidential business relationship between the Parties and customers that Plaintiff and its dealers have spent a significant amount of time and effort negotiating with.

30. Not only did Defendants use the confidential customer names, but Defendants used Plaintiff's confidential pricing information and sales strategies to intentionally and unjustifiably interfere with Plaintiff's business.

31. In fact, Defendants' actions of contacting Plaintiff's customers and potential customers has caused damage to Plaintiff in that Plaintiff has lost at least three (3) identifiable customers that were prior customers of Plaintiff's and at least ten (10) customers that were potential customers.

32. Plaintiff has been damaged as a result of Defendants' activities described herein.

33. Plaintiff has performed all conditions precedent to be performed by Plaintiff or the conditions have occurred.

34. Plaintiff has been forced to retain the law firm of Beusse Wolter Sanks Mora & Maire, P.A. for representation in this action.

COUNT I
DIRECT PATENT INFRINGEMENT

35. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

36. Plaintiff is the owner of United States Patent No. 8,402,920 (the '920 Patent) at all times material hereto. *See* Exhibit "A."

37. The '920 Patent is for a system and method of cleaning teats of milk-producing animals.

38. The '920 Patent also covers methods for cleaning the teats of milk producing animals.

39. Defendant, MDS, through the participation, direction, control and with the financial benefit and actual knowledge of Mr. Mlsna, manufactures, promotes, advertises, offers for sale and sells a teatscrubbing system that infringes one or more claims of the '920 Patent either literally or through the doctrine of equivalents.

40. Defendants' aforesaid activities have been without authority and/or license from Plaintiff and are considered intentional and willful.

41. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of the Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

42. Plaintiff is further entitled to recover damages dating back to the publication of the '920 Patent pursuant to 35 U.S.C. §154(d) against Defendants because Defendants were on actual notice of the patent in at least as early as January of 2012 and upon information and belief were also aware of the published application once it published in March of 2012.

43. Defendants' infringement of Plaintiff's exclusive rights under the '920 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II
INDIRECT PATENT INFRINGEMENT

44. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

45. Plaintiff is the owner of United States Patent No. 8,402,920 (the '920 Patent) at all times material hereto. *See* Exhibit "A."

46. The '920 Patent is for a system and method of cleaning teats of milk-producing animals.

47. The '920 Patent also covers methods for cleaning the teats of milk producing animals.

48. Upon information and belief, Defendant, MDS, through the participation, direction, control and with the financial benefit and actual knowledge of Mr. Mlsna is actively marketing the sale of the knock off to its resellers and both verbally and in writing, instructing its dealers how to clean teats using the method all of which violate one or more method claims of the '920 Patent and constitutes active inducement under 35 U.S.C. §271(b).

49. Evidence of Defendants' inducement activities can be seen in the advertising materials attached as Exhibit "F" and the YouTube video at the following link: <http://www.youtube.com/watch?v=DzJNXfl6l4o>

50. Defendants' aforesaid activities have been without authority and/or license from Plaintiff and are considered intentional and willful.

51. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of the Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

52. Plaintiff is further entitled to recover damages dating back to the publication of the '920 Patent pursuant to 35 U.S.C. §154(d) against Defendants because Defendants were on

actual notice of the patent at least as early as January of 2012 and upon information and belief were also aware of the published application once it published in March of 2012.

53. Defendants' infringement of Plaintiff's exclusive rights under the '920 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

54. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

55. During Plaintiff's business relationship with Defendants, Plaintiff disclosed, in confidence, a number of its customers to Defendants as well as its sales strategies, pricing, performance and testing information.

56. Plaintiff was a third party beneficiary to the contracts that Defendants had with their customers to provide ongoing services and products for the FutureCow system.

57. Defendants were aware of each of these business relationships.

58. Defendants intentionally and unjustifiably interfered with the contracts by contacting such customers and attempting to sell and selling the infringing MTech system to such customers under the guise that the MTech system was "better" and "less maintenance" and that MTech was the "original" system that everyone else copied and has a patent pending on the system.

59. Defendants actions were not justified or privileged.

60. Plaintiff was damaged by Defendants' activities because Plaintiff lost at least three (3) identifiable customers to Defendants.

COUNT IV
TORTIOUS INTERFERENCE WITH POTENTIAL ADVANTAGEOUS
BUSINESS RELATIONSHIPS

61. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

62. During Plaintiff's business relationship with Defendants, Plaintiff disclosed, in confidence, a number of its potential customers that it had ongoing negotiations with to Defendants as well as its sales strategies, pricing, performance and testing information.

63. Plaintiff had ongoing negotiations with over twenty (20) dairies which involved intensive negotiations.

64. Defendants were aware of each of these potential business relationships as a direct result of being one of Plaintiff's dealers and Defendants were aware that such information was supposed to be utilized only in relation to Defendants' capacity as a FutureCow dealer.

65. Defendants intentionally and unjustifiably interfered with the prospective business relationships by contacting such customers and attempting to sell and selling the infringing MTech system to such customers under the guise that the MTech system was "better" and "less maintenance" and that MTech was the "original" system that everyone else copied and has a patent pending on the system.

66. Plaintiff was damaged by Defendants' activities because Plaintiff lost at least ten (10) identifiable prospective customers to Defendants.

COUNT V
BREACH OF CONTRACT

67. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

68. The Parties entered into an agreement whereby Plaintiff was to provide valuable services and products to Defendants and Defendants were to pay Plaintiff for such services and products.

69. Plaintiff performed all conditions precedent to be performed by Plaintiff or the conditions have occurred.

70. Defendants breached the agreement by failing to pay Plaintiff.

71. Plaintiff has been damaged in a sum of \$4,314.56.

COUNT VI
DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER §501.201, et. seq.

72. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

73. The actions of Defendant, MDS through the direction and control and with the actual knowledge and financial benefit of Mr. Mlsna, including but not limited to, learning confidential information from Plaintiff and then using such information to make a knockoff of Plaintiff's FutureCow teatscrubber® while at the same time intentionally interfering with Plaintiff's current and prospective customers and disparaging Plaintiff and its products while doing so, constitutes deceptive and unfair trade practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")

74. Defendants were aware that Plaintiff's products and methods were protected by a patent, but willfully chose to infringe, to steal Plaintiff's customers and to disparage Plaintiff in the meantime by claiming that the MTech system was "better" and "less maintenance" and that

MTech was the “original” system that everyone else copied and has a patent pending on the system.

75. Defendants intentional and unjustifiable interference with Plaintiff’s business relationships and prospective business relationships constitutes tortious interference under Florida law.

76. By reason of Defendants’ unlawful actions, Plaintiff has suffered and continues to suffer irreparable harm including, but not limited to, its patent is being infringed upon, it has lost at least three (3) customers and ten (10) potential customers and it may continue to lose customers and/or potential customers if Defendants’ unlawful actions are not stopped.

77. Accordingly, Plaintiff is entitled to an injunction against Defendants, pursuant to *Fla. Stat.* §501.211(1).

78. Plaintiff is aggrieved by Defendants’ unlawful actions and has suffered and continues to suffer losses and is therefore entitled to recover all actual damages sustained as a result of Defendants’ actions, plus attorney’s fees and court costs, pursuant to *Fla. Stat.* §501.211(2) and §501.2105.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that Plaintiff’s rights in the ‘920 Patent are valid and enforceable;

B. An adjudication that one or more claims of the '920 Patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendants;

C. An adjudication that Defendants' actions constitute tortious interference with contractual relationships under Florida law;

D. An adjudication that Defendants' actions constitute tortious interference with potential advantageous business relationships under Florida law;

E. An adjudication that Defendants' actions constitute breach of contract under Florida law;

F. An adjudication that Defendants' actions constitute unfair and deceptive trade practices under Florida law;

G. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement, tortious interference, breach of contract and unfair and deceptive trade practices together with pre-judgment and post-judgment interest;

H. An award of Defendants' profits from the sale of the infringing product from March 26, 2013 until the present;

I. An award to Plaintiff of damages for patent infringement dating back to March 22, 2012, the date the application was published and when Defendants were on actual notice of the '652 patent application pursuant to 35 U.S.C. §154(d);

J. A grant of permanent injunction pursuant to 35 U.S.C. § 283 and 15 U.S.C. §1117, enjoining the Defendants, their agents, employees, officers, attorneys, successors, assigns, and all persons in active concert or participation with them from further acts of infringement of the '920 Patent and from making, using, offering or sale or selling any canopies

teatscrubbing systems that infringe one or more of the independent claims of the '920 Patent either literally or under the doctrine of equivalents;

K. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285;

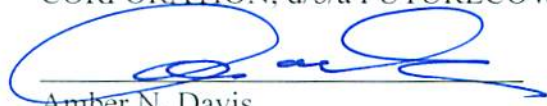
L. That this Court award Plaintiff its attorneys' fees and costs pursuant to Fla. Stat. 501.211(2) and §501.2105; and

M. Any further relief that this Court deems just and proper.

DATED this 12th day of July, 2013.

Respectfully submitted,

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