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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

11 Clamp-Swing Pricing Company,  
12 Plaintiff,  
13 v.  
14 Super Market Merchandising and Supply,  
15 Inc. and Kevin Knasel, individually,  
16 Defendants.

Case No. CV 12-02445-WHO

**SECOND AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT UNDER 35  
U.S.C. § 271**

**DEMAND FOR JURY TRIAL**

Complaint Filed: May 14, 2012  
First Amended  
Complaint Filed: September 26, 2012

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

19 Plaintiff Clamp-Swing Pricing Company brings this Second Amended Complaint against  
20 Defendant Super Market Merchandising and Supply, Inc. and Defendant Kevin Knasel for  
21 infringement of U.S. Patent No. 6,530,166, U.S. Patent No. 8,220,189, U.S. Patent No. D610,623,  
22 U.S. Patent No. D610,624, and U.S. Patent No. D623,697 (collectively, “CSP’s Patents”),  
23 pursuant to 35 U.S.C. § 271.

**THE PARTIES**

24  
25 1. Plaintiff Clamp-Swing Pricing Company (“CSP”) is a California corporation with  
26 its principal place of business at 8386 Capwell Drive, Oakland, California 94621. Operating since  
27 1924, CSP is one of the oldest and most well-known manufacturers of signage and related  
28

1 merchandise employed by retailers, and particularly food vendors, to market and price their  
2 products for sale at retail.

3 2. Defendant Super Market Merchandising and Supply, Inc. (“SMM”) is a Missouri  
4 corporation with its principal place of business at 5200 Virginia Avenue, St. Louis, Missouri  
5 63111. SMM manufactures and sells products for use by food vendors and other retailers, which  
6 products include signage for the marketing and pricing of goods for sale at retail.

7 3. Defendant Kevin Knasel (“Knasel”) is the founder and owner of SMM. Knasel is  
8 the sole shareholder of SMM. (Defendants Knasel and SMM are collectively referred to below as  
9 “Defendants”).

10 4. CSP alleges, based on the allegations set forth with more particularity below, that  
11 Knasel has used and continues to use SMM as his alter-ego. CSP alleges that there exists, and at  
12 all times relevant herein there existed, a unity of interest and ownership between Knasel and  
13 SMM, such that individuality and separateness between Knasel and SMM have ceased. Knasel  
14 founded SMM thirty years ago, and he is the sole owner and shareholder of SMM. On  
15 information and belief, SMM does not follow or adhere to corporate formalities. SMM does not  
16 have a board of directors, chief executive officer, or chief operations officer; it also has “no  
17 corporate structure.” Knasel has complete control over SMM’s corporate funds. On information  
18 and belief, Knasel commingles his personal funds with SMM’s corporate funds, and Knasel pays  
19 himself a salary that far exceeds and is not commensurate with Knasel’s actual duties,  
20 responsibilities, and involvement in the management of the day-to-day operations of SMM. On  
21 information and belief, SMM is inadequately capitalized. Therefore, for the reasons set forth  
22 herein, CSP alleges that adherence to the fiction that SMM and Knasel operate as distinct,  
23 separate entities would permit an abuse of the corporate privilege and would sanction fraud and  
24 promote injustice.

25 5. On information and belief, Knasel was intimately involved in the intentional patent  
26 infringement perpetrated against Clamp-Swing, and Knasel directed and controlled such  
27 infringing activities. CSP is informed and believes, and on that basis alleges, that at all relevant  
28 times, Knasel and SMM acted as the agent and representative of each other, each aided and

1 abetted the actions taken by each other and each was acting within the course and scope of his  
2 agency in connection with each of the actions and events that form the subject matter of this  
3 action.

4 **JURISDICTION AND VENUE**

5 6. This is an action for patent infringement under the patent laws of the United States,  
6 Title 35 of the United States Code. The Court has subject matter jurisdiction over this action  
7 pursuant to 28 U.S.C. §§1331 and 1338(a). Venue lies in this judicial district pursuant to 28  
8 U.S.C. §§ 1391(b) and (c).

9 7. This Court has personal jurisdiction over Defendants Knasel and SMM.  
10 Defendants have conducted and do conduct business within the State of California, directly or  
11 through intermediaries or agents. Defendants make, sell, offer for sale, advertise, use, and induce  
12 others to use products that infringe CSP's Patents in this judicial district.

13 8. In addition to Defendants' continuous and systematic conduct of business in  
14 California, the causes of action against it in this Complaint arose from or are connected with its  
15 purposeful acts committed in California, including its directly infringing, contributorily  
16 infringing, or inducing infringement of CSP's Patents by, among other activities, making, selling,  
17 offering to sell, using, and inducing others to use products that embody one or more claims in  
18 CSP's Patents.

19 9. The Court also has personal jurisdiction over Defendant Knasel because Knasel  
20 has used and continues to use SMM as his alter-ego, as set forth in detail above, and because  
21 Knasel is also the moving, active, conscious force behind SMM's infringing activity. Knasel has  
22 directed, controlled, ratified, and participated in the infringing activity in California, and acts as  
23 the guiding spirit and the active directing hand in full charge of SMM's operations. Knasel's  
24 conduct has caused, and continues to cause, harm to CSP in California.

25 10. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c), because, among other  
26 reasons, Defendants SMM and Knasel are subject to personal jurisdiction in this judicial district,  
27 and have committed acts of infringement in this judicial district.  
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**THE PATENTS IN SUIT**

11. CSP is the owner by assignment of all right, title and interest in and to U.S. Patent No. 6,530,166, U.S. Patent No. 8,220,189, U.S. Patent No. D610,623, U.S. Patent No. D610,624, and U.S. Patent No. D623,697.

12. U.S. Patent No. 6,530,166 (“the ’166 Patent”) is entitled “Sign Holder Device.” On March 11, 2003, after a full and fair examination, the United States Patent and Trademark Office (“PTO”) duly and legally issued the ’166 Patent. A true and correct copy of the ’166 Patent is attached hereto as Exhibit A. The ’166 Patent is valid and enforceable.

13. U.S. Patent No. 8,220,189 (“the ’189 Patent”) is entitled “Sign Holder Device.” On July 17, 2012, after a full and fair examination, the PTO duly and legally issued the ’189 Patent. A true and correct copy of the ’189 Patent is attached hereto as Exhibit B. The ’189 Patent is valid and enforceable.

14. U.S. Patent No. D610,623 (“the ’623 Patent”) is a design patent entitled “Signage Easel Base.” On February 23, 2010, after a full and fair examination, the PTO duly and legally issued the ’623 Patent. A true and correct copy of the ’623 Patent is attached hereto as Exhibit C. The ’623 Patent is valid and enforceable.

15. U.S. Patent No. D610,624 (“the ’624 Patent”) is a design patent entitled “Signage Counter Base.” On February 23, 2010, after a full and fair examination, the PTO duly and legally issued the ’624 Patent. A true and correct copy of the ’624 Patent is attached hereto as Exhibit D. The ’624 Patent is valid and enforceable.

16. U.S. Patent No. D623,697 (“the ’697 Patent”) is a design patent entitled “Signage Support Stem.” On September 14, 2010, after a full and fair examination, the PTO duly and legally issued the ’697 Patent. A true and correct copy of the ’697 Patent is attached hereto as Exhibit E. The ’697 Patent is valid and enforceable. The ’623 Patent, the ’624 Patent, and the ’697 Patent are at times collectively referred to as “the Design Patents.”

**GENERAL ALLEGATIONS**

17. CSP was founded in Alameda, California, in 1924. Since that time, CSP has become a leader in the design and manufacture of signage and related merchandise generally

1 intended for use by retailers in displaying, advertising, promoting, and pricing products for sale at  
2 retail. CSP markets and sells its signage products to retailers throughout the country, including  
3 many regional and national supermarket chains. Benjamin Garfinkle, the founder's grandson, is  
4 the Chief Executive Officer of CSP and one of the inventors of CSP's Patents.

5 18. The '166 Patent and the '189 Patent both relate to a modular sign holder device.  
6 One commercial embodiment marketed and sold by CSP consists of a separate base, stem, and  
7 sign frame, which CSP's customers assemble in a plurality of orientations to form a sign holder  
8 device to promote products in their stores.

9 19. The Design Patents relate to ornamental designs for the base and stem of a sign  
10 holder device. These ornamental designs have been used on commercial embodiments of the  
11 Design Patents.

12 20. Defendants have manufactured, marketed, offered for sale, and sold, and continues  
13 to manufacture, market, offer for sale, and sell, products that infringe on CSP's Patents. Prior to  
14 CSP serving the Complaint on SMM on May 17, 2012, the infringing products that Defendants  
15 manufactured, marketed, offered for sale, and sold included, by way of example and without  
16 limitation, Item #11049, "Modular Adjustable Sign Unit — Counter Top Base"; Item #11059,  
17 "Modular Adjustable Sign Units — Long Adjustable Stem"; Item #11060, "Modular Adjustable  
18 Sign Units — Large Plastic Sign Frame"; Item #11061, "Modular Adjustable Sign Units — Easel  
19 Base"; Item #11064, "Modular Adjustable Sign Units — Small Sign Frame"; Item #11065,  
20 "Modular Adjustable Sign Units — Short Adjustable Stem" (collectively, the "Original Infringing  
21 Products"). The Original Infringing Products infringe on the '166 Patent, the '189 Patent, and the  
22 Design Patents.

23 21. On information and belief, after CSP served the Complaint on SMM on May 17,  
24 2012, Defendants began to manufacture, market, offer for sale, and sell, the following infringing  
25 products: Item #11081, "Modular Plastic 3-Piece Sign Set"; Item #11081-Frame, "Modular  
26 Plastic Sign Frame for 11081"; Item #11081-Round Base, "Modular Plastic Round Base"; and  
27 Item #11081-Stem, "Modular Plastic Adjustable Stem for 11081" (collectively, "the New  
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1 Infringing Products”). The New Infringing Products infringe on the ’189 Patent, the ’624 Patent,  
2 and the ’697 Patent.

3 22. CSP has marked the ’166 Patent and ’189 Patent number on its patented products  
4 in accordance with 35 U.S.C. § 287 prior to Defendants’ acts of patent infringement, including  
5 without limitation Defendants’ creation of the Original Infringing Products and the New  
6 Infringing Products. On information and belief, Defendants were aware of the ’166 Patent (which  
7 issued on March 11, 2003) when they willfully and deliberately copied CSP’s patented products  
8 in the creation of their Original Infringing Products. Without limiting the generality of the  
9 foregoing, CSP is informed and believes that, some time between August 2007 and June 2008, a  
10 former employee of CSP with knowledge of the ’166 Patent provided Defendants with CSP’s  
11 patented products and/or documentation relating thereto, which products and documentation  
12 included the patent number and provided notice to Defendants of the ’166 Patent. On information  
13 and belief, this former CSP employee was hired by Defendants and subsequently offered the  
14 infringing products for sale to customers, including CSP’s customers, on behalf of Defendants.  
15 On information and belief, Defendants were also made aware of CSP’s ’166 Patent through other  
16 sources prior to Defendants’ creation of Original Infringing Products, including those identified  
17 above. On information and belief, Defendants were was also aware of some or all of CSP’s  
18 Patents when they created their New Infringing Products.

19 23. Defendants’ infringing products are identical (although poor quality) knock-offs of  
20 CSP’s patented products. Defendants have slavishly copied every feature of CSP’s patented  
21 products, including some features (such as holes on the signage easel base) that have no  
22 functional use and other features (such as internal bosses) that function only with CSP products  
23 that Defendants does not make, distribute, or sell. Defendants have also engaged in a pattern of  
24 copying of CSP’s other products and intellectual property, further demonstrating the willfulness  
25 of its infringement in this case.

26 24. Defendants are a direct competitor of CSP. Defendants call upon and offer to sell  
27 products to many of the same customers as CSP. On information and belief, customers of CSP  
28 have purchased Defendants’ infringing products in lieu of CSP’s products, resulting in lost profits

1 and other monetary damages. CSP has also suffered irreparable harm as a result of Defendants'  
2 distribution and sale of inferior knock-off products, as purchasers of the infringing products have  
3 mistakenly concluded that the inferior products were manufactured by CSP, which has tarnished  
4 and harmed CSP's business, reputation and goodwill. On information and belief, Defendants'  
5 sales of the infringing products have also eroded CSP's design and brand distinctiveness, and  
6 have resulted in a loss of market share, which losses may be difficult or impossible to quantify.

7 **COUNT ONE: PATENT INFRINGEMENT**

8 25. CSP incorporates by reference the preceding paragraphs 1-20 as set forth fully  
9 herein.

10 26. Defendants have infringed and are currently infringing CSP's Patents in violation  
11 of 35 U.S.C. § 271 by making, using, selling, and/or offering for sale, within the United States,  
12 California and this judicial district, products embodying the inventions claimed in CSP's Patents,  
13 including without limitation the products identified above.

14 27. Defendants have infringed and are currently infringing CSP's Patents by actively  
15 inducing others to make, use, sell and/or offer for sale, within the United States, California and  
16 this judicial district, products embodying the inventions claimed in CSP's Patents, including  
17 without limitation the products identified above.

18 28. Defendants have infringed and are currently infringing CSP's Patents by  
19 contributing to the infringement by others, including without limitation by providing products  
20 identified above.

21 29. An ordinary customer familiar with the prior art would believe the ornamental  
22 design of Defendants' infringing products embodies, or constitutes a colorable imitation of, the  
23 ornamental designs in CSP's Design Patents.

24 30. Defendants directly compete with CSP in the marketplace.

25 31. On information and belief, Defendants have had actual knowledge of one or more  
26 of CSP's Patents prior to manufacturing, marketing, offering for sale and selling products that  
27 infringe on CSP's Patents.  
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1 32. Defendants’ infringement of CSP’s Patents has been and continues to be willful  
2 and deliberate.

3 33. CSP has no adequate remedy at law against Defendants’ acts of infringement and  
4 Defendants’ infringement will continue unless enjoined by this Court.

5 34. CSP has suffered, and will continue to suffer, irreparable injury as a result of  
6 Defendants’ infringement.

7 35. CSP has been damaged by Defendants’ infringement, and will continue to be  
8 damaged until enjoined by this Court.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, CSP prays for the following relief:

- 11 1. That Defendants be adjudged to be alter-egos of each other;
- 12 2. That Defendants be adjudged to have infringed CSP’s Patents, directly and  
13 indirectly, literally and/or under the doctrine of equivalents;
- 14 3. That Defendants, their officers, directors, agents, servants, employees, attorneys,  
15 affiliates, divisions, branches, parents, and those persons in active concert or  
16 participation with any of them, be preliminarily and permanently restrained and  
17 enjoined from directly and/or indirectly infringing CSP’s Patents;
- 18 4. That CSP be awarded damages pursuant to 35 U.S.C. § 284 and/or § 289 sufficient  
19 to compensate CSP for Defendants’ past infringement and any continuing or future  
20 infringement and/or to the extent of Defendants’ total profits up until the date  
21 Defendants are finally and permanently enjoined from further infringement;
- 22 5. Entry of judgment in favor of CSP finding that CSP’s Patents are valid and  
23 enforceable;
- 24 6. An assessment of pre-judgment and post-judgment interest and costs against  
25 Defendants, together with an award of such interest and costs, in accordance with  
26 35 U.S.C. § 284;
- 27 7. That Defendants be directed to pay enhanced damages, including CSP’s attorneys’  
28 fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285;

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