

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

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

Plaintiff,

CASE NO.: 3:13-cv-870-slc

v.

JURY TRIAL DEMANDED

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

Defendants.

AMENDED COMPLAINT

Plaintiff, ALPHA TECHNOLOGY U.S.A. CORPORATION, d/b/a FUTURECOW (“Plaintiff” or “FutureCow”), by and through its undersigned counsel, files this Amended 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 and false advertising 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 false advertising of its infringing product. 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, is domiciled in this State and personally participated in, directed, controlled and financially benefitted from the unlawful conduct alleged herein.

JURISDICTION AND VENUE

5. This case arises, in part, 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.

6. This case also arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, including 15 U.S.C. §§ 1116, 1117, and 1125(a).

7. This Court has subject matter jurisdiction over both claims in this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) and 15 U.S.C. § 1121.

8. This case was originally filed in the Middle District of Florida, but the parties consented to a transfer pursuant to 28 U.S.C. §1404(a) to this district, and the parties consented to both personal jurisdiction and venue in the Western District of Wisconsin. A true and correct copy of the Stipulated Motion is attached hereto as Exhibit “B.”

9. Even without Defendant MDS consenting, this Court has personal jurisdiction over MDS because Defendant is a Wisconsin corporation that regularly does business in Wisconsin and the allegedly infringed product was offered for sale and sold in Wisconsin.

10. This Court has personal jurisdiction over Defendant, Mr. Mlsna pursuant to Wisconsin Statute § 801.05 because Mr. Mlsna in his capacity as an officer/director/manager of MDS committed a tortious act within this state, is engaged in substantial and not isolated activity within this State and is domiciled in this State.

11. 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, the allegedly infringing product has been offered for sale and sold in this district, Defendant is located in this district and because Defendant has consented to venue in this district. *See* Exhibit “B.”.

FACTUAL BACKGROUND

12. 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 Western District of Wisconsin, 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”).

13. 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.

14. 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."

15. 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.

16. 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®.

17. 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.

18. 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.

19. 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 "C"), 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 "D."

20. 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.

21. 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 FutureCow customers for the month of February 2012.

22. Rather than pay the outstanding balance, 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.

23. Upon information and belief, in January of 2013, Mr. Mlsna and MDS were at the Midwest Farm Show in Lacrosse, Wisconsin. During the trade show, Mr. Mlsna displayed to

potential customers old broken parts while telling such customers that they were FutureCow parts, when in fact they were not. Mr. Mlsna and MDS made such false claims to harm the reputation of FutureCow and to attempt to interfere with FutureCow's business and prospective business relationships with such customers.

24. 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, and has recently been offered for sale at a trade show and via MDS' new website www.mtechdairysolutions.com. See Exhibits "E" and "F" attached hereto.

25. 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 as the "MTech Dairy Control System Featuring the TeatSpa Teat Scrubber". A true and correct copy of an advertisement offering the MTech system for sale is attached hereto as Exhibit "G."

26. 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.

27. 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.

28. 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 (Exhibits F and G).

29. 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.

30. Although Defendant did apparently file a patent application in June of 2013, the patent is not "about to issue."

31. Several of the dairies visited by Defendants include customers 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.

32. 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.

33. 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.

34. Defendant, MDS, through the participation, direction, control, and with the financial benefit and with the actual knowledge of Mr. Mlsna is advertising its products, including the infringing Mtech system, as being "MADE IN THE USA" when there is proof that Chinese-made components are used in such system(s).

35. Specifically, via advertising on the MDS website located at www.mtechdairysolutions.com, Defendants boldly and falsely state that that the MDS products are "MADE IN THE USA," without qualification. *See* Exhibit "F," which is a true and correct printout of the MDS website as of January 6, 2014.

36. As found in Exhibit "H," which depicts the controller for the MTech system, the controller was not "MADE IN THE USA," it was "MADE IN CHINA."

37. Similarly, Defendants purchases hand-held applicators that are incorporated into the MTech system from Northern Dairy Equipment, Ltd., which is a company incorporated and domiciled in the United Kingdom.

38. In order to make an unqualified claim that a product is "MADE IN THE USA," the Federal Trade Commission ("FTC") states that "the product must be 'all or virtually all' made in the U.S." *See* Exhibit "I," which is a true and correct copy of the FTC's guide entitled "Complying with the Made In USA Standard" (the "FTC Guide") and which is also available at: <http://www.business.ftc.gov/documents/bus03-complying-made-usa-standard>. The FTC Guide further states that "all or virtually all" means that "all significant parts and processing that go into the product must be of U.S. origin. That is, the product should contain no – or negligible – foreign content." The use of a Chinese control system and a hand-held applicator from the

United Kingdom, goes beyond any “negligible” content. By placing a bold “MADE IN THE USA” logo at the top of each page of its website, including the page advertising the teatscrubbing system, Defendants are making a false and misleading material statements of fact, used in an interstate commercial advertisement, that are causing and will likely continue to cause injury to Futurecow in light of the perceived quality and other numerous advantages that “buying American” brings.

39. As explained above, the MDS website features a “MADE IN THE USA” logo on every product page. The FTC Guide states that manufacturers “should not indicate, either expressly or implicitly, that a whole product line is of U.S. origin (‘Our products are made in USA’) when only some products in the product line are made in the U.S. according to the ‘all or virtually all’ standard.” The MDS website indicates that all of its products are, without qualification, made in the United States which is a false statement.

40. Plaintiff has been damaged as a result of Defendants’ activities described herein.

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

42. 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**

43. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 42 of the Complaint.

44. Plaintiff is the owner of United States Patent No. 8,402,920 (the ‘920 Patent) at all times material hereto. *See* Exhibit “A.”

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

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

47. Defendant, MDS, through the participation, direction, control and with the financial benefit and actual knowledge of Defendant 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.

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

49. 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.

50. 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.

51. 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

52. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 42 of the Complaint.

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

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

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

56. 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).

57. Evidence of Defendants' inducement activities can be seen in the advertising materials attached as Exhibit "F" hereto; the YouTube video at the following link: <http://www.youtube.com/watch?v=DzJNXfl6I4o;> and in the MTech Operations & Maintenance Manual which was produced as "CONFIDENTIAL" and is therefore not being attached as an Exhibit hereto.

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

59. 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.

60. 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.

61. 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
FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)

62. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 42 of the Complaint.

63. Via its advertising and other commercial activities, Defendants have made and distributed within interstate commerce false and misleading statements of fact regarding its own, and FutureCow's, products. These literally false statements include: 1) that the infringing MDS Mtech system is "MADE IN THE USA;" 2) that broken parts Defendants displayed at a trade show were FutureCow's parts; 3) that the MTech system is better and requires less maintenance than the FutureCow system; 4) that the MTech system is the "original teatscrubber system" and everyone else copied MTech; and, 5) that MDS has a patent that is about to issue for the MTech system.

64. These statements are false, misleading descriptions and representations of fact which misrepresent and deceive consumers, and potential consumers, of the FutureCow System

as to the nature, characteristics, qualities, and geographic origin of FutureCow's and Defendants' products, and therefore these statements are material to the purchasing public.

65. These statements were made in the course of commercial advertising and promotion, and they are likely to influence purchasers' decisions. Plaintiff is being harmed by such statements.

66. Defendants' aforesaid statements violate 15 U.S.C. § 1125(a).

67. By reason of Defendants' unlawful statements and 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.

68. Plaintiff is entitled to an injunction under 15 U.S.S. § 1116 to restrain Defendants from making further false statements in its advertising and promotional activities, while also ordering the removal of Defendants' false advertisements.

69. Under 15 U.S.C. § 1117, Plaintiff is further entitled to recover: 1) all of Defendants' profits and gains obtained as a result of Defendants' violations of 15 U.S.C. § 1125(a); 2) all damages suffered by FutureCow by Defendants' violations of 15 U.S.C. § 1125(a); and 3) all costs of this action.

70. As a result of Defendants' willfully egregious conduct, Plaintiff believes that this is an exceptional case which entitles Plaintiff to recover additional damages and reasonable attorney fees.

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 false advertising under the Lanham Act;
- D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement and false advertisement, together with pre-judgment and post-judgment interest;
- E. An award of Defendants' profits from the sale of the infringing product from March 26, 2013 until the present;
- F. 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);
- G. A grant of permanent injunction pursuant to 35 U.S.C. § 283 and 15 U.S.C. §1116, 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 while also enjoining Defendants from further falsely advertising their products;

H. 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 and 15 U.S.C. § 1117;

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

DATED this 6th day of January, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via CM/ECF this 6th day of January, 2014 to: Michael T. Hopkins, Esquire, HOPKINS McCARTHY, LLC, 757 N. Broadway, Suite 201, Milwaukee, WI 53202.

/s/ Amber N. Davis

Attorney