

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IRVEN H. TENNYSON, an individual;	)	Civil Action No.
and WATERFALL POND SUPPLY OF)	
WASHINGTON, INC., a Washington	)	PLAINTIFFS' COMPLAINT FOR
State corporation,	)	PATENT INFRINGEMENT, UNFAIR
	)	COMPETITION, FALSE ADVERTISING,
Plaintiffs,	)	VIOLATION OF THE WASHINGTON
	)	STATE CONSUMER PROTECTION
v.	)	ACT, AND FOR INTENTIONAL
	)	INTERFERENCE WITH BUSINESS
EXOTIC WATERSCAPES, INC. a	)	EXPECTANCIES/RELATIONSHIPS
California corporation; and THE POND)	
DIGGER, INC., a California corporation,	)	JURY DEMAND REQUESTED
)	
Defendants.)	
)	

COME NOW Plaintiffs (collectively referred to as "Pond Supply") in the above-referenced action, and by way of Plaintiffs' Complaint for Patent Infringement, Unfair Competition, False Advertising, Violation of the Washington State Consumer Protection Act, and for Intentional Interference With Business Expectancies/Relationships, and contend, allege, and pray as follows:

PLAINTIFFS' COMPLAINT FOR PATENT INFRINGEMENT, UNFAIR COMPETITION, FALSE ADVERTISING, VIOLATION OF THE WASHINGTON STATE CONSUMER PROTECTION ACT, AND FOR INTENTIONAL INTERFERENCE WITH BUSINESS EXPECTANCIES/RELATIONSHIPS	BROWNLIE EVANS WOLF & LEE, LLP 230 E. Champion Street Bellingham, WA 98225 Ph.: (360) 676-0306/Fax: (360) 676-8058
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PARTIES AND JURISDICTION

I.

Waterfall Pond Supply of Washington, Inc. (“Waterfall”) is a Washington State corporation, with its principal place of business in Mount Vernon, Washington. Irven H. Tennyson (“Tennyson”) is a resident of Mount Vernon, Washington, and at all material times hereto, the inventor and owner of U.S. Patent No. 7,731,841 B1 (“Tennyson ‘841 Patent”).

II.

Defendant Exotic Waterscapes, Inc. is a California corporation, whose principal place of business is, based upon knowledge and belief, Yucaipa, California. Defendant The Pond Digger, Inc. is a California corporation, whose principal place of business is, based upon knowledge and belief, Yucaipa, California.

III.

This Court has subject matter jurisdiction under 35 U.S.C. § 271 and 28 U.S.C. §§ 1331 and 1338(a), and alternatively, for state law claims, 35 U.S.C. § 1367.

IV.

This Court has personal jurisdiction over Defendants, as they are actively transacting business in the state of Washington, and thereby involved in substantial, continuous, and systematic activities in the state of Washington. Such contacts include, but are not limited to, utilization of a fully interactive website (www.ponddiggersupplies.com) on which Defendants’ allegedly infringing products are marketed, offered, and sold to residents of the state of Washington.

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V.

Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400.

FACTS

VI.

Pond Supply restates and incorporates by reference the allegations and contentions set out in paragraphs I-V herein.

VII.

The United States Patent and Trademark Office issued the Tennyson '841 Patent to Tennyson on June 8, 2010, for a "Flow Control Systems and Methods for Artificial Ponds." A true and correct copy of the Tennyson '841 Patent is attached hereto and incorporated by reference as Exhibit A. The Tennyson '841 Patent is valid and enforceable.

VIII.

Tennyson has authorized Waterfall to manufacture, market, and sell products covered by the Tennyson '841 Patent. The Tennyson '841 Patent contains several independent claims, including Claim 1, which provides for:

An aerator system for an artificial pond, comprising:
an aerator housing defining an aerator chamber and first, second, and third aerator housing ports;
filter media arranged within the aerator housing, where the filter media defines first and second portions of the aerator chamber, where
the first aerator housing port is in direct fluid communication with the first portion of the aerator chamber, and
the second and third aerator housing ports are in direct fluid communication with the second portion of the aerator chamber;
a control valve array operatively connected to the first and second aerator housing ports; whereby

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1 in a first mode, the control valve array allows a portion of the water
2 flowing through the aerator housing to bypass the filter media.

3 IX.

4 Independent Claim 4 of the Tennyson '841 Patent provides for:

5 An aerator system as recited in claim 1, in which:
6 the aerator housing further defines a fourth aerator housing port, where
7 the fourth aerator housing port is in direct fluid communication with the first
8 portion of the aerator chamber; and
9 in a second mode, the control valve array allows water to flow into the
10 aerator chamber through the second aerator housing port and out of the aerator
11 chamber through the fourth aerator housing port.

12 X.

13 Independent Claim 10 of the Tennyson '841 Patent provides for:

14 An aerator system for an artificial pond comprising:
15 an aerator housing defining an aerator chamber and first, second, third,
16 and fourth aerator housing ports;
17 filter media arranged within the aerator housing, where the filter media
18 defines first and second portions of the aerator chamber,
19 the first and fourth aerator housing ports are in direct fluid
20 communication with the first portion of the aerator chamber, and
21 the second and third aerator housing ports are in direct fluid
22 communication with the second portion of the aerator chamber;
23 a control valve array operatively connected to the first and second
24 aerator housing ports; whereby
25 in a first mode, the control valve array allows a portion of the water
flowing through the aerator housing to bypass the filter media; and
in a second mode, the control valve array allows water to flow into the
aerator chamber through the second aerator housing port and out of the aerator
chamber through the fourth aerator housing port.

26 XI.

27 At all material times hereto, Pond Supply has given the public notice of the Tennyson

28 '841 Patent by marking its products covered by the '841 Patent.

29 **PLAINTIFFS' COMPLAINT FOR PATENT**
30 **INFRINGEMENT, UNFAIR COMPETITION,**
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32 **WASHINGTON STATE CONSUMER**
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XII.

Based upon knowledge and belief, Defendants produce, market, and sell a waterfall water filter for ponds under the mark “Helix Bio-Mechanical Koi Pond Filter” and/or the “FR Backflushable Fish Pond Filter” (“Products”). The Products include the claim limitations of some or all of the claims of the Tennyson ‘841 Patent, all without implicit or explicit authority or license from Tennyson. Defendants’ manufacturing, marketing, offering for sale, and/or selling of such Products, infringe literally or by equivalents the claims of the Tennyson ‘841 Patent, including, but not limited to, Claims 1, 4, and 10.

XIII.

Defendants have been, and still are, infringing, inducing infringement, or contributorily infringing the claims of the Tennyson ‘841 Patent by manufacturing, selling, marketing, using, and offering the Products for sale, and will continue to do so until they cease, or unless enjoined by this Court. Defendants’ infringement of the claims of the Tennyson ‘841 Patent has caused, and will continue to cause, Pond Supply to suffer damages in an amount to be determined by the trier of fact herein.

XIV.

Based upon knowledge and belief, Defendants have known or had notice that the Products meet the claim limitations of the Tennyson ‘841 Patent. They have nonetheless continued to willfully and deliberately infringe, or induce and/or contribute to the infringement of, the claims of the Tennyson ‘841 Patent.

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XV.

Defendants have made numerous statements in commercial advertising or promotion about the Products, including, but not limited to, the following: (1) a claim in Pond Trade Magazine indicating that their Products have a “patent pending,” a true and correct copy of which is attached hereto and incorporated by reference as Exhibit B; (2) identifications on the website www.theponddiggersupplies.com that their Products are pictured, accompanied by a picture of Pond Supply’s Flow Ranger products, a true and correct copy of which is attached hereto and incorporated as Exhibit C; (3) a claim on the website www.theponddiggersupplies.com that their Products have “Patented Technology,” *id.*; (4) a claim on the website www.theponddiggersupplies.com that their Products have “no “worthy competing product,” *id.*; (5) a claim on the website www.theponddiggersupplies.com that their Products are a “revolution in eco-system pond filtration,” *id.*; (6) a claim on the website www.theponddiggersupplies.com that Defendants are selling Pond Supply’s Flow Ranger product, and that the product is the “#1 choice for The Pond Digger Construction team,” *id.*; and (7) a claim on the website www.theponddiggersupplies.com that Pond Supply’s Flow Ranger product is their product, a true and correct copy of which is attached hereto and incorporated by reference as Exhibit D. These and other statements made by Defendants were made in commercial advertising or promotion, and were false statements of fact.

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**FIRST CAUSE OF ACTION – INFRINGEMENT OF
THE TENNYSON ‘841 PATENT**

XVI.

Pond Supply restates and incorporates by reference the allegations and facts contained in paragraphs I-XV herein.

XVII.

The Tennyson ‘841 Patent is valid and enforceable. Defendants’ manufacturing, marketing, and selling of the Products are without implicit or explicit authority or license from Pond Supply. Defendants’ manufacturing, marketing, and selling of the Products constitute a literal infringement of the claims of the Tennyson ‘841 Patent, or constitute infringement of the claims of the Tennyson ‘841 Patent by equivalents. 35 U.S.C. § 281 et seq.

XVIII.

Defendants’ infringement of the claims of the Tennyson ‘841 Patent has caused, and will continue to cause, Pond Supply to suffer damages in an amount to be determined by the trier of fact herein, all of which Pond Supply is entitled to recover, including, but not limited to, lost profits, but in no case, less than the reasonable royalty that Pond Supply could expect for use of the intellectual property rights, together with interest, attorneys’ fees, and costs as fixed by this Court.

XIX.

In addition to damages, Pond Supply is entitled to a permanent injunction and, where applied for, a preliminary injunction prohibiting Defendants from continuing to produce, market, offer to sell, or sell the Products; or to produce, market, offer to sell, or sell any other

1 product that infringes literally or by equivalents the Tennyson '841 Patent. Pond Supply is
2 also entitled to an accounting.

3 XX.

4 Defendants' infringement was committed with full knowledge of the Tennyson '841
5 Patent and corresponding intellectual property rights, and without adequate justification. Pond
6 Supply should therefore be awarded enhanced damages up to treble the amount of damages
7 Defendants have caused, as determined by the trier of fact herein.

8 XXI.

9 Defendants' acts are extraordinary, and therefore Pond Supply should be awarded all
10 costs and attorneys' fees incurred in this action as allowed by 35 U.S.C. § 285.

11 **SECOND CAUSE OF ACTION – INTERFERENCE**
12 **WITH BUSINESS EXPECTATIONS**

13 XXII.

14 Pond Supply restates and incorporates by reference the allegations and facts contained
15 in paragraphs I-XXI herein.

16 XXIII.

17 Pond Supply had valid and enforceable business expectations with people involved in
18 the water filter industry. Defendants knew, or in the exercise of reasonable care, should have
19 known of the existence of these actual or potential business relationships. Defendants
20 interfered with Pond Supply's business relationships for an improper purpose or through an
21 improper means, including, but not limited to, as set out herein.

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23 /////

24 **PLAINTIFFS' COMPLAINT FOR PATENT**
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XXIV.

The actions by Defendants have caused, and will continue to cause, Pond Supply to suffer damages in an amount to be determined by the trier of fact herein, all of which should be recovered by Pond Supply.

**THIRD CAUSE OF ACTION – FALSE ADVERTISING IN VIOLATION OF THE
LANHAM ACT**

XXV.

Pond Supply restates and incorporates by reference the allegations and facts contained in paragraphs I-XXIV herein.

XXVI.

Statements made by Defendants, including, but not limited to, those set out in paragraph XV, all of which are incorporated herein by reference, were made in commercial advertising or promotion and were false statements of fact about the Products or the products of Pond Supply. The misrepresented products travel in interstate commerce. These statements actually deceived or were likely to deceive and harm a substantial segment of the intended audience. The deception arising from these statements is material and likely to, and intended to, influence purchasing decisions. These statements made by Defendants have caused, and will continue to cause, Pond Supply to suffer damages in an amount to be determined by the trier of fact herein, and violate the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). The statements made by Defendants have caused competitive injury to Pond Supply, and in their ability to compete with Defendants, and diverted potential and/or actual business from Pond Supply.

XXVII.

Statements made by Defendants, including, but not limited to, those set out in paragraph XV, all of which are incorporated herein by reference, are likely to confuse, mistake, or deceive the public as to the affiliation, connection, or association with Pond Supply, or as to its origin, sponsorship, or approval of its goods. Such arises from, inter alia, use of images of Pond Supply's products under Defendants' brand names, and use of Pond Supply's brands as being associated with Defendants' Products. Such actions have caused, and will continue to cause, Pond Supply to suffer damages in an amount to be determined by the trier of fact herein, and violate the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

XXVIII.

Pond Supply is entitled to all relief afforded by 15 U.S.C. § 1117, including, but not limited to, recovery of attorneys' fees and costs, and enhanced damages.

**FOURTH CAUSE OF ACTION – VIOLATION OF THE WASHINGTON STATE
CONSUMER PROTECTION ACT, RCW CHAPTER 19.86**

XXIX.

Pond Supply restates and incorporates by reference the allegations and facts contained in paragraphs I-XXVIII herein.

XXX.

Defendants have participated in unfair or deceptive acts or practices, including, but not limited to, those actions set out herein, all of which are incorporated herein by reference. Such acts occurred in trade or commerce and affect the public interest. Such acts have caused, and

1 will continue to cause, Pond Supply to suffer injury to their business and/or property,
2 including, but not limited to, the potential for diversion of sales of their own products. Such
3 acts have caused, and will continue to cause, Pond Supply to suffer damages in an amount to
4 be determined by the trier of fact herein. Such acts are all in violation of the Washington State
5 Consumer Protection Act, RCW Chapter 19.86.

6 XXXI.

7
8 Pond Supply has been, and will continue to be, damaged by Defendants' unfair trade
9 practices, and is therefore entitled to all available relief under the Consumer Protection Act,
10 RCW Chapter 19.86, including, but not limited to, damages, enhanced damages, injunctive
11 relief, and an award of attorneys' fees and costs.

12 NOW, THEREFORE, having stated claims for relief, Pond Supply prays as follows:

13 1. that upon the filing of a motion, this Court grant Pond Supply a preliminary
14 injunction against Defendants requiring:

15 (a) that they stop designing, marketing, selling, or otherwise distributing
16 any products with features that are protected by any claim in the Tennyson '841 Patent;
17 and

18 (b) that they immediately remove all products from the marketplace which
19 contain features infringing any claim of the Tennyson '841 Patent;

20 2. that this Court issue an order and judgment granting a permanent injunction
21 against Defendants prohibiting them from undertaking those acts set out in paragraphs 1(a)-(b)
22 above;

1 3. that this Court issue an order and judgment requiring Defendants to deliver an
2 accounting to Pond Supply of all Products sold or that otherwise infringe any claim of the
3 Tennyson '841 Patent;

4 4. that this Court issue an order and judgment awarding Pond Supply their
5 damages for Defendants' infringement and acts which violate any claim of the Tennyson '841
6 Patent at Pond Supply's election of either (a) such damages as Pond Supply has sustained as a
7 result of Defendants' infringement and acts, together with all gains, profits, and advantages
8 derived therefrom by Defendants; or (b) statutory damages. Further, that all such damages
9 should be trebled based upon Defendants' knowing and willful infringement;

10 5. that this Court award Pond Supply damages based upon all other claims as
11 found by the trier of fact herein;

12 6. that this Court order that Defendants pay Pond Supply's costs and attorneys'
13 fees pursuant to 35 U.S.C. § 285, RCW Chapter 19.86, the Lanham Act, 15 U.S.C. § 1117, or
14 as otherwise allowed by law, statute, or equity; and

15 7. that this Court award such other relief as allowed by law or equity.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Fed. R. Civ. P. 38(b), Pond Supply hereby demands a jury trial.

18 DATED this 31st day of October, 2013.

19
20 s/ Mark J. Lee

21 Mark J. Lee, WSBA #19339
22 of Brownlie Evans Wolf & Lee, LLP
23 Attorneys for Plaintiffs

24 **PLAINTIFFS' COMPLAINT FOR PATENT**
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