

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

SIGNCOMP, LLC)	
)	Civil Action No. 1:15-cv-304
Plaintiff,)	
v.)	Honorable
)	
WAGNER ZIP-CHANGE, INC.)	
)	COMPLAINT and JURY DEMAND
Defendant.)	
_____)	

COMPLAINT

SignComp, LLC hereby complains of Wagner Zip-Change, Inc. and alleges as follows:

THE PARTIES

1. SignComp, LLC is a limited liability company organized and existing under the laws of the State of Michigan, registered to do business in the State of Michigan with a registered office of 3032 Walker Ridge NW, Grand Rapids, Michigan 49544, and is doing business in this District (hereinafter "SignComp" or "Plaintiff").

2. Defendant Wagner Zip-Change, Inc. ("Wagner Zip-Change"), upon information and belief, is an Illinois corporation operating and doing business at 3100 Hirsch Street, Melrose Park, Illinois 60160.

3. Defendant Wagner Zip-Change, upon information and belief, is doing business within the State of Michigan and within the Western District of Michigan, and is engaged in continuous and systematic business within the Western District of Michigan, conducts and solicits business within this district and derives substantial revenue from the sales of its products and/or services within this district and elsewhere in Michigan. Upon information and belief, Wagner Zip-Change has made one or more offers for sale that infringe, contributorily infringe, and/or induce infringement by others as hereinafter stated, in Michigan and within this District.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code, §§1 et seq.

5. This Court has jurisdiction in this action under 28 U.S.C. §§1331 and 1338. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400.

BACKGROUND ALLEGATIONS

6. Wagner Zip-Change and SignComp entered into a License Agreement dated January 1, 2014, a copy of which is attached hereto as Exhibit 1 (the "Agreement"). SignComp was the Licensor under the Agreement and Wagner Zip-Change was the Licensee.

7. Pursuant to the Agreement, SignComp as Licensor agreed to license to Wagner Zip-Change as Licensee certain intellectual property and other rights and proprietary information used in relation to the manufacture, sale and marketing of patented plastic letter trim product known as "Zip.Trim".

8. The License set forth in the Agreement included the goods and services associated with the patented Zip.Trim product but specifically excluded Zip.Clip products, which were intended for use with the Zip.Trim product in constructing a patented sign assembly. Pursuant to paragraph 1.4 of the Agreement, "Licensed Products" means the goods and services associated with the patented plastic letter trim product known as Zip.Trim, but not including the Zip.Clip products.

9. The Agreement of Exhibit 1 (at its Exhibit A) recites United States Patents numbered 8,484,871 and 8,424,230 "and other related patents pending."

10. Prior to entering into the Agreement, Wagner Zip-Change manufactured or ordered others to manufacture, sold and marketed its own plastic letter trim product known as

"Jewelite". Upon information and belief, Zip.Trim is materially different from Jewelite trim, in that Zip.Trim is compatible for use with Zip.Clips whereas Jewelite trim is not.

11. In a letter dated June 16, 2014, SignComp notified Wager Zip-Change of its breach of Section 5.2 of the Agreement.

12. Wagner Zip-Change did not remedy the breach of Section 5.2 or respond to the notice of breach.

13. Wagner Zip-Change has subsequently declared the Agreement terminated as of July 16, 2014.

14. On April 22, 2014, United States Letters Patent No. 8,701,319 was duly and legally issued to SignComp, as owner by assignment thereof, for an invention entitled "Channel Letter and Trim Cap Retaining Clip Therefor." A true and correct copy of United States Patent No. 8,701,319 is attached hereto as Exhibit 2 (hereinafter "the '319 Patent").

15. On June 24, 2014, United States Letters Patent No. 8,756,841 was duly and legally issued to SignComp, as owner by assignment thereof, for an invention entitled "Channel Letter and Trim Cap Retaining Clip Therefor." A true and correct copy of United States Patent No. 8,756,841 is attached hereto as Exhibit 3 (hereinafter "the '841 Patent").

16. SignComp is the owner, by valid assignment, of all right, title, and interest in and to the '319 and '841 Patents, including the right to seek remedies and relief for past infringement thereof.

17. Exemplary drawings corresponding to drawings in the '319 patent were reproduced in Exhibit A to the Agreement.

18. The filing and Notice of this action provides actual notice to Defendant Wagner Zip-Change of the '319 and '841 Patents. Defendant has notice of the '319 and '841 Patents.

19. An actual and justiciable controversy exists between SignComp and Defendant Wagner Zip-Change concerning whether the actions of Defendant Wagner Zip-Change infringe, contributorily infringe and/or induce infringement of the asserted patents in suit, namely the '319 and '841 Patents.

20. Wagner Zip-Change has marketed, and upon information and belief, has offered for sale and distributed samples of trim strips and clips under the name Jewelite Plus (hereinafter "Wagner Jewelite Plus"). Upon information and belief, Wagner Zip-Change has made whole channel letter signs using the Wagner Jewelite Plus trim strips and clips in combination with lenses and enclosure walls.

21. Upon information and belief, Wagner Jewelite Plus includes a plurality of retention clips configured to frictionally engage enclosure walls, each clip having a leg that is configured to extend outwardly relative to an enclosure wall to which the clip is configured to be attached.

22. Upon information and belief, Wagner Jewelite Plus trim strips are in the form of an extruded retainer cap configured to cooperate with the clips to retain a lens at the enclosure walls. Upon information and believe, Wagner Jewelite Plus trim strips include an interior face with a first edge and an opposing second edge, where the first edge has an overhang for engaging a forward surface of a lens, and the second edge has a channel for engaging the outwardly-extending legs of the retention clips along an outer surface of the enclosure walls.

23. Upon information and belief, Wagner Zip-Change has made one or more channel letter signs utilizing the Wagner Jewelite Plus trim strips and/or Zip.Trim trim strips, and Jewelite Plus clips, to demonstrate a method of assembling channel letter signs to its customers and potential customers, to develop and establish the operability of Wagner Jewelite Plus trim

strips and clips and for purposes of offering for sale and sale of Wagner Jewelite Plus trim strips and clips.

24. Wagner Zip-Change, upon information and belief, marketed products using marketing materials, including at least website materials, that referenced Wagner Zip-Change products and also the patents recited in the Agreement of Exhibit 1, and further recited "International Patents Pending." Wagner knew, had reason to know, and/or had knowledge amounting to willful blindness if it failed to determine SignComp's ownership and applicability of the '319 and '841 patents to the products and actions of Wagner Zip-Change, and thus induced and intended to induce the infringement of SignComp's '319 and '841 patents.

25. Upon information and belief, at least one distributor of Wagner Zip-Change has entered into an agreement with Wagner Zip-Change to purchase Wagner Jewelite Plus trim strips and clips adapted to be used with enclosures and lenses supplied by customers.

26. Upon information and belief, Wagner Zip-Change has continued marketing and offering for sale Wagner Jewelite Plus trim strips and clips, and distributing samples of Wagner Jewelite Plus trim strips and clips to distributors including, without limitation, Wensco of Michigan, Corp. (d/b/a Wensco Sign Supplies, hereinafter "Wensco").

COUNT I
Infringement of United States Patent No. 8,701,319

27. Plaintiff incorporates and reasserts paragraphs 1-26 herein by reference.

28. Defendant Wagner Zip-Change has, on information and belief, in the past been and still is infringing United States Letters Patent 8,701,319 by making, using, selling and/or offering for sale in the United States products specifically designed, intended, marketed, and sold or distributed components for making a channel letter sign using a trim cap and retaining clip therefor embodying the patented invention of the '319 Patent. Upon information and belief Defendant Wagner Zip-Change has engaged in acts of direct infringement by itself and has

induced or attempted to induce acts of infringement by others through its offers for sale, distribution of samples, and instructions for committing acts of infringement by others.

29. Upon information and belief, with knowledge and/or reckless disregard amounting to knowledge of the infringement by the aforesaid products of the '319 Patent, Defendant has provided retention clips and retainer caps to at least one third party for use in infringement of the '319 Patent, such third parties including for example and without limitation, Wensco, and has encouraged infringement by distributing flyers (Exhibit 4) showing infringing products, by distributing price sheets (Exhibit 5), and by producing and publishing instructional videos demonstrating how to build infringing products (Exhibit 6). Use by third parties of the aforesaid retention clips and retainer caps obtained from or through Defendant Wagner Zip-Change, upon information and belief, infringes the '319 Patent.

30. Upon information and belief, Defendant Wagner Zip-Change sells and/or offers to sell components of Channel Letter and Trim Cap Retaining Clip Therefor, including retention clips and trim strips, with knowledge and/or reckless disregard amounting to knowledge that said components constitute a material part of the invention of the '319 Patent and that are specially made or specially adapted for use in the infringement of the '319 Patent, said components taken collectively are not a staple article or commodity of commerce suitable for substantial noninfringing use, and Wagner has not marketed or distributed the components as staple article or commodity suitable for substantial non-infringing use.

31. Upon information and belief, Defendant's infringement, contributory infringement, and inducement of infringement have been willful.

32. Despite any statement to the contrary, upon information and belief, Defendant Wagner Zip-Change will continue to infringe, contributorily infringe and induce the infringement of the '319 Patent unless enjoined by this Court.

33. Upon information and belief, Defendant's infringement, contributory infringement, and inducement of infringement have resulted in damage to Plaintiff and will continue to do so unless enjoined by this Court.

34. Plaintiff has no adequate remedy at law, and is, therefore, entitled to a permanent injunction prohibiting further infringement by Defendant.

35. Plaintiff has been damaged by past activities of Defendant, and is entitled to damages for past infringement, contributory infringement and inducement of infringement.

36. In the alternative, Plaintiff is entitled to a declaration from the Court establishing that the actions of Defendant Wagner Zip-Change are infringing, contributorily infringing, and inducing infringement of the '319 Patent.

COUNT II
Infringement of United States Patent No. 8,756,841

37. Plaintiff incorporates and reasserts paragraphs 1-36 herein by reference.

38. Defendant Wagner Zip-Change has, on information and belief, in the past been and still is infringing United States Letters Patent 8,756,841 by making, using, selling and/or offering for sale in the United States products specifically designed, intended, marketed, and sold or distributed components for making a channel letter sign using a trim cap and retaining clip therefor embodying the patented invention of the '841 Patent. Upon information and belief, Defendant Wagner Zip-Change has engaged in acts of direct infringement by itself and has induced or attempted to induce acts of infringement by others through its offers for sale, distribution of samples, and instructions for committing acts of infringement by others.

39. Upon information and belief, with knowledge and/or reckless disregard amounting to knowledge of the infringement by the aforesaid products of the '841 Patent, Defendant has provided retention clips and retainer caps to at least one third party for use in infringement of the '841 Patent, such third parties including for example and without limitation,

Wensco, and has encouraged infringement by distributing flyers (Exhibit 4) showing infringing products, by distributing price sheets (Exhibit 5), and by producing and publishing instructional videos demonstrating how to build infringing products (Exhibit 6). Use by third parties of the aforesaid retention clips and retainer caps obtained from or through Defendant Wagner Zip-Change, upon information and belief, infringes the '841 Patent.

40. Upon information and belief, Defendant Wagner Zip-Change sells and/or offers to sell components of Channel Letter and Trim Cap Retaining Clip Therefor, including retention clips and trim strips, with knowledge and/or reckless disregard amounting to knowledge that said components constitute a material part of the invention of the '841 Patent and that are specially made or specially adapted for use in the infringement of the '841 Patent, said components taken collectively are not a staple article or commodity of commerce suitable for substantial noninfringing use, and Wagner has not marketed or distributed the components as staple article or commodity suitable for substantial non-infringing use.

41. Upon information and belief, Defendant's infringement, contributory infringement, and inducement of infringement have been willful.

42. Despite any statement to the contrary, upon information and belief, Defendant Wagner Zip-Change will continue to infringe, contributorily infringe and induce the infringement of the '841 Patent unless enjoined by this Court.

43. Upon information and belief, Defendant's infringement, contributory infringement, and inducement of infringement have resulted in damage to Plaintiff and will continue to do so unless enjoined by this Court.

44. Plaintiff has no adequate remedy at law, and is, therefore, entitled to a permanent injunction prohibiting further infringement by Defendant.

45. Plaintiff has been damaged by past activities of Defendant, and is entitled to damages for past infringement, contributory infringement and inducement of infringement.

46. In the alternative, Plaintiff is entitled to a declaration from the Court establishing that the actions of Defendant Wagner Zip-Change are infringing, contributorily infringing, and inducing infringement of the '841 Patent.

WHEREFORE, Plaintiff SignComp demands that judgment be entered in its favor against Defendant Wagner Zip-Change, as follows:

A. Entering an order determining and/or declaring that Defendant Wagner Zip-Change infringes, contributorily infringes and induces infringement of the '319 and '841 Patents.

B. Permanently enjoining Defendant Wagner Zip-Change, their officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, and each of them, from further making, sale, offer for sale, importing and/or use of an apparatus, or components constituting a material part of an apparatus, which infringes, contributorily infringes, or induces infringement of the '319 and/or '841 Patents.

C. Permanently enjoining Defendant Wagner Zip-Change, their officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with it, and each of them, from further acts of infringement of the '319 and/or '841 Patents.

D. Ordering an accounting.

E. Awarding damages adequate to compensate Plaintiff for Defendant' infringement, contributory infringement, and inducement of infringement of the '319 and/or the '841 Patents.

F. Increasing the damages up to three times the amount found or assessed for Defendant' willful acts of infringement.

G. Awarding prejudgment interest and costs.

H. Finding this to be an exceptional case and awarding reasonable attorney's fees to Plaintiff.

I. Such other and further relief as is necessary and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues triable by jury in this action.

Dated: March 19, 2015

/s/Terence J. Linn
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