

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FLEXIBLE INNOVATIONS LTD.,	§	
a Texas Limited Partnership,	§	
	§	
Plaintiff,	§	
	§	Civil Case No. 3:14-cv-01197-M
v.	§	
	§	
PRISTINE SCREENS, LLC, a Colorado	§	
limited liability company,	§	
	§	JURY TRIAL DEMANDED
Defendant.	§	

FIRST AMENDED COMPLAINT

For its Amended Complaint, Plaintiff Flexible Innovations Ltd. (“Flexible”), by and through the undersigned counsel, alleges as follows:

PARTIES

1. Plaintiff Flexible Innovations Ltd. is a Texas Limited Partnership with its principal place of business in Tarrant County, Texas, and is sometimes hereinafter referred to as “Flexible.”

2. Upon information and belief, Defendant Pristine Screens, LLC (hereinafter referred to as “PS”) is a Colorado limited liability company having its principal offices at 10200 E. Girard Avenue, Suite C251, Denver, Colorado 80231. Service of process may be accomplished by serving its Registered Agent, Pristine Screens, LLC, at 10200 E. Girard Avenue, Suite C251, Denver, Colorado 80231.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.* and the Lanham Act, 15 U.S.C. § 1052 *et seq.*

4. There is diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Therefore, this Court has jurisdiction under 28 U.S.C. § 1332(a)(1).

5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121(a).

6. Upon information and belief, Defendant PS conducts substantial business in this forum, directly or through intermediates, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business by and through its interactive website, www.pristinescreens.com, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this District.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b).

THE ‘983 PATENT IN SUIT

8. On October 7, 2008, United States Patent No. 7,431,983 (the “‘983 Patent”) entitled “Wiping Sheet” was duly and lawfully issued by the United States Patent and Trademark Office. A true and correct copy of the ‘983 Patent is attached hereto as Pleading Exhibit A. Originally the ‘983 Patent was owned by Rakupuri Co., Ltd. (“Rakupuri”).

9. Plaintiff Flexible is the assignee and current owner of all right, title and interest in and to the ‘983 Patent, including the right to assert all causes of action arising under said Patent and the right to any past or future remedies for infringement of it.

10. Prior to the assignment of the '983 Patent to Plaintiff Flexible, Plaintiff Flexible was Rakupuri's exclusive distributor for Rakupuri's microfiber screen cleaning wipes, marketed in the United States as "DigiClean" products.

THE '948 U.S. TRADEMARK REGISTRATION FOR "DIGICLEAN" IN SUIT

11. Plaintiff Flexible is the owner of all right, title and interest in and to United States Trademark Registration No. 3,407,948 for "DIGICLEAN" for "sheet-shaped wiping cloth for cleaning display screens of car navigation, cellular phones or handheld game machines" (the "DIGICLEAN Registration") by assignment from Rakupuri on or about November 20, 2012. A copy of the "DIGICLEAN" '948 Registration Certificate and assignment is attached hereto as Pleading Exhibit B. The '948 Registration is valid, subsisting and incontestable. Examples of Plaintiff FI's "DIGICLEAN" microfiber display screen cleaning wipes are shown in Pleading Exhibit C.

12. Plaintiff Flexible has at substantial expense developed a fine reputation and extensive good will as associated with its "DIGICLEAN" products, through advertising and marketing of its goods through its websites, namely, www.digiclean.com, www.digicleanpromo.com, and www.flexinno.com. Since prior to 2010, Plaintiff Flexible has attended and continues to attend national trade shows, and participates in various industry associations.

13. Upon information and belief, Defendant PS advertises, markets, offers for sale, and sells its adhesive microfiber display cleaning wipes in the United States and in this District.

14. Defendant PS's products are competitive with Plaintiff Flexible's DIGICLEAN products. Examples of the screen wipes of Defendant PS are shown in Pleading Exhibit D.

15. Upon information and belief, Defendant PS purposefully placed advertising with GOOGLE (“GOOGLE Ad”) such that when a search is made for Plaintiff Flexible’s DIGICLEAN goods, the FIRST “hit” is for “DIGICLEAN – Custom Digital Screen Cleaners,” noted as an Ad for Defendant PS’s website, as shown in Pleading Exhibit E. Defendant PS is not authorized, nor does it sell any genuine DIGICLEAN microfiber screen wipes. As such, Defendant PS is using Plaintiff Flexible’s DIGICLEAN trademark in a manner to illegally divert legitimate product sales from Plaintiff Flexible to Defendant PS.

16. Upon information and belief, Defendant PS has used the mark “DIGICLEAN” in its GOOGLE Ad to illegally redirect “hits” that legitimately belong to Plaintiff Flexible to Defendant PS. As such, Defendant PS has intentionally misappropriated and unfairly used Plaintiff Flexible’s registered trademark “DIGICLEAN” as one of its key words, so that anyone searching for genuine “DIGICLEAN” products is misdirected to Defendant PS’s website for non-genuine “DIGICLEAN” products, rather than being directed solely to Plaintiff Flexible.

17. The result of this misdirection is to cause initial interest confusion, or further or alternatively source confusion.

CAUSES OF ACTION

COUNT I—INFRINGEMENT OF U.S. PATENT NO. 7,431,983

18. Plaintiff Flexible repeats and realleges the allegations of ¶¶ 1-17 as if fully set forth herein.

19. Upon information and belief, Rakupuri established a Chinese company, Dalian Three-Dimensional Design Corp. (“DTDD”), to make and sell screen cleaners in China. DTDD makes its screen cleaners in accordance with the ‘983 Patent. DTDD sells to various resellers in China.

20. Upon information and belief, one of such resellers in China provide unauthorized microfiber screen cleaner products for resale in the United States to Defendant PS.

21. Without license or authorization and in violation of 35 U.S.C. § 271(a) Defendant PS has infringed and continues to infringe the '983 Patent by making, using, offering for sale, and/or selling within this District and elsewhere in the United States and/or importing into this District and elsewhere in the United States, microfiber screen cleaning products made in accordance with the '983 Patent, including but not limited to Defendant PS's "Pristine Screen" products, as shown in the attached Pleading Exhibit D.

22. Plaintiff Flexible is entitled to recover from Defendant PS the damages sustained by Plaintiff Flexible as a result of Defendant PS's infringement of the '983 Patent 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.

COUNT II—FEDERAL TRADEMARK INFRINGEMENT

23. The allegations of ¶¶ 6-22 above are hereby incorporated herein by reference.

24. Under 15 U.S.C. § 1114(1)(a), Defendant PS has, without the consent of Plaintiff Flexible, used in commerce a reproduction, counterfeit, copy, or colorable imitation of the DIGICLEAN mark in connection with the sale, offering for sale, distribution, or advertising of goods or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

25. Under 15 U.S.C. § 1117, Plaintiff Flexible seeks Defendant PS's profits, damages sustained by Plaintiff Flexible, and costs of this action. Further, under the circumstances of this case, Plaintiff Flexible seeks trebling of the actual damages. Further, if the Court should find that the recovery based on profits is inadequate, Plaintiff Flexible prays that the Court will in its

discretion enter judgment for such a sum as the Court shall find to be just.

26. Because of the blatant and willful nature of Defendant PS's infringement, Plaintiff Flexible submits this is an exceptional case and seeks its reasonable attorneys' fees.

COUNT III—LANHAM ACT UNFAIR COMPETITION

27. The allegations of ¶¶ 6-26 above are hereby incorporated herein by reference.

28. Under 15 U.S.C. § 1125(a), Defendant PS has, in connection with goods, used in commerce false or misleading description of facts, or false or misleading representations of facts, which are likely to cause confusion as to the origin, sponsorship, or approval of its goods by another person; or, in commercial advertising or promotion, misrepresented the nature, characteristics, or qualities of its or Plaintiff Flexible's goods or commercial activities. Plaintiff Flexible believes that it is, or is likely to be, damaged by such acts. Also, Defendant PS has made false designations of origins of its product with respect to using "DIGICLEAN" as trademarks, thereby identifying its product with Plaintiff Flexible as a source.

29. Under 15 U.S.C. § 1117, Plaintiff Flexible seeks Defendant PS's profits, damages sustained by Plaintiff Flexible, and costs of this action. Further, under the circumstances of this case, Plaintiff Flexible seeks trebling of the actual damages. Further, if the Court should find that the recovery based on profits is inadequate, Plaintiff Flexible prays that the Court will in its discretion enter judgment for such a sum as the Court shall find to be just.

30. Because of the blatant and willful nature of Defendants' misrepresentations, Plaintiff Flexible submits this is an exceptional case and seeks its reasonable attorneys' fees.

COUNT IV—COMMON LAW UNFAIR COMPETITION

31. The allegations of ¶¶ 6-30 above are hereby incorporated herein by reference.

32. Defendant PS has engaged in unfair competition with Plaintiff Flexible through violations of statutory obligations and/or trade disparagement, thereby, on information and belief, obtaining profits that would otherwise have gone to Plaintiff Flexible and thereby damaging Plaintiff Flexible.

33. Defendant PS's actions have been actuated by fraud and/or malice.

34. Plaintiff Flexible seeks an award of exemplary damages under the provisions of Chapter 41, Texas Civil Practices and Remedies Code.

JURY DEMAND

Plaintiff Flexible hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Flexible requests this Court enter a judgment against Defendant PS as follows:

- a. An adjudication that Defendant PS has infringed the '983 Patent;
- b. An injunction restraining Defendant PS, and all those who are in active concert with Defendant PS, from any future acts of infringement of the '983 Patent;
- c. An injunction enjoining any future acts of trademark infringement and acts of unfair competition by Defendant PS against Plaintiff Flexible, including but not limited to ordering Defendant PS not to use Plaintiff Flexible's "DIGICLEAN" trademark or any word or mark that is confusingly similar thereto in any GOOGLE Ad.
- d. An award of Plaintiff Flexible's damages and Defendant PS's profits to be paid by Defendant PS adequate to compensate Plaintiff Flexible for Defendant PS's past infringement

of the '983 Patent and Plaintiff Flexible's "DIGICLEAN" trademark and any continuing future infringement through the date of such judgment, including interest (pre-judgment and post-judgment), costs, expenses and an accounting of all infringing acts;

e. A declaration that this case is exceptional under 35 U.S.C. § 285 and 15 U.S.C. § 1117(a) and an award of Plaintiff Flexible's reasonable attorney's fees; and,

f. An award to Plaintiff Flexible of such further relief at law or in equity as this Court deems just and proper.

Dated: March 30, 2015.

Respectfully submitted,

/s/ Richard L. Schwartz
Richard L. Schwartz
Texas Bar No. 17869500
rschwartz@whitakerchalk.com
Lead Counsel in Charge

Thomas F. Harkins, Jr.
Texas Bar No. 09000990
tharkins@whitakerchalk.com

**WHITAKER CHALK SWINDLE
& SCHWARTZ PLLC**
301 Commerce Street, Suite 3500
Fort Worth, Texas 76102
Phone: (817) 878-0500
Fax: (817) 878-0501

**ATTORNEYS FOR PLAINTIFF
FLEXIBLE INNOVATIONS LTD.**

CERTIFICATE OF SERVICE

I hereby certify that I served counsel for Defendant by this Court's ECF system on this 30th day of March, 2015.

/s/ Richard L. Schwartz
Richard L. Schwartz