

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**CHARLES C. FREENY III, BRYAN E.
FREENY, and JAMES P. FREENY,**

Case No. 2:15-cv-01389

Plaintiffs,

JURY TRIAL DEMANDED

v.

FIKES WHOLESALE, INC.,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their Complaint against Defendant Fikes Wholesale, Inc., hereby allege as follows:

THE PARTIES

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Fikes Wholesale, Inc. (“Fikes”) is a corporation duly organized and existing under the laws of the State of Texas, having its principal place of business at 6261 Central Pointe Parkway, Temple, Texas, 76504.
5. On information and belief, Fikes owns and operates retail gas stations located in this judicial district and throughout the United States, including retail gas stations operating under the CEFCO Convenience Stores and Food Fast brands.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§1331 and 1338(a).

7. This Court has specific and/or general personal jurisdiction over Defendant Fikes because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because Fikes has committed acts within this judicial district giving rise to this action, and continues to conduct business in this district, and/or has committed acts of patent infringement within this District giving rise to this action.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,076,071)

9. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

10. On June 13, 2000, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,076,071 ("the '071 patent"), entitled "Automated Synchronous Product Pricing and Advertising System." A true and correct copy of the '071 patent is attached hereto as **Exhibit A**.

11. The named inventor of the '071 patent is Charles C. Freeny, Jr., who is now deceased.

12. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and

assignees of all right, title and interest in and to the '071 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

13. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '071 patent.

14. On information and belief, Fikes has been and now is infringing the '071 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in its retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the '071 patent.

15. On information and belief, Fikes will continue to infringe the '071 patent unless enjoined by this Court.

16. Fikes' acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Fikes' infringement of Plaintiffs' rights under the '071 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,513,016)

17. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

18. On January 28, 2003, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,513,016 ("the '016 patent") entitled "Automated

Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’016 patent is attached hereto as **Exhibit B**.

19. The named inventor of the ’016 patent is Charles C. Freeny, Jr., who is now deceased.

20. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the ’016 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

21. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the ’016 patent.

22. On information and belief, Fikes has been and now is infringing the ’016 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in its retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the ’016 patent.

23. On information and belief, Fikes will continue to infringe the ’016 patent unless enjoined by this Court.

24. Fikes’ acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Fikes’ infringement of Plaintiffs’ rights under the ’016 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Fikes as follows:

- a. For judgment that Fikes has infringed and continues to infringe the claims of the '071 and '016 patents;
- b. For a permanent injunction against Fikes and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '071 and '016 patents;
- c. For an accounting of all damages caused by Fikes' acts of infringement;
- d. For a judgment and order requiring Fikes to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for their infringement of the '071 and '016 patents as provided under 35 U.S.C. § 284;
- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: August 3, 2015

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

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