

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LINDSAY ENGRAVING,
INC.

Case No.

Plaintiff,

v.

VU NGOC ANH, AKA NGOC ANH VU;
VU THUY DUONG, AKA THUY DUONG
VU; LE DUY GIAP, AKA DUY GIAP LE;
AND ANDU ENGRAVING TOOLS

Defendants.

COMPLAINT

JURY TRIAL REQUESTED IN LINCOLN

COMPLAINT

Plaintiff Lindsay Engraving, Inc. (“Lindsay”), for its Complaint against Defendants Vu Ngoc Anh, aka Ngoc Anh Vu; Vu Thuy Duong, aka Thuy Duong Vu; Le Duy Giap, aka Duy Giap Le; and Andu Engraving Tools (collectively, “Defendants”), upon knowledge as to its own acts, and upon information and belief as to all other matters, hereby alleges as follows:

THE PARTIES

1. Plaintiff Lindsay is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business at 3714 West Cedar Hill Drive, Kearney, Nebraska 68845.

2. Upon information and belief, Defendant Vu Ngoc Anh, is an individual and resident of Ha Noi, Vietnam with an address of 1 Le Van Luong Cau Giay Hanoi, Ha Noi, Ba Dinh, Vietnam, and a phone number of 84 975873689.

3. Upon information and belief, Defendant Vu Ngoc Anh uses the alias Ngoc Anh Vu.

4. Upon information and belief, Defendant Vu Thuy Duong is an individual and resident of Hanoi, Vietnam with an address of 1 Le Van Luong Cau Giay Ha Noi, Ha Noi, Ba Dinh, Vietnam, and a phone number of 84 912623455.

5. Upon information and belief, Defendant Vu Thuy Duong uses the alias Thuy Duong Vu.

6. Upon information and belief, Defendant Vu Ngoc Anh and Defendant Vu

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Thuy Duong are husband and wife, respectively.

7. Upon information and belief, Defendant Le Duy Giap is an individual and resident of Hanoi, Vietnam with an address of Sieu thi BigC thang long, Ha Noi, 00844, 1508512, Vietnam, and a phone number of 84 904000876.

8. Upon information and belief, Defendant Le Duy Giap uses the alia Duy Giap Le.

9. Upon information and belief, Defendants Vu Ngoc Anh, Vu Thuy Duong, and Le Duy Giap are the owners of Andu Engraving Tools, a business organized and existing under the laws of the country of Vietnam, with its principal place of business of 1 Le Van Luong Cau Giay Hanoi, Ha Noi, Ba Dinh, Vietnam and / or 15/98 Hoang Ngan, Ha Noi, Cau Giay, Vietnam and / or P211 NHÀ A6D Nam Trung Yen, Trung Hoa, Cau Giay Hanoi, Vietnam and /or Sieu thi BigC thang long, Ha Noi, 00844, 1508512, Vietnam.

10. Defendants are engaged in the design, manufacture, sales within the United States, offering for sale in the United States, use within the United States, importation into the United States, and/or sale after importation into the United States of hand held pneumatic engraving tools and accessories. Defendants market and sell these infringing tools and accessories worldwide and in the United States through the online retailer Etsy®, via the websites of facebook.com and youtube.com, and through their own e-commerce website. Defendants also use the website paypal.com to facilitate the offering for sale in the United States and for use of payment of the infringing products.

11. Upon information and belief, Defendants' Etsy® account names include "Vũ Ngọc Ánh" and "AnduEngravingtools" and the webpages include:

www.etsy.com/people/HandmadebyAndu and www.etsy.com/listing/246427365/brand-new-pneumatic-engraver-air-powered?ref=shop_home_active_3 and <https://www.etsy.com/shop/AnduEngravingtools?ref=l2-shopheader-name>. Upon information and belief, Defendants' facebook profile account is Graver Pneumatic and the webpage is <https://vi-vn.facebook.com/people/Graver-Pneumatic/100010483385825>. Upon information and belief, Defendants' youtube account is "Vu NGoc Anh" and there are videos and photographs of the infringing products being made at the following URLs: https://www.youtube.com/channel/UCDTLFHZA6PCFiPLRZcGI_Dg; <https://www.youtube.com/watch?v=YuEgOQHs3UM>; https://www.youtube.com/watch?v=I8us51_Qc5Q; <https://www.youtube.com/watch?v=4KcXK85Z77s>; and <https://www.youtube.com/watch?v=Bhmng0ePn8A>. Upon information and belief, Defendant Vu Ngoc Anh's email address is vnah1001@yahoo.com.vn; Defendant Vu Thuy Duong's email address is thuyduongvu1407@gmail.com; and Defendant Le Duy Giap's email address is hoangbang3012@gmail.com. Upon information and belief, Defendants' e-commerce website is www.anduengravingtools.com. Defendants use the following names and other variations of these names, in order to promote and market their products to customers: AirGraver, Hand Control Pneumatic Graver, Pneumatic Graver, Graver Pneumatic, Air Power Graver, Tool Handengraver, HandControl, Andu Engraver, Andu Engraving, and Uniform-Parallel Graver Point,

12. Upon information and belief, Defendants use their presence on the Internet, via the online retailer Etsy®, facebook.com, youtube.com, Nebraska-based entity PayPal, their

own e-commerce website, and other such sites, to advertise, exchange information, and enter into contracts with Nebraska residents who visit the websites.

13. Pursuant to the Federal Rules of Civil Procedure, service upon Defendants is proper by a method that is reasonably calculated to give notice as prescribed by Vietnam's law for service in that country in an action in its courts of general jurisdiction. Fed. R. Civ. P. 4(f)(2)(A).

JURISDICTION AND VENUE

14. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

15. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

16. Defendants are subject to specific personal jurisdiction in the District of Nebraska (the "District") consistent with the principles of due process and the Nebraska Long Arm Statute, because Defendants offer their products for sale in this District, have committed and/or induced acts of patent infringement in this District, and/or have placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District. Upon information and belief, Defendants have committed acts giving rise to this action within this District and have established minimum contacts within this District such that exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(d) because Defendants have conducted business in this District and have committed acts and continue to commit acts of patent infringement within the State of Nebraska, this District, and elsewhere in the United States giving rise to this action.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,095,256

18. Lindsay re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 17 above as if fully set forth herein.

19. On August 1, 2000, United States Letters Patent No. 6,095,256 (“the ‘256 patent”) entitled HAND-HELD PNEUMATIC IMPACT TOOL AND METHOD OF CONTROLLING THE SAME was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘256 patent is attached hereto as Exhibit A, and is incorporated herein by reference. A true and correct copy of a Certificate of Correction issued by the United States Patent and Trademark Office on September 22, 2000, in connection with the ‘256 patent is attached hereto as Exhibit B.

20. Lindsay is the owner and assignee of all rights, title and interest in and to the ‘256 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. Defendants have been and now are directly infringing the ‘256 patent in the State of Nebraska, in this District, and elsewhere in the United States, by making, using, selling, offering to sell, and/or importing into the United States, products that are

covered by at least claims 1 of the '256 patent, including, by way of example and not limitation, an AirGraver, Hand Control Pneumatic Graver, Pneumatic Graver, Graver Pneumatic, Air Power Graver, Tool Handengraver, HandControl, Andu Engraver, and Andu Engraving.

22. Lindsay has complied with the statutory requirement of placing required notice of the '256 patent and has given the Defendants written notice of the infringement.

23. Lindsay has been injured by Defendants' infringing activities, and is entitled to recover money damages from Defendants adequate to compensate it for such Defendants' infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Lindsay will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

24. Unless a permanent injunction is issued enjoining Defendants and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '256 patent, Lindsay will be greatly and irreparably harmed.

COUNT II

INFRINGEMENT OF U.S.PATENT NO. 6,508,315

25. Lindsay re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 24 above as if fully set forth herein.

26. On January 21, 2003, United States Letters Patent No. 6,508,315 ("the '315 patent") entitled SMALL IMPACT POWER TOOL was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy

of the '315 patent is attached hereto as Exhibit C, and is incorporated herein by reference.

27. Lindsay is the owner and assignee of all rights, title and interest in and to the '315 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

28. Defendants have been and now are directly infringing the '315 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling, offering to sell, and/or importing into the United States products that are covered by the claims of the '315 patent, including, by way of example and not limitation, an AirGraver, Hand Control Pneumatic Graver, Pneumatic Graver, Graver Pneumatic, Air Power Graver, Tool Handengraver, HandControl, Andu Engraver, and Andu Engraving.

29. Lindsay has complied with the statutory notice for the '315 patent on all hand- held pneumatic tools that embody the patented invention and has given the Defendants written notice of the infringement.

30. Lindsay has been injured by Defendants infringing activities, and is entitled to recover money damages from Defendants adequate to compensate it for such Defendants' infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Lindsay will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

31. Unless a permanent injunction is issued enjoining Defendants and its respective agents, servants, employees, representatives, affiliates, and all others acting

in active concert therewith from infringing the '315 patent, Lindsay will be greatly and irreparably harmed.

COUNT III

INFRINGEMENT OF U.S.PATENT NO. 6,691,798

32. Lindsay re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 31 above as if fully set forth herein.

33. On February 17, 2004, United States Letters Patent No. 6,691,798 ("the '798 patent") entitled VARIABLE HAND PRESSURE ACTIVATED POWER TOOL was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '798 patent is attached hereto as Exhibit D, and is incorporated herein by reference.

34. Lindsay is the owner and assignee of all rights, title and interest in and to the '798 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

35. Defendants have been and now are directly infringing the '798 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling, offering to sell, and/or importing into the United States products that are covered by the claims of the '798 patent, including, by way of example and not limitation, an AirGraver, Hand Control Pneumatic Graver, Pneumatic Graver, Graver Pneumatic, Air Power Graver, Tool Handengraver, HandControl, Andu Engraver, and Andu Engraving.

36. Lindsay has complied with the statutory notice for the '798 patent on

all hand-held pneumatic tools that embody the patented invention and has given the Defendants written notice of the infringement.

37. Lindsay has been injured by Defendants infringing activities, and is entitled to recover money damages from Defendants adequate to compensate it for such Defendants' infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Lindsay will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

38. Unless a permanent injunction is issued enjoining Defendants and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '798 patent, Lindsay will be greatly and irreparably harmed.

COUNT IV

INFRINGEMENT OF U.S.PATENT NO. 7,032,586

39. Lindsay re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 38 above as if fully set forth herein.

40. On April 25, 2006, United States Letters Patent No. 7,032,586 ("the '586 patent") entitled SINGLE POINT ENGRAVING CUTTER TIP was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '586 patent is attached hereto as Exhibit E, and is incorporated herein by reference.

41. Lindsay is the owner and assignee of all rights, title and interest in and to the '586 patent, including the right to assert all causes of action arising under
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said patent and the right to any remedies for infringement of it.

42. Defendants have been and now are directly infringing the '586 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling, offering to sell, and/or importing into the United States products that are covered by the claims of the '586 patent, including, by way of example and not limitation, a Uniform-Parallel Graver Point.

43. Lindsay has complied with the statutory notice for the '586 patent on all hand-held pneumatic tools that embody the patented invention and has given the Defendants written notice of the infringement.

44. Lindsay has been injured by Defendants infringing activities, and is entitled to recover money damages from Defendants adequate to compensate it for such Defendants' infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Lindsay will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

45. Unless a permanent injunction is issued enjoining Defendants and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '586 patent, Lindsay will be greatly and irreparably harmed.

COUNT V

TRADEMARK INFRINGEMENT OF AIRGRAVER

46. Lindsay re-alleges and incorporates by reference the allegations set

forth in Paragraphs 1 through 45 above as if fully set forth herein.

47. Lindsay has common law trademark rights in trade name AirGraver for use in the sale of engraving tools.

48. Lindsay has used the AirGraver trade name since September 2000 in combination with the sale of engraving tools.

49. Lindsay has sold engraving tools under the AirGraver in every state in the United States, as well as in dozens of countries around the world.

50. AirGraver is associated in the minds of the customers of engraving tools as the source of Lindsay's products.

51. Defendants activities alleged herein are likely to cause confusion, or cause mistake, or deceive, as to the affiliation, connection, or association of Defendants and Lindsay, and to their respective goods and services.

52. Defendants activities as described herein constitute false designation of origin and trademark infringement in violation of § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a).

53. Upon information and belief, Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Lindsay's business, reputation, and goodwill in the industry. Lindsay has no adequate remedy at all.

COUNT V

TRADEMARK INFRINGEMENT OF UNIFORM-PARALLEL POINT

54. Lindsay re-alleges and incorporates by reference the allegations set
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forth in Paragraphs 1 through 53 above as if fully set forth herein.

55. Lindsay has common law trademark rights in trade name Uniform-Parallel Point for use in the sale of engraving tools.

56. Lindsay has used the Uniform-Parallel Point trade name since December 21, 2006 in combination with the sale of engraving tools.

57. Lindsay has sold engraving tools under Uniform-Parallel Point in every state in the United States, as well as in dozens of countries around the world.

58. Uniform-Parallel Point is associated in the minds of the customers of engraving tools as the source of Lindsay's products.

59. Defendants activities alleged herein are likely to cause confusion, or cause mistake, or deceive, as to the affiliation, connection, or association of Defendants and Lindsay, and to their respective goods and services.

60. Defendants activities as described herein constitute false designation of origin and trademark infringement in violation of § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a).

61. Upon information and belief, Defendants' wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Lindsay's business, reputation, and goodwill in the industry. Lindsay has no adequate remedy at all.

DEMAND FOR JURY TRIAL

62. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lindsay respectfully requests a trial by jury of all issues properly triable by jury.

63. Pursuant to Nebraska Civil Rule 40.1, Lindsay respectfully requests a place of trial in Lincoln.

PRAYER FOR RELIEF

WHEREFORE Lindsay respectfully requests judgment in its favor and against Defendants, as follows:

64. A judgment in favor of Lindsay that Defendants have infringed the '256, '315, '798, and '586 patents;

65. A judgment in favor of Lindsay that Defendants have infringed Lindsay's common law trademark rights;

66. A permanent injunction against Defendants and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing, inducing the infringement of, or contributing to the infringement of the '256, '315, '798, and '586 patents;

67. A permanent injunction against Defendants and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches subsidiaries, parents, and all others acting in active concert therewith from infringing, inducing the infringement of, or contributing to the infringement of Lindsay's common law trademark rights;

68. A judgment and order requiring Defendants to pay Lindsay its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '256, '315, '798, and '586 patents as provided under 35 U.S.C. § 284;

69. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lindsay its reasonable attorneys' fees; and

70. Such other relief in law and equity as this Court may deem just and proper.

Respectfully submitted this 14th of January, 2016.

LINDSAY ENGRAVING, INC.

Plaintiff

By s/ Michael Hilgers

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