

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
Milwaukee Division**

MIKKELSEN GRAPHIC)	
ENGINEERING, INC.,)	
Plaintiff,)	
)	Case No.:
vs.)	
)	
BEATRICE DRURY, CHRISTOPHER)	
NICHOLSON, ZÜND AMERICA, L.L.C.,)	
ZÜND SYSTEMTECHNIK AG,)	Judge
Defendants.)	

VERIFIED COMPLAINT

NOW COMES the Plaintiff and as and for a cause of action hereby states on information and belief as follows:

Parties

1. Plaintiff, Mikkelsen Graphic Engineering, Inc. (MGE), is a Wisconsin corporation having a principal place of business of 801 Geneva Parkway, Lake Geneva, Wisconsin 53147.
2. Defendant, Beatrice Drury, is an individual, who, on information and belief, is a citizen of the State of Colorado, residing at 4896 East Costilla Place, Littleton, Colorado 80122.
3. Defendant, Christopher Nicholson, is an adult individual who on information and belief is a citizen of the State of Wisconsin, residing at W157 S7373 Martin Drive, Muskego, Wisconsin 53150, and is an officer of defendant Zund America, Inc.
4. Defendant, Zünd Systemtechnik AG (ZST) is an alien corporation incorporated and operating under the laws of Switzerland and having a principal place of business located at Industriestrasse 8, CH-9450 Altstätten, Switzerland.

5. Zund America, Inc. (ZA), is a Wisconsin corporation, incorporated April 8, 2004, and having a principal place of business at 5068 West Ashland Way, Franklin, Wisconsin, 53132.

Jurisdiction

6. This action arises under the Trademark Laws of the United States, and, more particularly, under the Lanham Act §§32 and 43(a)(1)(15 USC §§1114 and 1125(a)(1)). Jurisdiction is conferred on this Court pursuant to Lanham Act §39(a) (15 USC §1121(a)) and 28 USC §1338(a) and (b).

7. This action also arises under the Patent Laws of the United States; more particularly, this action arises under 35 USC §271 and §281. Jurisdiction is conferred on this Court pursuant to 28 USC §1331 and §1338.

8. This action also arises under the Antitrust Laws of the United States; more particularly, jurisdiction is conferred on this Court pursuant to 28 USC §1337(a).

9. This Court also has Supplementary Jurisdiction pursuant to 28 USC 1367(a).

10. This action also arises under the Declaratory Judgment Act; more particularly, jurisdiction is conferred on this Court pursuant to 28 USC 2201.

11. Venue is proper in this judicial district for the alien corporate Defendant pursuant to 28 USC §1391(c) and (d) because the alien corporate Defendant is deemed to reside in and does or has done business in this district. Venue is also proper in this judicial district for the alien corporate Defendant pursuant to 28 USC §1400(b) as on information and belief, the alien Defendant has imported and sold infringing articles into this judicial district. Venue is proper in this judicial district for the domestic corporate Defendant and the Wisconsin citizen pursuant to 28 USC §1391(b), (c) because the domestic corporate Defendant resides in and does or has done

business in this district. Venue is also proper in this judicial district for the domestic corporate Defendant pursuant to 28 USC §1400(b) as on information and belief, the alien Defendant has imported, stored, and sold infringing articles into this judicial district.

12. On information and belief, venue is proper in this judicial district pursuant to 28 USC §1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Wisconsin. Defendants do or have done business in this district by marketing their services and goods in interstate commerce without exclusion to residents in the State of Wisconsin, and are deemed to reside in this district because Defendants are subject to personal jurisdiction in this district.

Background Facts

MGE's Business

13. Since its incorporation in 1986, MGE is and has been in the business of developing, marketing, and servicing digital cutting systems, including plotters and cutters.

14. As part of MGE's business, prior to 1990, MGE entered into an oral agreement with ZST whereby ZST granted MGE a dealership for the sales of ZST machinery including cutters and plotters.

15. ZST's initial grant to MGE was for the exclusive dealership of ZST machinery to the graphics, sign, and mat-cutting markets in North America, specifically including the entirety of the United States and Canada.

16. Pursuant to that grant of exclusive dealership, at its own cost, MGE attended trade shows and otherwise developed sales leads.

17. Through MGE's efforts, MGE has developed and expanded the sales of ZST machinery in North America.

18. MGE has annually shown increases in MGE's sales of ZST machinery.

19. MGE has developed at its own cost, software and devices including MGE's *i-cut*® software, sheet feeders, weeders and workstations specifically for use with ZST machinery to increase sales of ZST machinery in North America and throughout the rest of the world.

20. Aspects of the *i-cut*® software, including aspects of the *i-cut*® Pro versions of the software, are subject of United States patents: Patent No. 6,772,661 (entitled "Method and Apparatus for Precision Cutting and the like of Graphics Areas from Sheets"); Patent No. 6,672,187 (entitled "Method and Apparatus for Rapid Precision Cutting of Graphics Areas from Sheets"); Patent No. 6,619,168 (entitled "Method and Apparatus for Automatic Precision Cutting of Graphics Areas from Sheets"); and/or Patent No. 6,619,167 (entitled "Method and Apparatus for Precision Cutting of Graphics Areas from Sheets"). Each of the patents is assigned to MGE and is valid and subsisting.

MGE Computer Stand/Workstation Design and Vendor Information

21. To further facilitate its sales of ZST machinery, MGE conceived of a complementary computer stand/workstation for use with the ZST-produced plotters.

22. MGE worked with a company in the design of the MGE-conceived computer stand/workstation, such work resulting in a distinctive MGE design.

23. MGE paid for the design for the computer stand/workstation.

24. That local company manufactured and sold the MGE-conceived computer stand/workstations on a wholesale basis to MGE.

25. MGE's source of the MGE-conceived computer stand/workstations was maintained as a trade secret; the computer stand/workstations bore no indications of the name of the contract manufacturer used by MGE.

26. MGE sold the MGE-conceived computer stand/workstations worldwide under the MGE trademark.

ZST's Business

27. ZST manufactures plotters and cutters.

28. ZST sells its plotters and cutters through regionally-exclusive dealerships called "Original Sales and Support Partners" (OSSP), with the only major exception being for direct sales from the factory to major, internationally-situated Original Equipment Manufacturing corporations (OEM), and sporadic sales to consumers outside of dealership territories.

29. Prior to April 8, 2004, ZST sold its plotters and cutters in the United States and Canada predominately through MGE, which was at the time an OSSP.

30. On or about April 8, 2004, ZST created ZA to directly compete with MGE.

31. On information and belief, ZST knowingly hired key strategic employees of MGE in an attempt to cripple and oppress the competition of MGE in order that ZA could build its business in America.

ZA

32. ZA was incorporated in the State of Wisconsin on or about April 8, 2004.

33. ZA is wholly owned by ZST.

34. ZA was formed in order to sell ZST plotters and cutters in direct competition with MGE.

35. At the time ZA was incorporated, MGE was the North American OSSP for ZST with exclusive rights for the geographical area of the United States, Canada and Mexico.

36. At the time ZST formed ZA, ZST facilitated the hiring by ZA of certain key personnel of MGE namely, Christopher Nicholson (who was Vice-President of MGE directly involved with sales of machinery), Dan Farrey (who was a senior-level manager of the service department of MGE and a repairman for ZST machinery), and Peter Alsten (who was a factory-trained technician and product manager for the development of *i-cut*® software).

37. At the time Messrs. Nicholson, Alsten, and Farrey became employees of ZA, they collectively knew MGE trade secrets, including specific pieces of information regarding MGE's customers/prospective customers for plotters and related equipment, software, systems, services, etc.

38. Messrs. Nicholson, Alsten, and Farrey, collectively, were further aware of certain confidential customer information with respect to appropriate contact persons, business facilities, operations, specific needs, and concerns, etc.

39. Messrs. Nicholson, Alsten, and Farrey, collectively, were further aware of certain confidential information concerning the identity of MGE's contract manufacturers.

40. Messrs. Nicholson, Alsten, and Farrey, collectively, were also aware of confidential MGE information regarding business dealings with companies in various portions of the graphics industry, including without limitation general and specific information on dealings with equipment makers, equipment vendors, equipment users, software needs, system needs, contact persons, programmers, business plans, etc.

41. Messrs. Nicholson, Alsten, and Farrey, collectively, were further aware of MGE's confidential and proprietary business information, including without limitation, information on business plans, new business ventures, organizational plans, financial information, inventions, marketing concepts, etc. as well as confidential and proprietary information regarding both the technical and business aspects concerning MGE's *i-cut*® and *i-script*™ systems and technology including, without limitation, information on applications, manner of operation, capabilities, software and programming, associated mechanical devices, planned and conceived innovations/improvements, strategic plans and related business arrangements, marketing programs, *i-cut*® and *i-script*™ vendors, useful business contacts throughout the marketplace with respect to the promotion and sales of the MGE systems, customer-specific information, etc.

Beatrice Drury

42. Beatrice Drury was hired by Mikkelsen Graphic Engineering, Inc. as an independent contractor on or about August 16, 1996.

43. At all times from the commencement of her employment until the termination of her employment on October 7, 2004, Beatrice Drury was an independent contractor who served to assist in sales of MGE products.

44. Beatrice Drury signed the initial contract on August 16, 1996, a true and correct copy of which is attached hereto as Exhibit A.

45. Beatrice Drury signed a supplemental contract with MGE on November 1, 1996, a true and correct copy of which is attached hereto as Exhibit B.

46. On information and belief, during her employment with MGE, income derived from MGE constituted more than 80% of Beatrice Drury's income in any given year.

47. As part of her employment with MGE, Beatrice Drury attended trade shows with MGE; when attending trade shows with MGE, she worked as an apparent employee in the MGE booth and wore MGE credentials.

48. Aside from working at trade shows, Beatrice Drury made sales calls to MGE-provided leads to sell MGE product.

49. In conducting such sales calls for MGE, Beatrice Drury maintained a toll-free telephone number for which MGE reimbursed Beatrice Drury the MGE-associated costs.

50. Beatrice Drury held herself out as an employee of MGE, by providing business cards to clients and potential clients. A true and correct copy of Beatrice Drury's business card is attached hereto as Exhibit C.

51. Said business cards provided by Beatrice Drury to customers identified her as associated with MGE, did not identify her as an independent contractor working with MGE and provided her toll-free number in association with MGE.

52. In conducting the business of MGE, MGE provided to Beatrice Drury a computer with software for exclusive use in connection with MGE sales.

53. Said computer contained software allowing for the establishment of a virtual network with MGE computers through which Beatrice Drury would periodically synchronize the MGE-provided computer with the MGE computers which through such synchronization Beatrice Drury would have access to all proprietary sales information including the entire up-dated database of business leads with information on potential customers.

54. In addition to regular synchronization with MGE computers, on a regular basis MGE provided to Beatrice Drury current sales information including a list of “hot prospects” sales leads.

55. Such information maintained in MGE’s computers and provided to Beatrice Drury by MGE was proprietary and a valuable trade secret to MGE.

56. One of the two major trade shows attended by MGE in pursuit of sales is conducted by the Specialty Graphic Imaging Association (SGIA); the SGIA trade show for 2004 occurred in Minneapolis, Minnesota from October 6 to October 9, 2004 (SGIA ‘04 trade show).

57. In preparation for the SGIA ‘04 trade show, MGE provided to Beatrice Drury proprietary product and sales information and sales strategies for purposes of marketing the MGE products at the trade show.

58. MGE paid for all of the expenses of travel and stay for Beatrice Drury at the SGIA ‘04 trade show.

59. On the eve of the opening of the SGIA ‘04 trade show, Beatrice Drury attended an opening strategy session of MGE during which the confidential and proprietary sales strategy of MGE for the upcoming sales year was discussed.

60. Soon after obtaining the information from MGE regarding their sales strategies for the show and for the ensuing year, Beatrice Drury quit her association with MGE and immediately joined the sales staff of ZA.

61. ZA knew, prior to the SGIA ‘04 trade show, that one of the principal sellers for MGE was Beatrice Drury.

62. Beatrice Drury was paid by MGE to prepare for and attend the SGIA '04 trade show and to work at MGE's trade show booth at the SGIA.

63. Beatrice Drury duties at the MGE trade show booth was to meet with customers and potential customers of MGE, some of whom she may have met at previous MGE-attended trade shows, and to procure orders for sales of product offered by MGE and to obtain leads for future sales MGE products.

64. On information and belief, prior to the SGIA '04 trade show, ZA contacted Beatrice Drury in an effort to hire her.

65. On or about October 7, 2004, during the SGIA trade show, ZA caused Beatrice Drury to quit from MGE without notice.

66. Prior to the termination of employment with MGE by Beatrice Drury, MGE was unaware of the negotiations for employment between ZA and Beatrice Drury.

67. On information and belief, at the time that ZA hired Beatrice Drury, ZA knew that Beatrice Drury was privy to MGE proprietary information including identified sales leads of MGE for ZST machinery and other MGE product.

68. Sales of product by MGE included sales of plotters and cutters manufactured by ZST.

69. At the time of her quitting MGE, and joining ZA, MGE and ZA were direct competitors, each being a major factory-authorized sales force of ZST selling in the North American market, and together, representing nearly all of the sales of ZST plotters in North America.

70. From the time of identifying a lead to the time of closing the sale for a plotter, a sales development period of between three months to twelve months typically is incurred.

71. Within two months of Beatrice Drury's leaving MGE to work for ZST, ZA (a company which started business no earlier than April 8, 2004) has made sales to three of the leads which had been previously provided by MGE to Beatrice Drury prior to her sudden termination with MGE.

72. Subsequent to Beatrice Drury's termination of association with MGE and despite repeated requests by MGE, Beatrice Drury has failed to return the MGE-owned computer, and other personal property, all of which contain confidential and proprietary MGE information, including sales and market leads.

COUNT I - Theft of Proprietary Information

73. MGE realleges paragraphs 1 through 72 above as if set forth in full.

74. During the course of her duties associated with sales of MGE product, Beatrice Drury had available to her, leads on potential customers.

75. By way of example, one of the leads provided to Beatrice Drury from the information of MGE was Oregon Blueprint.

76. Prior to her terminating her employment with MGE, Beatrice Drury provided a quote to Oregon Blueprint on behalf of MGE for the sale of a ZST machinery system.

77. In following-up on such sales lead after Beatrice Drury had quit working for MGE, MGE representatives learned that Beatrice Drury tried to sell to Oregon Blueprint a ZST plotter on behalf of ZA.

78. On information and belief, in trying to make the sale to Oregon Blueprint on behalf of ZA, Beatrice Drury utilized a copy of the sales quote she previously prepared for Oregon

Blueprint when she was employed by MGE, which copy of the sales quote was the proprietary property of MGE, but had not been, and has not been, returned by Beatrice Drury to MGE.

79. On information and belief, in discussing the sales quote to Oregon Blueprint on behalf of ZA, Beatrice Drury did not inform buyers for Oregon Blueprint that she was no longer working with MGE, the company for which she had issued the original quotation and that the ZST machinery she was now quoting was being sold on behalf of ZA.

80. Beatrice Drury's retention and use of confidential and proprietary information obtained from MGE for the use by and the benefit of ZA constitutes theft of trade secrets.

81. Retention and use by Beatrice Drury and ZA of the confidential and proprietary information of MGE constitutes unfair trade practices.

COUNT II - Conspiracy for Tortious Interference of Contract

82. MGE realleges paragraphs 1 through 81 above as if set forth in full.

83. After a price quote was made on behalf of MGE by Beatrice Drury, MGE entered into an agreement for the sale of a ZST plotter to Color Reflections.

84. On information and belief, with knowledge MGE had entered into the agreement with Color Reflections, ZA made a price quote to Color Reflections that was less than that provided by MGE.

85. In order to maintain Color Reflections as a customer for future transactions, MGE was forced to provide the lower price to the customer, significantly reducing the earnings for that sale, and on at least one subsequent sale.

86. ZA intentionally interfered with the agreements between MGE and Color Reflections in order to gain a competitive advantage over MGE.

87. Through Beatrice Drury, ZA has access to knowledge of businesses with whom MGE has spent time developing commercial relationships as potential customers of MGE.

88. On information and belief, with knowledge of the potential business relationship with MGE, ZA has made representations to these potential customers of MGE about MGE's financial fitness, quality of goods and services, ability to obtain replacement parts, and/or inability to obtain delivery for systems of the same specifications as fast as ZA.

89. On information and belief, ZA has made such representations to these potential customers of MGE with the intention of causing the potential customers to not do business with MGE.

90. ZA intentionally interfered with the agreements and prospective agreements between MGE and their customers and prospective customers in order to gain a competitive advantage over MGE.

91. Such actions by Beatrice Drury and ZA constitute tortious interference of contract and tortious interference with prospective business relations.

COUNT III - Replevin

92. MGE realleges paragraphs 1-91 above as if set forth in full.

93. To date, Beatrice Drury maintains possession of the computer which is solely personal property of MGE.

94. On information and belief, Beatrice Drury maintains possession of the copies of quotations and other client-specific information and records, all of which are solely personal property of MGE.

COUNT IV - Declaration of Monies Owed

95. MGE realleges paragraphs 1-94 above as if set forth in full.

96. MGE paid to Beatrice Drury a monthly payment and commissions on sales for services rendered in the sale of MGE's products through Beatrice Drury's efforts.

97. The commission paid by MGE to Beatrice Drury was a percentage (such percentage varied with regard to particular sales depending on factors such as the type of sale, the value of the sale, and the type of client) on the net sale by MGE. Such commission was only earned after installation and full payment.

98. Advanced payments against actual commissions earned were paid by MGE to Beatrice Drury subject to set-off after an actual calculation could be made.

99. The monthly payment was toward on-going services rendered by Beatrice Drury, which were directed by MGE for MGE.

100. The payment for September 2004 was for Beatrice Drury to prepare for MGE sales at the SGIA '04 trade show.

101. Part of the preparation by Beatrice Drury in September 2004 for the SGIA '04 trade show was the telephone contact of potential clients to encourage them to meet with Beatrice Drury at the trade show.

102. On information and belief, some of those potential MGE clients contacted by Beatrice Drury in September, met with Beatrice Drury at the ZA booth at the SGIA '04 trade show.

103. On information and belief, the majority of the value of the services performed by Beatrice Drury during September 2004, was received by ZA, a competitor of MGE.

104. During December 2004, Beatrice Drury provided to MGE a claim for payment of services based on her estimate of commissions she earned and of the monthly service payment due for September of 2004.

105. Beatrice Drury's claim of commissions earned is incorrect with respect to commissions actually earned.

106. On information and belief, Beatrice Drury did not provide service to MGE for September of 2004.

107. MGE provided to Beatrice Drury the calculated difference between the amount claimed by Beatrice Drury and the amount earned by Beatrice Drury.

108. Beatrice Drury has disagreed with the MGE calculation, leaving in doubt between the parties as to the amount earned by Beatrice Drury for services rendered to MGE.

COUNT V - Breach of Contract By Drury, Failure to Provide Notice

109. MGE realleges paragraphs 1-108 above as if set forth in full.

110. Pursuant to the provisions of the August 16, 1996 Agreement signed by Beatrice Drury, either MGE or Beatrice Drury may terminate such Agreement on thirty days notice to the other party.

111. Prior to October 7, 2004, MGE had neither terminated the Beatrice Drury Agreement nor provided notice to Beatrice Drury that MGE intended to terminate the Agreement.

112. Prior to October 7, 2004, MGE had paid for expenses of Beatrice Drury for her travel and attendance at the SGIA '04 trade show to work for MGE.

113. On the morning of October 7, 2004, Beatrice Drury was working at the MGE booth at the SGIA '04 trade show.

114. On October 7, 2004, Beatrice Drury orally informed MGE that she would no longer be working for MGE.

115. On October 7, 2004, Beatrice Drury terminated her employment with MGE.

116. After her sudden oral termination of employment with MGE, Beatrice Drury immediately went to work for ZA, a direct competitor of MGE, at ZA's booth at the SGIA '04 trade show.

117. Beatrice Drury's failure to provide a thirty-day notice of termination constitutes a breach of the Agreement.

118. By reason of this breach by Beatrice Drury, MGE has sustained damages.

COUNT VI - Violation By Drury of Section 43(a) of Lanham Act,
Use of Toll-Free Telephone Number

119. MGE realleges paragraphs 1-118 above as if set forth in full.

120. During the time that Beatrice Drury was working with MGE in the sales of MGE-supplied ZST plotters and cutters, Beatrice Drury maintained a toll-free telephone number, for which MGE reimbursed her for MGE-associated expenses.

121. During the time that she was associated with MGE, Beatrice Drury provided such toll-free telephone number to potential customers of MGE as a way of contacting her for MGE-provided ZST products.

122. Beatrice Drury provided information, including the toll-free telephone number, to potential customers of MGE through official-looking documents (including business cards, letterhead, and machinery quotations) which also included the MGE name and logo.

123. Beatrice Drury intended for customers and potential customers of MGE to associate the toll-free telephone number as a source of ordering information for MGE-supplied machines and service.

124. Customers and potential customers of MGE came to associate the toll-free telephone number as a source of MGE-supplied machines and service.

125. Upon information and belief, subsequent to the commencement of Ms. Drury's employment with ZA, Beatrice Drury received telephone calls to that toll-free telephone number from MGE potential customers with whom she had been in initial contact prior to the termination of employment with MGE on October 7, 2004.

126. Beatrice Drury continues to maintain the toll-free telephone number formerly associated with MGE for apparent use with potential customers, including those based on leads generated through Beatrice Drury's previous association with MGE, for the benefit of ZA.

127. Upon information and belief, at least one of the MGE-associated potential customers has subsequently purchased a ZST product from ZA rather than MGE.

128. Upon information and belief, when making the first contact with ZA resulting in the sale by ZA, such customer thought that they were dealing with Beatrice Drury as an independently contracting employee of MGE.

129. Beatrice Drury's actions create a likelihood of confusion or mistake by the consuming public as to the affiliation, connection, or association of Beatrice Drury with MGE, or as to the origin, sponsorship, or approval of Beatrice Drury's goods, services, or commercial activities by MGE.

130. MGE believes that it is or is likely to be damaged by such acts of Beatrice Drury.

COUNT VII - Tortious Interference of Contract, Independent Sales Representative

131. MGE realleges paragraphs 1-130 above as if set forth in full.

132. Upon information and belief, officials of ZA were in contact with Beatrice Drury at or prior to the SGIA '04 trade show in Minneapolis, Minnesota in October 2004, in an effort to cause her to terminate her employment with MGE.

133. Upon information and belief, based on the communications between ZA officials and Beatrice Drury, Beatrice Drury abruptly terminated her contractual relationship with MGE and entered into an employment relationship with ZA during the SGIA '04 trade show.

134. Announcement by Beatrice Drury of her termination of her contractual relationship with MGE occurred at the SGIA '04 trade show after MGE had paid for her expenses to travel to the show, her initial expenses at the show, provided to her credentials to attend the show, and provided confidential and proprietary MGE sales and marketing information to her.

135. Ms. Drury's termination was provided to MGE orally by Ms. Drury less than 24 hours before Ms. Drury was working in the ZA booth at the SGIA '04 trade show.

136. ZA's actions with regard to MGE's former representative, Beatrice Drury, were taken with knowledge by ZA of a continuing representation contract between MGE and Beatrice Drury.

137. ZA's actions with regard to the raiding of MGE employees were predatory; in addition to taking three key administrative and service employees of MGE in March of 2004 (Messrs. Nicholson, Alsten, and Farrey), between September 21, 2004 (the date that ZST, the parent corporation of ZA, and MGE entered into an agreement settling a previous dispute) and October 6, 2004 (the opening of the SGIA '04 trade show at which initial contact is made with

potential customers who will make up approximately sixty percent of the annual sales of MGE), ZA attempted to hire Beatrice Drury and Paul White, the sales supervisor for MGE, who, between the two of them, had sales responsibility for MGE for the majority of the United States. ZA's actions were calculated to destroy MGE, a company of approximately twenty employees, through the attempt at hiring away of both of these two sales employees immediately prior to the SGIA '04 trade show, after having already decimated the administrative staff through hiring away of a majority of MGE's administrative staff several months before.

138. ZA intentionally and tortiously interfered with the employment agreement between MGE and the former sales representative in order to gain a competitive advantage over MGE.

COUNT VIII - Patent Infringement, Unlicensed Sales of MGE's *i-cut*® Pro software

139. MGE realleges paragraphs 1-138 above as if set forth in full.

140. On September 21, 2004, ZST and MGE entered into a contract, a true and correct copy of which is attached hereto as Exhibit D.

141. Pursuant to that contract, ZST agreed that ZST would not sell MGE *i-cut*® Pro with *i-script*™ software to customers in the United States.

142. MGE *i-cut*® Pro with *i-script*™ software significantly improves the marketability of ZST plotters and cutters.

143. On information and belief, on at least one occasion, ZA installed the MGE *i-cut*® Pro with *i-script*™ software in combination with a ZST plotter to a customer within the United States.

144. MGE provided *i-cut*® Pro software to ZST for sales outside of the United States.

145. On information and belief, ZST provided some of the MGE-provided *i-cut*® Pro software to ZA for sale and/or installation in the United States without benefit of license from MGE.

146. ZA's unlicensed sale and/or installation of MGE's *i-cut*® Pro software in the United States constitutes patent infringement.

COUNT IX - Violation By ZA of Section 43(a) of Lanham Act (toll-free telephone number)

147. MGE realleges paragraphs 1-146 above as if set forth in full.

148. On information and belief, ZA knew that Beatrice Drury used the toll-free telephone number when she was selling ZST machinery for MGE.

149. On information and belief, ZA knew that potential customers of MGE came to understand the toll-free telephone number as a means of contacting MGE representatives to obtain MGE-supplied ZST machinery.

150. On information and belief, ZA knows that subsequent to Beatrice Drury's employment with ZA, Beatrice Drury uses the toll-free telephone number for her sales of ZA-supplied ZST machinery.

151. On information and belief, potential customers of MGE have contacted Beatrice Drury using the toll-free telephone number, subsequent to her leaving the employ of MGE.

152. ZA's use in commerce of the toll-free telephone number constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of ZA with MGE, or as to the origin, sponsorship, or approval of ZA's services or commercial activities by MGE.

153. ZA, through its acts of utilizing for commercial gain the toll-free telephone number formerly associated with its major competitor, has violated Section 43(a) of the Lanham Act.

154. MGE believes that it is or is likely to be damaged by such acts of ZA.

COUNT X - Violation By ZA of Section 43(a) of Lanham Act (trade dress)

155. MGE realleges paragraphs 1-154 above as if set forth in full.

Computer Stand/Workstation

156. MGE has offered its computer stand/workstation for sale for over three years.

157. MGE has been the sole source of its computer stand/workstation.

158. ZA, ZST, and ZST's OSSPs have ordered the computer stand/workstation from MGE.

159. MGE's computer stand/workstation has non-functional design aspects.

160. MGE's computer stand/workstation design is distinctive.

161. MGE has promoted sales of its computer stand/workstation with the distinctive design in the normal course of its business through illustration in MGE brochures, through illustration and offer for sale through MGE's web site, and through display and offer for sale at trade shows.

162. Through MGE's exclusive use of the design and MGE's promotion of sales of machinery of the design, MGE has come to be identified as the single source of the computer stand/workstation of the MGE design.

163. On information and belief, prior to September 1, 2004, ZA contacted MGE's former supplier of computer stand/workstations to commission manufacture of computer stand/workstations of the MGE design for ZA.

164. On information and belief, ZA is offering for sale and/or selling computer stand/workstations of the MGE design manufactured by the former supplier of MGE.

165. Neither the manufacture, the offer for sale, nor the sale of the computer stand/workstations of MGE design by ZA was authorized by MGE.

166. Sales of the computer stand/workstations of the MGE design by ZA are likely to confuse or deceive the public with regard to the affiliation, connection, or association of ZA with MGE, or as to the origin of the computer stand/workstations.

167. Sales of the computer stand/workstation by ZA are done with deceptive intent.

168. ZA's sales of computer stand/workstations of the MGE design or that are confusingly similar to the MGE design constitutes infringement of MGE's trade dress rights.

Sheet Feeder Table

169. MGE has offered its sheet feeder table for sale for over three years.

170. MGE has been the sole source of its sheet feeder table.

171. ZA, ZST, and ZST's OSSPs have ordered the computer stand/workstation from MGE.

172. MGE's sheet feeder table has non-functional design aspects.

173. MGE's sheet feeder table design is distinctive.

174. MGE has promoted sales of its sheet feeder table with the distinctive design in the normal course of its business through illustration in MGE brochures, through illustration and offer for sale through MGE's web site, and through display and offer for sale at trade shows.

175. Through MGE's exclusive use of the design and MGE's promotion of sales of machinery of the design, MGE has come to be identified as the single source of the sheet feeder tables of the MGE design.

176. On information and belief, prior to September 1, 2004, ZA contacted MGE's supplier of sheet feeder tables to commission manufacture of sheet feeder tables of the MGE design for ZA.

177. On information and belief, ZA is offering for sale and/or selling sheet feeder tables of the MGE design manufactured by the supplier of MGE.

178. Neither the manufacture, the offer for sale, nor the sale of the sheet feeder tables of MGE design by ZA was authorized by MGE.

179. Sales of the sheet feeder tables of the MGE design by ZA are likely to confuse or deceive the public with regard to the affiliation, connection, or association of ZA with MGE, or as to the origin of the sheet feeder tables.

180. For over twenty years, MGE has been the exclusive seller of ZST machinery at certain trade shows in the United States until ZA was created in 2004.

181. MGE has developed a trade show booth design scheme wherein the ZST plotter was set up in combination with the computer stand/workstations and sheet feeder tables of the MGE designs, and the *i-cut*® cameras of MGE, which MGE used at trade shows for at least three years prior to the SGIA '04 trade show.

182. The trade show booth design scheme of MGE was distinctive, and came to be identified with MGE.

183. In association with the trade show booth design scheme, MGE cut brochures with the machine combination, said brochures of a non-regular shape.

184. For many years, and through 2003 and including the SGIA trade show in 2003, MGE staffed the trade shows with Steen Mikkelsen, Chris Nicholson, Peter Alsten, and Beatrice Drury.

185. For 2004 trade shows, including the SGIA '04 trade show, ZA had a booth design scheme wherein the ZST plotter was set up in combination with the computer stand/workstations and sheet feeder tables of the MGE designs, and the *i-cut*® cameras of MGE, cutting brochures of a non-regular shape with the machine combination, said booth staffed with Chris Nicholson, Peter Alsten, and Beatrice Drury.

186. Sales of the sheet feeder table by ZA are done with deceptive intent.

187. ZA's sales of sheet feeder table of the MGE design or that are confusingly similar to the MGE design constitutes infringement of MGE's trade dress rights.

188. MGE believes that it is or is likely to be damaged by such acts of ZA.

COUNT XI - Unjust Enrichment

189. MGE realleges paragraphs 1-188 above as if set forth in full.

190. ZA has improperly utilized trade secret information in selling ZST machinery to MGE-courtied customers.

191. ZST and ZA have been or will be unjustly enriched through such actions with regard to MGE.

COUNT XII - Theft of Trade Secrets

192. MGE realleges paragraphs 1-191 above as if set forth in full.

192. After hiring Chris Nicholson, ZA made contact with MGE's supplier of computer stand/workstations and the supplier of the sheet feeder tables, whose identity was a trade secret of MGE.

193. MGE's former supplier of computer stand/workstations and sheet feeder tables is now supplying computer stand/workstations and sheet feeder tables the MGE designs to ZA for worldwide distribution.

194. The misappropriation of proprietary information of MGE by ZA regarding MGE's suppliers of products and services constitutes theft of trade secrets.

COUNT XIII - Antitrust (Delayed Delivery to MGE Customers,
Discriminatory Pricing, Discriminatory Commercial Procedures)

195. MGE realleges paragraphs 1-194 above as if set forth in full.

196. It is in ZA economic interest for MGE to cease doing business in the sale of plotters in the graphics, sign, and/or mat-cutting industries in the United States.

197. It is in ZST's economic interest for ZA to succeed financially.

198. It is in ZA's economic interest for MGE to cease to be a competitor in the sales of ZST machinery, and representatives of ZA have indicated to representatives of MGE that ZA will be seeking to obtain MGE's customers.

199. It is in ZA's economic interest to acquire the business MGE has developed over the many years for ZST machinery in the United States and Canada in the graphics, sign, mat-cutting, and/or screen-printing industries.

200. ZST did not deliver orders submitted by MGE for customers purchasing plotters as a result of the SGIA '04 trade show for a period of 8 weeks.

201. On information and belief, ZA told potential customers of MGE that ZA could provide plotters to those customers in approximately three weeks, which period of time would be faster than could be provided by MGE for the same product.

202. On information and belief, as a result of such representations, at least one potential MGE customer who had been working with MGE via Beatrice Drury for purchase of a plotter decided at the SGIA '04 trade show to purchase that ZST plotter from ZA.

203. ZST's intentional delay in providing product to MGE has prejudiced MGE in that ZST promptly supplies its own company, ZA, with equipment in order to create a reason for MGE customers to buy from ZA in order to obtain delivery sooner and, consequently, maintain or improve the customers' schedules.

204. On information and belief, ZST does not require ZA to provide 100% prepayment of the cost of the machines ordered from a customer in order to begin processing the customer's order as ZST requires of MGE.

205. On information and belief, ZST allows ZA to order machines for inventory, which ZST does not allow to MGE.

206. On information and belief, ZST preferentially informs ZA of new machinery configurations thereby discriminatorially allowing ZA to offer such new machinery configurations to potential customers in a manner by which MGE is effectively prevented from competing for the business of those potential customers.

207. On information and belief, ZST allows ZA to order machines and not charge the customer for delivery, which ZST does not allow to MGE.

208. On information and belief, ZST discriminates between the prices it provides to MGE and ZA.

209. On information and belief, the price discrimination by ZST is predatory.

210. On information and belief, Oliver Zund is an officer and director of ZST and is an officer and director of ZA. On information and belief, all orders from MGE for purchase of Zund machinery directly from ZST for delivery to the end user, must first be approved for acceptance of the order and then for approved for delivery, by Oliver Zund, an officer of MGE's competitor.

211. ZST's actions with regard to MGE constitute a restraint trade in violation of the Sherman Antitrust Act.

212. ZST's actions with regard to MGE is attempting to monopolize the plotter/cutter market in violation of the Sherman Antitrust Act

213. ZST's actions with regard to MGE is effect of substantially lessening competition or creating a monopoly in the plotter/cutter market in violation of the Clayton Act.

214. ZST does not treat its two major buyers in the United States, MGE and ZA, even-handedly.

215. ZST's actions with regard to MGE is discrimination in price, services, or facilities unlawful for both sellers and buyers when it has a tendency to create a monopoly, restrain competition, or violate trade regulations in violation of the Robinson-Patman Act.

COUNT XIV: Anti-Competition Under Wisconsin Statutory
Law, Chapter 133 Wis. Stats. and Wisconsin Common Law

216. MGE hereby realleges paragraphs 1 through 215 of this Complaint.

217. The conduct of the Defendant ZST constitutes Anti-competition and unfair restraint of trade in violation of the statutory and Common Law of the State of Wisconsin.

COUNT XV: Slander of MGE by Defendants Christopher Nicholson and ZA

218. MGE hereby realleges paragraphs 1 through 217 of this Complaint.

219. Upon information and belief, Christopher Nicholson while employed by ZA has maliciously circulated false and defamatory remarks to members of the cutter-system-buying public regarding the financial solvency of MGE.

220. Upon information and belief, Christopher Nicholson has maliciously circulated false and defamatory remarks to members of the cutter-system-buying public regarding the veracity of MGE.

221. The words used by Christopher Nicholson in regard to MGE were false and defamatory, and Christopher Nicholson knew or reasonably should have known at the time he made them that they were false.

222. The information provided by Christopher Nicholson to the members of the cutter-system-buying public was communicated maliciously, and with intent to cause it to be believed that MGE was dishonest, untrustworthy, and unsafe to trade with.

223. By reason of these statements, persons have ceased to deal with MGE, so that MGE was deprived of their trade and reasonable profits.

224. Upon information and belief, the actions of Christopher Nicholson in circulating false and defamatory remarks to members of the cutter-system-buying public were made in his capacity as an officer of ZA, and for his personal benefit and for the benefit of ZA.

COUNT XVI: Unfair Competition Under Wisconsin Common Law

225. MGE hereby realleges paragraphs 1 through 224 of this Complaint.

226. The conduct of the Defendants constitutes unfair competition in violation of the Common Law of the State of Wisconsin.

WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff against Defendants, jointly and severally, as follows:

- A. Grant of preliminary and permanent injunctive relief enjoining the Defendants, their agents, servants, employees, attorneys, assignees, and all other persons in active concert with them, from falsely designating that they are associated or affiliated with Mikkelsen Graphic Engineering, Inc. and from using the trade dress of Mikkelsen Graphic Engineering, Inc.;
- B. Grant of preliminary and permanent injunctive relief enjoining the Defendants, their agents, servants, employees, attorneys, assignees, and all other persons in active concert with them, from infringing on the patents of Mikkelsen Graphic Engineering, Inc.;
- C. A declaration regarding amounts, if any, owed to Beatrice Drury by Mikkelsen Graphic Engineering, Inc.;
- D. An award of actual damages;
- E. An award of treble damages with regard to the Antitrust damages;
- E. An award of Plaintiff's actual attorneys' fees, expenses, costs, and disbursements of this action; and
- F. Such other relief and this Court deems just and equitable.

JURY DEMAND

Mikkelsen Graphics Engineering, Inc. hereby requests a trial by jury.

Dated this 2nd day of February, 2005.

Respectfully submitted,

MIKKELSEN GRAPHICS ENGINEERING, INC.

By /s
Edward R. Antaramian (WI Bar #1019160)

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AFFIDAVIT OF STEEN MIKKELSEN

STATE OF WISCONSIN)
) ss
COUNTY OF WALWORTH)

Steen Mikkelsen, being first duly sworn on oath deposes and says that he is President of Mikkelsen Graphic Engineering, Inc., Plaintiff in the above-entitled action; that he has read the foregoing Complaint, including the exhibits annexed thereto, and knows the contents thereof; that said Complaint was prepared with the assistance and advice of counsel upon which he has relied; that the Complaint set forth herein, subject to inadvertent or undiscovered errors, the facts stated in said Complaint are true to the best of his knowledge, information and belief.

Further deponent sayeth not.

Steen Mikkelsen

Subscribed and sworn to before me this
31 day of January, 2005.

/s/ Barbara J. Phillipps

Notary Public, State of Wisconsin
My commission expires 4/4/06