

**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. 2:16-CV-0559

Plaintiffs,

JURY TRIAL DEMANDED

v.

**NEBRASKA FURNITURE MART,
INC. and TXFM, INC.,**

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their Complaint against Defendants Nebraska Furniture Mart, Inc., and TXFM, 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 Nebraska Furniture Mart, Inc. is a corporation duly organized and existing under the laws of the State of Nebraska, having its principal place of business at 700 S. 72nd St., Omaha, Nebraska 68114. On information and belief, NFM may be served via its registered agent, CSC-Lawyers Incorporating Service Company, at 233 South 13th Street, Suite 1900, Lincoln, Nebraska 68508.
5. On information and belief, Defendant TXFM, Inc. is a corporation duly organized and existing under the laws of the State of Texas, having its principal place of business at 5600

Nebraska Furniture Mart Drive, The Colony, Texas 75056. On information and belief, TXFM, Inc. is a wholly-owned subsidiary of Nebraska Furniture Mart, Inc., and may be served via its registered agent, CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

6. On information and belief, Defendants Nebraska Furniture Mart, Inc. and TXFM, Inc. (collectively “NFM”) own and operate retail home furnishing stores in this judicial district and throughout the United States, including a store located at 5600 Nebraska Furniture Mart Drive, The Colony, Texas 75056.

JURISDICTION AND VENUE

7. 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).

8. This Court has specific and/or general personal jurisdiction over NFM 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.

9. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because NFM 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.

PATENTS-IN-SUIT

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. 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**.

12. The ’071 and ’016 patents describe, among other things, novel systems in which product pricing and advertising information at multiple store locations can be managed from a central location and updated efficiently through a computer network. The ’071 and ’016 patents disclose the use of electronic product pricing units to display information regarding products at the store, such as the price of the product and other advertising information to be displayed to the customer. The electronic pricing units can be efficiently updated with new prices and/or advertising information in response to instructions sent by a central control system, which uses information such as competitor prices and sales and inventory data to determine when to make changes to prices and advertisements at the individual stores.

13. The named inventor of the ’071 and ’016 patents is Charles C. Freeny, Jr., who is now deceased.

14. 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 and ’016 patents, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

15. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the ’071 and ’016 patents.

COUNT I

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

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

17. On information and belief, NFM has been and now is directly 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 stores located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of products offered for sale at those stores.

18. For example, NFM uses at each of its retail stores electronic pricing systems that include digital price tags networked to a central control system. With respect to these digital price tags, NFM advertises on its website at <http://blog.nfm.com/2013/11/23/electronicprice/tags/> that: “We monitor competitor’s prices online and update our digital price tags daily. . . . 1. More than 40,000 electronic tags are currently used in the Omaha, Kansas City and Des Moines stores in the Appliance and Electronics categories. 2. Every night NFM uses a system out of Ireland called Profitero. NFM’s prices are checked against other retailers and our prices are dropped automatically. 3. Over 35,000 skus are checked daily and range from high end Viking ranges to everyday batteries. 4. 155 transceivers control the electronic tags through infrared technology and take up to 7 minutes to update. 5. In January 2015, electronic price tags will be launched in the Furniture and Flooring departments as well.”

19. NFM’s electronic pricing systems directly infringe one or more claims of the '071 patent, including at least claim 24 of the '071 patent.

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

21. NFM's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. NFM's 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)

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

23. On information and belief, NFM has been and now is directly 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 stores located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of products offered for sale at those stores.

24. NFM's electronic pricing systems directly infringe one or more claims of the '016 patent, including at least claim 8 of the '016 patent.

25. On information and belief, NFM will continue to infringe the '016 patent unless enjoined by this Court.

26. NFM's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. NFM's 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 NFM as follows:

- a. For judgment that NFM has infringed and continues to infringe the claims of the '071 and '016 patents;
- b. For a permanent injunction against NFM 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 NFM's acts of infringement;
- d. For a judgment and order requiring NFM 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: May 25, 2016

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

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