

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SOUTHERN MILLS, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-cv-00482-ELR
	)	
INTERNATIONAL TEXTILE	)	JURY DEMANDED
GROUP, INC.	)	
	)	
(f/k/a)	)	
	)	
SAFETY COMPONENTS	)	
INTERNATIONAL, INC.	)	
	)	
Defendant.	)	

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Southern Mills, Inc. (“Plaintiff”) files this Amended Complaint against Defendant International Textile, Inc. (“Defendant”) and alleges the following:

**NATURE OF ACTION**

1. This is an action for damages and equitable relief arising under the patent laws of the United States, Title 35, United States Code, including in particular, Sections 271, 281, 283, 284, and 285, as a result of Defendant’s acts of

infringement of United States Patent No. 9,259,599 (“the ’599 Patent”). A true and correct copy of the ’599 Patent is attached to this Amended Complaint as Exhibit A.

### **THE PARTIES**

2. Plaintiff is a corporation organized and existing under the laws of the State of Georgia, and has a principle place of business at 6501 Mall Boulevard, P.O. Box 289, Union City, Georgia 30291. Plaintiff is in the business of manufacturing and selling fabrics, including flame resistant fabrics. Plaintiff is the current assignee and owner of the ’599 Patent and is entitled to enforce all rights arising therefrom, including the right to prevent infringement of the patent.

3. On information and belief, Defendant is a corporation organized under the laws of Delaware, with its principle place of business at 804 Green Valley Road, Suite 300, Greensboro, N.C. 27408. Defendant may be served through its registered agent for service of process, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, NC 27601. On information and belief, Defendant has been, and is now, directly and through its agents and affiliates, doing business in this judicial district and elsewhere in the United States.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and 1338(a).

5. Defendant conducts substantial business in the state of Georgia, including (1) committing at least a portion of the infringing acts alleged herein and (2) regularly transacting business, soliciting business, and/or knowingly deriving revenue from the sale of goods and services, including the infringing goods and services, to individuals in the state of Georgia. Thus, Defendant has purposefully availed itself of the benefits of the state of Georgia, and the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400(b) because Defendants has transacted business and committed acts of patent infringement in this judicial district.

### **THE PATENT**

7. On February 16, 2016, the United States Patent and Trademark Office duly and legally issued the '599 Patent, entitled "Flame Resistant Fabric With

Anisotropic Properties,” to Plaintiff as the assignee and naming Michael T. Stanhope, Charles S. Dunn, and Matthew Lucius Colatruglio as the inventors.

### **GENERAL ALLEGATIONS**

8. Defendant makes, uses, imports, sells, or offers for sale flame resistant fabrics, such as the flame resistant thermal liners under the Glide™ trade name.

9. For example, the flame resistant thermal liners under the Glide™ trade name include a face cloth formed of 60% DuPont™ Kevlar® (para-aramid) filament fibers, and 40% spun yarn comprising a blend of DuPont™ Nomex® (meta-aramid) and Lenzing FR® (flame resistant viscose/rayon) staple fibers. *See* Exhibit B. The face cloth of the Glide™ thermal liner product is a flame resistant fabric. *See* Exhibit B.

10. The face cloth of the Glide™ thermal liner product is a woven, single layer fabric having warp yarns and fill yarns. *See* Exhibit B. Upon information and belief, either the warp or fill yarns comprise the Kevlar® filament fibers. Upon information and belief, the other of the warp or fill yarns comprise the spun yarns comprising a blend of Nomex® and Lenzing® staple fibers. These spun yarns have a different fiber content from the Kevlar® filament fibers.

11. As illustrated in Exhibit B, the Kevlar® filament fibers are predominantly exposed on the body side of the face cloth of the Glide™ thermal liner product (*i.e.*, the side facing the wearer):



**Fig. 1: Glide**

12. The spun yarns, which are less exposed on the body side of the Glide™ thermal liner product, are predominantly exposed on the back side of the face cloth of the Glide™ thermal liner product, facing away from the wearer.

13. More para-aramid fibers are located in either the warp or fill yarns that comprise the Kevlar® filament fibers than the other of the warp or fill yarns that comprise the spun yarns comprising a blend of Nomex® and Lenzing® staple fibers.

14. Defendant was aware of Plaintiff's patent portfolio related to flame resistant fabrics with anisotropic properties, which includes the '599 Patent, prior to the filing of the original Complaint in this action.

15. On November 23, 2011, Southern Mills filed a patent application with the United States Patent & Trademark Office ("Patent Office")—Application No. 13/303,495—entitled "Flame Resistant Fabric with Anisotropic Properties."

16. On August 12, 2014, the Patent Office issued a Notice of Allowance with respect to Application No. 13/303,495, indicating that all claims presented in the application had been allowed.

17. On October 17, 2014, Southern Mills' representative Mr. Daniel Hauert advised Mr. Joey Underwood, Defendant's Senior Vice President, of Southern Mills' Application No. 13/303,495 and the infringement of the allowed claims of the application by Defendant's Glide™ thermal liners.

18. The allowed claims of the Southern Mills' Application No. 13/303,495 subsequently issued as United States Patent No. 8,898,821 ("the '821 Patent") on December 2, 2014.

19. On February 19, 2015, Mr. Hauert again advised Mr. Underwood of Defendant's infringement of the '821 Patent via activity related to Defendant's

Glide™ thermal liners. In response to these correspondences, Southern Mills and Defendant began discussing potential licensing arrangements related to Southern Mills' '821 Patent. No licensing arrangement was reached, however.

20. In a March 17, 2015 letter correspondence, counsel for Southern Mills provided Defendant with an exemplary claim chart explaining how Defendant's Glide™ thermal liners, based on Defendant's public marketing materials, infringed claim 1 of the '821 Patent. In response to this correspondence, Southern Mills and Defendant resumed discussions regarding potential licensing arrangements related to the '821 Patent. No licensing arrangement was reached, however.

21. As a result of the stalled licensing negotiations, Southern Mills filed a complaint for patent infringement against Defendant regarding the '821 Patent on July 21, 2015. The complaint revived licensing negotiations between Southern Mills and the Defendant regarding the '821 Patent and its related patents and applications. Southern Mills voluntarily dismissed its infringement claims against Defendant regarding the '821 Patent on November 17, 2015.

22. During these licensing negotiations, Southern Mills filed a second, related patent application relating to its innovations related to flame resistant fabrics with anisotropic properties. That application—Application No.

14/520,056—was filed on October 21, 2014 as a “continuation” of Southern Mills’ Application No. 13/303,495 (*i.e.*, the ’821 Patent).

23. On December 23, 2015, the Patent Office issued a Notice of Allowance with respect to Application No. 14/520,056, indicating that all claims presented in the application had been allowed. The allowed claims of the application subsequently issued as the ’599 Patent on February 16, 2016. Southern Mills filed the original Complaint in this action on the same day.

24. The application for the ’599 Patent was explicitly contemplated as a part of the potential license from Southern Mills to Defendant related to the ’821 Patent previously discussed by the parties.

25. In correspondence from counsel for Southern Mills to counsel for Defendant dated July 28, 2015, Southern Mills proposed a license that would include the ’821 Patent “and any child patents/applications” thereto. The application for the ’599 Patent, which was filed as a “continuation”—*i.e.*, child—of the ’821 Patent on October 21, 2014, was pending at the time of this proposal.

26. Upon information and belief, Defendant, and/or its attorneys, monitored the status of the application for the ’599 Patent at the Patent Office from at least July 28, 2015 forward through the Notice of Allowance and issuance of the



'599 Patent, and had knowledge of the allowed claims of the '599 Patent prior to issuance of the '599 Patent.

**COUNT I – INFRINGEMENT OF THE '599 PATENT**

27. Plaintiff realleges, adopts, and incorporates by reference the allegations preceding paragraphs as though fully set forth herein.

28. Defendant has manufactured, used, offered for sale, or sold, and continues to manufacture, use, offer for sale, or sell in the United States flame resistant fabrics, such as flame resistant thermal liners under the Glide™ trade name, that incorporate each and every element of one or more of the claims of the '599 Patent and therefore are covered by the '599 Patent (“the Accused Products”).

29. Defendant infringes one or more claims of the '599 Patent, including but not limited to claim 27, either literally or under the doctrine of equivalents, by making, using, selling, offering for sale, or importing the Accused Products, such as flame resistant thermal liners under the Glide™ trade name, that embody each element of at least one of the claims of the '599 Patent and will continue to do so unless enjoined by this Court.

30. Defendant also indirectly infringes the '599 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the allowed

claims of the '599 Patent and/or the '599 Patent, at least by the filing of the original Complaint, and by failing to cease offering the Accused Products, Defendant has knowingly and intentionally induced, and continues knowingly and intentionally to induce, others in this judicial district and throughout the United States, including but not limited to Defendant's customers, garment manufacturers, and/or ultimate end users, to directly infringe one or more claims of the '599 Patent, such as claim 28. It does so, *inter alia*, by (1) providing instructions or information, for example in Exhibit B, to explain how to use the Accused Products in an infringing manner; and (2) touting these infringing uses of the Accused Products in advertisements, including but not limited to Exhibit B. Upon information and belief, Exhibit B depicts a person wearing a garment comprising an Accused Product.

31. Defendant also indirectly infringes the '599 Patent by contributing to the direct infringement of garment manufacturers and end users under 35 U.S.C. § 271(c) by providing the Accused Products, which, as evidenced by Defendant's own marketing materials, are specially made for use in a manner infringing one or more claims of the '599 Patent, such as claim 28, and have no substantial non-infringing uses.

32. Plaintiff has been and continues to be injured by Defendant's infringement of the '599 Patent.

33. Plaintiff has suffered damages in the form of lost profits, lost sales, and/or lost opportunities. Plaintiff is entitled to recover damages to compensate it for Defendant's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

34. Defendant's infringement has been and continues to be deliberate, willful, intentional, egregious, and with knowledge of the allowed claims of the '599 Patent and existence of the '599 Patent, at least by the filing of the original Complaint, such that Plaintiff is entitled to recover its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

35. Defendant knew of the '599 Patent and has disregarded, and continues to disregard, an objectively high likelihood that its actions infringe the '599 Patent. Defendant knew of the risk that its actions infringe the '599 Patent, or the risk is so obvious that Defendant should have known of it.

36. Plaintiff has been damaged by Defendant's infringement of the '599 Patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendant is enjoined from continuing to infringe.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

(a) Enter judgment that Defendant has infringed the '599 Patent, and that such infringement has been willful;

(b) Permanently enjoin Defendant from infringing the '599 Patent, pursuant to 35 U.S.C. § 283, or grant such other equitable relief the Court determines is warranted;

(c) Award Plaintiff damages in an amount to be proven at trial because of the injury suffered by reason of Defendant's infringement of the '599 Patent;

(d) Increase the damages awarded to Plaintiff up to three times the amount found to be Plaintiff's actual damages, as authorized by 35 U.S.C. § 284;

(e) Award Plaintiff its attorney's fees and other expenses of litigation pursuant to 35 U.S.C. § 285;

(f) Award Plaintiff prejudgment interest and costs pursuant to 35 U.S.C. § 284; and

(g) Award Plaintiff such other and further relief as the Court deems proper.

**JURY DEMAND**

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury on any issue in this action triable by right before a jury.

Respectfully submitted this 17<sup>th</sup> day of June, 2016.

/s/Joshua H. Lee

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*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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