

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

SUPERBA S.A.S. and AMERICAN  
SUPERBA, INC.,

Plaintiffs,  
v.

MSS SERVICES, INC.

Defendant.

Civil Action File No.: 4:17-cv-47-HLM

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs SUPERBA S.A.S. and American SUPERBA Inc. (“SUPERBA” or “Plaintiffs”), by and through undersigned counsel, make and file this Complaint against Defendant MSS Services, Inc. (“Defendant”), and hereby allege and demand a jury trial as follows:

**INTRODUCTION AND ALLEGATIONS COMMON TO ALL CLAIMS**

1. SUPERBA is a global leader in manufacturing heat-setting machines and saturated steam heat-setting for carpet yarn.

2. With 35 years of experience in the highly specialized field of high quality tufted or woven carpet, SUPERBA has provided advanced and competitive solutions with a complete range of heat-setting machines, including the MF4 frieze machine for heat-setting carpet yarns. SUPERBA’s MF4 frieze machine is subject to the protection of a valid United States Letters patent.

3. SUPERBA's heat-setting frieze machines are high performing and efficient, environmentally friendly and economical. SUPERBA's frieze machines integrate the latest technologies in terms of automatism, information treatment and remote access.

4. Without SUPERBA's permission or authorization, Defendant has sold the MITAS MAKINA frieze machine, which is a copy of SUPERBA's patented MF4 machine, and has distributed and sold the infringing MITAS MAKINA frieze machine.

5. SUPERBA has sustained injury, in part, by Defendant having distributed and sold SUPERBA's patented technology and Defendant having sold the MITAS MAKINA frieze machine to at least Lonesome Oak Trading Company in Eton, Georgia.

6. By distributing and selling the infringing MITAS MAKINA frieze machine, Defendant has misappropriated SUPERBA's intellectual property.

7. Upon information and belief, Defendant plans to distribute and/or sell additional MITAS MAKINA frieze machines in the United States.

8. Defendant's infringement irreparably harms SUPERBA. To eliminate further infringement, SUPERBA brings this action for patent infringement.

### **NATURE OF THE ACTION**

9. This action seeks damages and injunctive relief for Defendant's acts of making, using, selling, offering for sale and/or importing the MITAS MAKINA frieze machine that infringes SUPERBA's U.S. Patent Number 8,046,885 ("the '885 Patent"). A true and correct copy of the '885 Patent is attached as Exhibit 1.

### **THE PARTIES**

10. Plaintiff SUPERBA S.A.S. is a French corporation that maintains its principal place of business in Mulhouse, France.

11. Plaintiff AMERICAN SUPERBA, INC. is a Georgia corporation that maintains its principal place of business in Dalton, Georgia.

12. Upon information and belief, Defendant MSS Services, Inc. is a Georgia Corporation with its principal place of business located at 407 Esther Drive, Dalton, Georgia 30720.

### **JURISDICTION AND VENUE**

13. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. § 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §1331 and §1338(a).

14. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant resides in this District, does business in this District, and/or because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400, in that a substantial part of the events giving rise to this complaint occurred in this District and Defendant resides in this District.

### **FACTUAL BACKGROUND**

16. U.S. Patent Number 8,046,885 (“the ’885 Patent”) is entitled “Apparatus and Methods for Crimping Textile Threads.” The ’885 Patent was duly and legally issued on November 1, 2011 by the United States Patent and Trademark Office.

17. SUPERBA S.A.S. is the owner of the ’885 Patent. American SUPERBA Inc. is the exclusive licensee of the ’885 Patent and possesses all rights of recovery under the ’885 Patent, including the exclusive right to sue for infringement and recover past damages.

18. The '885 Patent provides, among other things, a thread-crimping machine comprising: a) a first drive roll (i) configured for rotation about an axis and (ii) having means for defining a thread entrance into the machine, the thread entrance-defining means comprising a circumferentially grooved drive face oriented perpendicular to the axis; and b) a second drive roll (i) paired with the first drive roll and (ii) having an ungrooved drive face.

19. Upon information and belief, on or about June 2016, Defendant sold the infringing MITAS MAKINA frieze machine to Lonesome Oak Trading Company.

20. SUPERBA has examined the MITAS MAKINA frieze machine at Lonesome Oak Trading Company and at an industry convention.

21. Upon information and belief, the MITAS MAKINA frieze machine infringes at least claims 1-4 of the '885 Patent. For example, claim 1 of the '885 Patent recites: A thread-crimping machine comprising: a) a first drive roll (i) configured for rotation about an axis and (ii) having means for defining a thread entrance into the machine, the thread entrance-defining means comprising a circumferentially grooved drive face oriented perpendicular to the axis; and b) a second drive roll (i) paired with the first drive roll and (ii) having an ungrooved drive face.

22. Upon information and belief, and based on the examination of machine, the MITAS MAKINA frieze machine meets every limitation of Claim 1 of the '885 Patent, including a first drive roll having a circumferentially grooved drive face and second drive roll having a flat, ungrooved drive face. The MITAS MAKINA frieze machine also has a ceramic eyelet at the input of the drive rolls.

23. Upon information and belief, the MITAS MAKINA frieze machine is a copy of the SUPERBA MF4 frieze machine.

24. On October 19, 2016, counsel for SUPERBA sent letters to Defendant and MITAS MAKINA seeking assurance that they would not make, use, sell or offer to sell any product in the United States that would infringe the '885 Patent or any other SUPERBA patent. A true and correct copy of SUPERBA's letter to Defendant is attached as Exhibit 2.

25. On October 28, 2016, MITAS MAKINA responded to the letter. A true and correct copy of MITAS MAKINA's response is attached as Exhibit 3. In its response letter, MITAS MAKINA provided a representative image of its frieze machine that is a virtual copy of Figure 4 of the '885 Patent. Further, MITAS MAKINA admitted that its product contains a "grooved surfaced cylinder" as claimed in the '885 Patent.

26. Defendant did not respond to the October 19, 2016 letter from counsel for SUPERBA.

27. Having not heard from Defendant, counsel for SUPERBA responded to MITAS MAKINA's letter and provided MITAS MAKINA's letter to Defendant on November 23, 2016. A true and correct copy of SUPERBA's November 23, 2016 letter to Defendant is attached as Exhibit 4.

28. Despite receiving SUPERBA's November 23, 2016 letter on November 25, 2016, Defendant again did not respond to the letter from counsel for SUPERBA. A true and correct copy of the return receipt acknowledgement from Defendant is attached as Exhibit 5.

29. On December 1, 2016, MITAS MAKINA responded again to counsel for SUPERBA, and once again admitted the MITAS MAKINA frieze machine contains the "grooved surfaced cylinder" claimed in the '885 Patent. A true and correct copy of MITAS MAKINA's December 1, 2016 letter is attached as Exhibit 6.

**COUNT ONE**  
**WILLFUL DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,046,885**

30. SUPERBA realleges and incorporates by reference the allegations included in the foregoing paragraphs as if fully set forth herein.

31. Defendant has infringed one or more claims of the '885 Patent, including at least claim 1 as set forth above, and continues to infringe, literally or under the doctrine of equivalents, one or more claims the '885 Patent, by making, using, selling, offering for sale, and/or importing the MITAS MAKINA frieze machine within the United States, in violation of 35 U.S.C. § 271(a).

32. Defendant has had knowledge of the '885 Patent since at least October 19, 2016.

33. Defendant has willfully and intentionally infringed upon the '885 Patent without authority and/or license from SUPERBA. Defendant's infringement has damaged and irreparably harmed SUPERBA.

34. SUPERBA has been and continues to be injured by Defendant's infringement of the '885 Patent. SUPERBA is entitled to recover from Defendant damages adequate 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, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

35. Defendant's infringement of SUPERBA's rights will continue to damage SUPERBA, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT TWO**  
**WILLFUL INDIRECT INFRINGEMENT OF U.S. PATENT NO. 8,046,885**

36. SUPERBA realleges and incorporates by reference the allegations included in the foregoing paragraphs as if fully set forth herein.

37. Defendant indirectly infringes the '885 Patent, literally or under the doctrine of equivalents, within the United States, by inducement under 35 U.S.C. § 271(b). Defendant knowingly and intentionally induced others to directly infringe one or more claims of the '885 Patent by, among other things, advising, encouraging, contributing, or otherwise inducing others, including Lonesome Oak Trading Company, to make, use, sell, offer for sale, and/or import the MITAS MAKINA frieze machine claimed by the '885 Patent to the injury of SUPERBA.

38. Defendant has had knowledge of the '885 Patent since at least October 19, 2016, and by committing the actions described above, had specific intent to induce infringement of the '885 Patent pursuant to 35 U.S.C. § 271(b).

39. Defendant indirectly infringes the '885 Patent, literally or under the doctrine of equivalents, within the United States, by contributing to the direct infringement of others of the '885 Patent under 35 U.S.C. § 271(c) by distributing and selling the MITAS MAKINA frieze machine claimed by the '885 Patent. The accused MITAS MAKINA frieze machine is especially made for use in a manner infringing one or more claims of the '885 Patent and is not a staple article or commodity of commerce suitable for substantial noninfringing use.

40. Defendant has willfully and intentionally indirectly infringed upon the '885 Patent without authority and/or license from SUPERBA. Defendant's infringement has damaged and irreparably harmed SUPERBA.

41. SUPERBA has been and continues to be injured by Defendant's infringement of the '885 Patent. SUPERBA is entitled to recover from Defendant damages adequate 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, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

42. Defendant's infringement of SUPERBA's rights will continue to damage SUPERBA, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**JURY DEMAND**

43. SUPERBA hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**PRAYER FOR RELIEF**

44. SUPERBA respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant SUPERBA the following relief:

- a. A judgment in favor of SUPERBA that Defendant has infringed one or more of the claims, directly, jointly and/or indirectly, by way of inducing and/or contributing to the infringement of the '885 Patent;
- b. A preliminary and/or permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and its officers, directors, agents servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '885 Patent, or such other equitable relief the Court determines is warranted;
- c. An award to SUPERBA of damages adequate to compensate SUPERBA for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;



- d. That the Court find Defendant's acts of infringement willful and award enhanced damages for such willful infringement pursuant to 35 U.S.C. § 284;
- e. That this Court declare this to be an exceptional case and award SUPERBA its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- f. Any further relief that this Court deems just and proper.

DATED: March 9, 2017

Respectfully submitted,

By: /s/ Russell A. Korn

KILPATRICK TOWNSEND & STOCKTON LLP  
Russell A. Korn (Georgia Bar No. 428492)  
Richard W. Goldstucker (Georgia Bar No. 940472)  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530  
Telephone: (404) 815-6500  
Facsimile: (404) 815-6555

*Attorneys for Plaintiffs SUPERBA S.A.S. and  
American SUPERBA Inc.*