

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

TOTAL CONTROL SPORTS, INC.,

Plaintiff,

v.

PRECISION IMPACT,

Defendant.

CASE NO. 1:17-CV-09281

JUDGE: JOHN ROBERT BLAKEY

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), this First Amended Complaint is being filed as a matter of course within twenty-one (21) days of service of Defendant Precision Impact's partial motion to dismiss. Dkt. 020. As a result of the amendments made herein, Defendant's motion to dismiss is now moot.

Plaintiff Total Control Sports, Inc. ("TCS" or "Plaintiff"), for its First Amended Complaint against Defendant Precision Impact ("Precision" or "Defendant") alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35 of the United States Code. Defendant has infringed and continues to infringe, and/or actively induces others to infringe U.S. Patent Nos. 8,702,542 and 9,186,564 (collectively, "the Asserted Patents" or "the Patents-in-Suit").

THE PARTIES

2. Plaintiff Total Control Sports, Inc. is a corporation organized and existing under the laws of Illinois, with its principal place of business located at 2000 South 25th Avenue, Suite 1, Broadview, Illinois 60155.

3. Upon information and belief, Precision Impact is an entity organized and existing under the laws of Alberta, Canada, with its principal place of business located at 2280-39 Avenue NE, Calgary, Alberta, Canada T2E 6P7.

4. Upon information and belief, Precision directly or indirectly imports, develops, designs, manufactures, distributes, markets, offers to sell, and/or sells products and services in the United States, including in this District, and otherwise purposefully directs activities to this District.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States of America, including Title 35 of the United States Code § 271.

6. This Court has exclusive subject matter jurisdiction under the provisions of Title 28 of the United States Code §§ 1331 and 1338(a).

7. Upon information and belief, Precision is subject to personal jurisdiction in the Northern District of Illinois because it offers its products and services for sale in this District, has transacted business in this District, has committed acts of patent infringement in this District, and/or has 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.

8. Venue is proper within this District under the provisions of Title 28 of the United States Code § 1391(c)(3) and the holding in *Brunette Machine Works v. Kockum Indus.*, 406 U.S. 706 (1972) because Precision is not a resident of the United States and therefore may be sued in any judicial district.

BACKGROUND

9. The technology at issue generally relates to a weighted ball used to train athletes participating in sports that involve striking a ball with a bat, club, or any other hitting object. The technology at issue also generally relates to a method of training and evaluating a hitter using a weighted ball.

10. U.S. Patent Nos. 8,702,542 (“the ‘542 Patent”) and 9,186,564 (“the ‘564 Patent”) are directed to a weighted ball and a method of training and evaluating a hitter, respectively.

11. Upon information and belief, Precision manufactures, imports, uses, has used, advertises, sells, and/or provides for sale within the United States certain weighted balls, including but not limited to Precision’s Baseball Slugs (the “Accused Product”). True and correct copies of Precision’s website showing the Accused Product and advice for training with the Accused Product are attached to this First Amended Complaint as **Exhibits 1-3**. The Accused Product, and Precision’s instructions for using the same, infringes the Asserted Patents.

12. Upon information and belief, Precision was aware of the weighted ball sold by TCS (the “TCB Ball”) prior to Precision introducing the Accused Product into the U.S. marketplace.

13. Upon information and belief, Precision was aware of the TCB Ball sold by TCS at least as early as April 7, 2017 when Precision posted on its Facebook page saying “‘Total Control Balls’ are way overpriced. Stop overpaying for them and get your own set of Precision Impact Slugs.” A true and correct copy of this Facebook post is attached to this First Amended Complaint as **Exhibit 9**.

14. Upon information and belief, Precision had viewed the TCB Ball on TCS’ website prior to Precision introducing the Accused Product into the U.S. marketplace.

15. Upon information and belief, Precision was in possession of a TCB Ball sold by TCS prior to Precision introducing the Accused Product into the U.S. marketplace.

16. Prior to Precision introducing the Accused Product into the U.S. marketplace, the TCB Ball advertised and sold by TCS was marked as “Patent Pending” thereby providing Precision with actual notice that one or more U.S. patent applications were pending in the U.S. Patent and Trademark Office. (See <http://www.totalcontrolsports.com/>).

17. Upon information and belief, Precision was aware of the ‘542 Patent, which issued on April 22, 2014, before Precision introduced the Accused Product into the U.S. marketplace.

18. Precision was, at the latest, aware of the '542 Patent on December 27, 2017 when the original Complaint was filed in this action. Since that time Precision has continued to infringe the '542 Patent.

19. Upon information and belief, Precision was aware of the '564 Patent, which issued on November 17, 2015, before Precision introduced the Accused Product into the U.S. marketplace.

20. Precision was, at the latest, aware of the '564 Patent on December 27, 2017 when the original Complaint was filed in this action. Since that time Precision has continued to infringe the '564 Patent.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,702,542

21. TCS re-alleges and incorporates the allegations of all prior paragraphs of the First Amended Complaint as if set forth in their entirety herein.

22. The '542 Patent, which is entitled "Total Control Batting Ball," was duly and legally issued on April 22, 2014. A true and correct copy of the '542 Patent is attached to this First Amended Complaint as **Exhibit 4**. The '542 Patent issued from U.S. Patent Application No. 12/963,562, filed on December 8, 2010, which claims earliest priority to U.S. Provisional Patent Application No. 61/267,784, filed on December 8, 2009. TCS is the owner by assignment of all right, title, and interest in the '542 Patent. The '542 Patent is valid, enforceable, and currently in full force and effect.

23. Upon information and belief, Precision was aware of the '542 Patent before it introduced the Accused Product into the U.S. marketplace.

24. Upon information and belief, Precision has committed, and continues to commit, acts of infringement throughout the United States, including in the state of Illinois. For example, on information and belief, Precision has manufactured, used, sold, provided, and/or offered to sell, in this judicial district and elsewhere in the United States, and/or imported into the United States, products that infringe one or more claims of the '542 Patent either literally or under the doctrine of equivalents. For example, and without limitation, the Accused Product infringes at least Independent Claim 1 of the '542 Patent as shown in **Exhibit 5**, which is attached to this First Amended Complaint and incorporated herein. Additionally, Precision has attended conventions, including the 74th Annual ABCA Convention in Indianapolis held January 2018. Upon information and belief, Precision offered the Accused Products for sale at the trade show. A true and correct copy of the 74th Annual ABCA Convention Exhibitor List Index, which includes Precision Impact, is attached to this First Amended Complaint as **Exhibit 10**.

25. Upon information and belief, Precision has manufactured, used, sold, provided, and/or offered to sell products, and/or has provided instructions regarding the use of those products, that constitute or effect induced infringement of the '542 Patent.

26. Further, and without limitation, upon information and belief, Precision's affirmative acts of making, using, selling, providing, and/or offering for sale the Accused Product have induced and continue to induce others to infringe at least Independent Claim 1 of the '542 Patent under 35 U.S.C. § 271(b) by, among other things, actively aiding others to infringe, including but not limited to Precision's customers, distributors, and end users whose use, sale, and/or offer for sale of the Accused Product constitutes direct infringement of at least Independent Claim 1 of the '542 Patent.

27. In particular, by way of example only, Precision's actions that induce others such as its customers, distributors, and end users to infringe include advertising and distributing the Accused Product and providing instructional materials and support services regarding the Accused Product. For example, Precision offers support services through its website by which customers may contact Precision with questions regarding products, including without limitation, the Accused Product. A true and correct copy of the "Contact Us" page on Precision's website located at <https://www.precisionimpact.ca/pages/contact-us>, which was last visited on December 11, 2017, is attached hereto as **Exhibit 6**. In addition, Precision specifically intends to induce and encourage others, such as its consumers and end users, to infringe by creating a variety of videos related to proper training techniques when using the Accused Product as shown in **Exhibits 2 and 3**.

28. Upon information and belief, Precision has knowingly induced these infringing uses by others with full knowledge of the '542 Patent and with full knowledge that the use of the Accused Product constitutes infringement of the '542 Patent.

29. Precision is liable for directly infringing and/or inducing the infringement of at least Independent Claim 1 of the '542 Patent under 35 U.S.C. § 271.

30. Precision's infringement of at least Independent Claim 1 of the '542 Patent has injured and damaged TCS and will continue to cause TCS irreplaceable harm unless enjoined by this Court.

31. TCS is entitled to recover from Precision the damages resulting from Precision's infringing acts, including but not limited to, and in no event less than, a reasonable royalty.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 9,186,564

32. TCS re-alleges and incorporates the allegations of all prior paragraphs of the First Amended Complaint as if set forth in their entirety herein.

33. The '564 Patent, which is entitled "Method Of Training And Evaluating A Hitter Using A Weighted Ball," was duly and legally issued on November 17, 2015. A true and correct copy of the '564 patent is attached hereto as **Exhibit 7**. The '564 Patent issued from U.S. Patent Application No. 13/757,530, filed on February 1, 2013, which claims earliest priority to U.S. Provisional Patent Application No. 61/267,784, filed on December 8, 2009. TCS is the owner by assignment of all right, title, and interest in the '564 Patent. The '564 Patent is valid, enforceable, and currently in full force and effect.

34. Upon information and belief, Precision was aware of the '564 Patent before it used and induced others to use the Accused Product to practice the patented method in the U.S. marketplace.

35. Upon information and belief, Precision has committed, and continues to commit, acts of infringement throughout the United States including in the state of Illinois. For example, on information and belief, Precision has manufactured, used, sold, provided, and/or offered to sell, in this judicial district and elsewhere in the United States, and/or imported into the United States, products and/or services that infringe one or more claims of the '564 Patent either literally or under the doctrine of equivalents. For example, and without limitation, photographs and a video on Precision's website show Precision personnel or persons under Precision direction and control performing each step of the claimed method that infringes either literally or under the doctrine of equivalents at least Independent Claim 1 of the '564 Patent as shown in **Exhibit 8**,

which is attached to this First Amended Complaint and incorporated herein. Additionally, as shown in **Exhibit 10**, Precision has attended trade shows, including the 74th Annual ABCA Convention in Indianapolis held January 2018, where upon information and belief, Precision exhibited and demonstrated the Accused Products performing each step of the claimed method of the '564 Patent. Upon information and belief, Precision also participated in a coaches clinic in the U.S. wherein it demonstrated or directed others to demonstrate the Accused Products using the methods claimed in the '564 Patent. A true and correct copy of a Twitter post referencing Precision Impact as a partner with Youth Baseball Talk in which Precision Impact participated in a coaches clinic is attached to this First Amended Complaint as **Exhibit 11**.

36. Upon information and belief, Precision has manufactured, used, sold, provided, and/or offered to sell the Accused Products, and provided photographs, videos, and/or instructions regarding the use of those products that induced infringement of the '564 Patent. Further, and without limitation, upon information and belief, Precision's affirmative acts of making, using, selling, providing, and/or offering for sale the Accused Product have induced and continue to induce others to infringe at least one claim of the '564 Patent under 35 U.S.C. § 271(b) by, among other things, actively aiding others to infringe, including but not limited to Precision's customers, distributors, and end users whose use, sale, and/or offer for sale of the Accused Product to perform each step of the claimed method in the U.S. constitutes direct infringement of at least Independent Claim 1 of the '564 Patent. Additionally, Precision's website and dedicated YouTube Channel has training videos showing customers in the U.S. how to perform each step claimed by the at least Independent Claim 1 of the '564 Patent.

37. In particular, by way of example only, Precision's actions that induce others as its customers, distributors, and end users to infringe include advertising and distributing the

Accused Product and providing instructional materials and support services regarding the Accused Product. For example, as shown in **Exhibit 6**, Precision offers support services through its website by which customers may contact Precision with questions regarding products, including without limitation, the Accused Product. In addition, Precision specifically intends to induce and encourage others, such as its consumers and end users, to infringe by creating a variety of videos related to proper training techniques when using the Accused Product as shown in **Exhibits 2 and 3**. In response to the training videos on Precision's website, customers in the U.S. have posted reviews touting the use of Precision's training videos for direction on how to use the product. A true and correct copy of a review on Precision's website authored by Steve N., which is attached to this First Amended Complaint as **Exhibit 12**, states, "I am utilizing the training videos you guys are putting on youtube."

38. Upon information and belief, Precision has knowingly induced these infringing uses by others with full knowledge of the '564 Patent and with full knowledge that the use of the Accused Product to perform each step of the claimed method constitutes infringement of the '564 Patent.

39. Precision is liable for directly infringing and/or inducing the infringement of at least Independent Claim 1 of the '564 Patent under 35 U.S.C. § 271.

40. Precision's infringement of at least Independent Claim 1 of the '564 Patent has injured and damaged TCS and will continue to cause TCS irreplaceable harm unless enjoined by this Court.

41. TCS is entitled to recover from Precision the damages resulting from Precision's infringing acts, including but not limited to, and in no event less than, a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Total Control Sports, Inc. prays for judgment and seeks relief against Precision as follows:

a. For a judgment that one or more claims of the '542 Patent have been and continue to be infringed by Precision;

b. For a judgment that one or more claims of the '564 Patent have been and continue to be infringed by Precision;

c. For a judgement that Precision's infringement of the '542 Patent has been willful;

d. For a judgment that Precision's infringement of the '564 Patent has been willful;

e. For a judgment that Precision has actively induced the infringement of the '542 Patent by others;

f. For a judgment that Precision has actively induced the infringement of the '564 Patent by others;

g. For a judgment and an award of all damages sustained by TCS as the result of Precision's acts of infringement, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;

h. For preliminary and permanent injunctions enjoining Precision from infringing one or more claims of the '542 Patent;

i. For preliminary and permanent injunctions enjoining Precision from infringing one or more claims of the '564 Patent;

j. For a judgment and an award of enhanced damages pursuant to 35 U.S.C. § 284;

k. For a judgment and an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

l. For a judgment and an award of pre-judgment interest, post-judgment interest, and costs; and

m. For a judgment and an award of such other and further relief as the Court may deem just and proper.

JURY DEMAND

In accordance with Fed. R. Civ. P. 38 and 39, TCS asserts its rights under the Seventh Amendment to the United States Constitution and demands a trial by jury on all issues that may be so tried.

HAHN LOESER & PARKS LLP

/s/ Sherry L. Rollo

Steven E. Feldman

Sherry R. Rollo

sfeldman@hahnlaw.com

srollo@hahnlaw.com

125 South Wacker Drive, Suite 2900

Chicago, Illinois 60606

(312) 637-3000

R. Eric Gaum

Christopher R. Butler

200 Public Square, Suite 2800

Cleveland, Ohio 44114

(216) 621-0150

regaum@hahnlaw.com

cbutler@hahnlaw.com

Attorneys for Plaintiff Total Control Sports, Inc.

Dated: March 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Sherry L. Rollo
Sherry L. Rollo
Attorney for Plaintiff Total Control Sports, Inc.