

**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN
DIVISION**

SENNCO SOLUTIONS INC.,)	
)	
Plaintiff,)	Case No.: 1:16-CV-09668
)	
v.)	Judge: Honorable Joan H. Lefkow
)	
MOBILE TECHNOLOGIES INC.,)	JURY DEMANDED
)	
Defendant.)	

THIRD AMENDED COMPLAINT

Plaintiff Sennco Solutions, Inc. (“Sennco”), through its attorneys, alleges the following against Defendant Mobile Tech, Inc., d/b/a Mobile Technologies Inc. (formerly Merchandising Technologies, Inc. and collectively “MTI”):

THE PARTIES, JURISDICTION AND VENUE

1. Sennco is an Illinois corporation with its principal and only place of business at 14407 Coil Plus Drive, Plainfield, Illinois. Sennco designs, makes and sells merchandising and security systems for electronic devices, such as smart phones and cameras sold in retail stores. In addition to directly selling its security systems to retailers, Sennco was also a supplier of patented component parts to MTI for more than a decade.

2. MTI is a corporation organized and existing under the laws of the State of Indiana with has a principal place of business at 1050 NW 229th Avenue, Hillsboro, Oregon. MTI purchases, makes and sells security and merchandising systems for mobile devices

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.

§§1331, 1332 and 1338(a) since this cause of action includes MTI's misappropriation of trade secrets, breach of two Mutual Non-Disclosure Agreements and infringement of a United States patent. There is complete diversity of citizenship and damages for each cause of action exceeds \$75,000.

4. This Court has specific personal jurisdiction over MTI because MTI committed tortious acts within Illinois which form the basis of Count I of this Complaint and because MTI has generally appeared in this case, filed counterclaims in this case, and filed various motions in this case, in addition to purposely availing itself to Illinois through sales activity regarding the products at issue directed to Illinois and product sales in Illinois. Moreover, MTI has had substantial sales and delivery of products, into Illinois, which are accused of infringing the Patent-In-Suit. Moreover, MTI has visited Sennco's place of business in this District for the purpose of entering into and furthering its business relationship with Sennco. Further, MTI, while under a duty of confidentiality, was in this District when, under an executed Mutual Non-Disclosure Agreement, learned of Sennco's trade secrets which forms the basis of acts complained of in Count I.

5. The Court also has general personal jurisdiction over MTI since it regularly and systematically conducts business activity within Illinois, including, but not limited to visiting Sennco's facility in order to further its business relationship with Sennco, conducting significant sales activity in Illinois, and shipping product into Illinois.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b), 1391(c) and 1400(b).

BACKGROUND

7. Sennco began conducting business with MTI in approximately 2002 wherein Sennco sold component parts to MTI for use in MTI's security systems which MTI sold to retail stores.

8. The relationship was initiated and continued with several non-disclosure agreements between the parties, the final two agreements dated February 6, 2005 ("2005 Mutual Non-Disclosure Agreement") and May 30, 2008 ("2008 Mutual Non-Disclosure Agreement"). Both of these agreements are attached as Exhibits 1 and 2, respectively.

9. Prior to September 2008, Sennco designed and created a prototype for securing, attaching and/or detaching a device to a retail display fixture.

10. The system was a structure upon which a retailer could mount a product such as a camera, smart phone, or other electronic device. The structure would allow a customer to pick-up and hold the electronic device while it was electronically tethered to the fixture by a retractable cord. Sennco's innovative security design (1) incorporated the electronics and retractable components into the base and post upon which the electronic device was mounted, (2) permitted the crown connected to the post to pivot thus allowing the displayed electronic device to sit multiple preselected angles, (3) combined the foregoing features into a single, above-counter unit, (4) permitted a retailer to quickly disconnect the electronic device from the post for closer inspection, and (5) permitted the electronic device to charge while attached to the base and post ("Sennco's Proprietary Information"). A rendering of this prototype is shown in Exhibit 3.

11. Subsequent to learning of Sennco's Proprietary Information, MTI abruptly stopped purchasing retail security components from Sennco and introduced its own security fixture, the "Freedom Micro," which incorporated Sennco's trade secrets confidentially disclosed

to MTI in and after 2008. A brochure for this device is attached at Exhibit 4.

12. In addition to protecting its intellectual property by way of the Mutual Non-Disclosure Agreements, Sennco was awarded U.S. Patent No. 9,303,809 (“the ‘809 Patent”) which pertained to Sennco’s security system innovations. (Exhibit 5)

13. Sennco is the assignee of all right, title, and interest in the ‘809 Patent (“the Patent-in-Suit”).

14. MTI’s Freedom Micro is a security device having a base unit and a tether for securing electronic devices in a manner that permits interaction with the consumer and prevents theft or unauthorized removal.

15. MTI manufactures, sells and/or distributes the Freedom Micro and provides a User Guide for use of the product. (Exhibit 6)

16. MTI sells the Freedom Micro throughout the world, and all of said sales are made from the United States.

COUNT I

Trade Secret Misappropriation (765 ILCS 1065)

17. Sennco incorporates by reference the allegations in paragraphs 1-16 as if fully set forth herein.

18. Attached as Exhibit 1 is a Mutual Non-Disclosure Agreement dated February 17, 2005 between Sennco and MTI.

19. Attached as Exhibit 2 is a Mutual Non-Disclosure Agreement dated May 30, 2008 between Sennco and MTI.

20. During training sessions for MTI on September 15 and 16, 2008 at Sennco’s facility, Sennco disclosed Sennco’s Proprietary Information, including a prototype as described in Paragraph 7, to Eric Pitt and Thaine Allison of MTI. Sennco and MTI both understood the

confidential nature of the disclosure and that such disclosure had been made pursuant to the Mutual Non-Disclosure Agreements which were in full force and effect. Thereafter, MTI manufactured and released to the market its Freedom Micro which incorporated critical components of the confidentially-disclosed prototype.

21. Pursuant to 765 ILCS 1065 et seq., MTI has violated the Illinois Trade Secrets Act by their above-referenced conduct. As stated previously, Sennco designed and developed an apparatus for securing, attaching and/or detaching a device to a fixture, the apparatus housing the electronics and mechanical recoiling means, the apparatus capable of pivoting thus allowing the electronic device to be displayed at multiple preset angles, and combining these features into a single, above-counter unit. Sennco's Proprietary Information, including its ideas on manufacturing the structure was (1) sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) was the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. MTI misappropriated this Proprietary Information of Sennco and used it in the manufacture and sale of the Freedom Micro.

COUNT II

Breach of Contract – 2005 Mutual Non-Disclosure Agreement

22. Sennco incorporates by reference the allegations in paragraphs 1-21 as if fully set forth herein.

23. The 2005 Mutual Non-Disclosure Agreement was duly executed by and between Sennco and MTI.

24. The Mutual Non-Disclosure Agreement defines "Confidential Information" as including "know-how, trade secrets, tools, methods, methodologies, techniques, designs, specifications, customer lists, pricing information, marketing plans, personal information,

financial information, and business strategies...” (Ex. 1, “Definition.”)

25. The Mutual Non-Disclosure Agreement required MTI to “employ diligent efforts to maintain the secrecy and confidentiality of all Confidential Information” of Sennco and that MTI was not allowed to use the confidential information for its own activity nor was it allowed to disclose the information throughout its company without restriction. (Ex. 1, ¶¶5 and 6)

26. MTI took part in such prohibited activities and, thus, breached the 2005 Mutual Non-Disclosure Agreement.

COUNT III

Breach of Contract – 2008 Mutual Non-Disclosure Agreement

27. Sennco incorporates by reference the allegations in paragraphs 1-26 as if fully set forth herein.

28. The 2008 Mutual Non-Disclosure Agreement was duly executed by and between Sennco and MTI.

29. The Mutual Non-Disclosure Agreement, drafted by MTI and on MTI letterhead, defines “Confidential Information” as “confidential and proprietary information.”

30. The 2008 Mutual Non-Disclosure Agreement required MTI to maintain Sennco’s Confidential Information “in strictest confidence and not to make use of it other than as specifically provided herein.” (Ex. 2, Section 1(a))

31. MTI took part in such prohibited activities and, thus, breached the 2008 Mutual Non-Disclosure Agreement.

COUNT IV

Infringement of U.S. Patent No. 9,303,809

32. Sennco incorporates by reference the allegations in paragraphs 1-31 as if fully set forth herein.

33. Through the sale of its Freedom Micro, MTI has infringed and continues to infringe the '809 Patent in violation of 35 U.S.C. § 271(a) by manufacturing, using, offering to sell, and selling the Freedom Micro device.

34. In addition to its direct infringement, through its user guides, marketing materials, and other instructions, MTI instructs its customers to use the Freedom Micro in an infringing manner such as to actively induce others to infringe claims of the '809 Patent in violation of 35 U.S.C. § 271(b).

35. MTI has knowledge of the '809 Patent and knowledge that the induced acts constitute infringement.

36. In addition to its direct and induced infringement, MTI is contributing to infringement of the '809 Patent in violation of 35 U.S.C. §271(c).

37. Despite MTI's knowledge of the '809 Patent and its infringement thereof, MTI is contributing to the infringement of the '809 Patent by selling or offering for sale in the United States products that are used by others in systems covered by claims of the '809 Patent. Such products sold or offered for sale include the Freedom Micro and the Freedom Micro UM. These products are material to practicing the '809 Patent, are especially made and/or adapted for use in infringing the '809 Patent, and are not staple articles or commodities of commerce suitable for substantial noninfringing use.

38. MTI has knowledge of the fact that its products, including Freedom Micro, are material to practicing the '809 Patent, are specifically made and/or adapted for infringement of

the '809 Patent, and are not staple articles of commerce suitable for substantial noninfringing use.

39. Sennco has suffered and continues to suffer damages as a result of MTI's infringement of the '809 Patent in an amount to be determined at trial.

40. MTI's infringement of the '809 Patent is causing irreparable harm for which Sennco has no adequate remedy at law unless MTI is enjoined by this Court. Under 35 U.S.C. §283, Sennco is entitled to a permanent injunction against further infringement of the '809 Patent.

PRAYER FOR RELIEF

WHEREFORE, Sennco respectfully requests for judgment be entered in its favor and for the following relief:

- (a) judgment that MTI has misappropriated Sennco's trade secrets in violation of 765 ILCS 1065;
- (b) judgment that MTI breached the 2005 Mutual Non-Disclosure Agreement;
- (c) judgment that MTI breached the 2008 Mutual Non-Disclosure Agreement;
- (d) judgment that MTI has infringed and is infringing U.S. Patent No. 9,303,809;
- (e) an award of damages including an accounting of MTI's profits and disgorgement of such profits, plus Sennco's actual damages and a reasonable royalty adequate to compensate Sennco for the misappropriation;
- (f) a doubling of the damages awarded pursuant to 765 ILCS 1065/4;
- (g) damages sufficient to compensate Sennco for patent infringement pursuant to 35 U.S.C. 284;
- (h) a permanent injunction against MTI and its affiliates from infringing the '809 Patent;
- (i) an award of pre-judgment and post-judgment interest at the maximum rate allowed by law;
- (j) an order finding that this is an exceptional case and awarding Sennco its costs, expenses, disbursements, and reasonable attorneys' fees related to MTI's patent infringement under 35 U.S.C. §285 and all other applicable statutes, rules and common

law;

- (k) an order finding that MTI's infringement was willful and a corresponding award of treble damages in accordance with 35 U.S.C. §284; and
- (l) such other further relief, in law or equity, as this Court deems just and proper.

JURY DEMAND

Plaintiff respectfully demands a trial by jury in the above-captioned matter.

Respectfully submitted,

SENNCO SOLUTIONS, INC.

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