

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**WILLIAM G. SYKES.,  
Individually,**

**Plaintiff,**

**v.**

**Case No. 1:21-cv-00897-TSE-MSN**

**NASH DISTRIBUTION, INC.,**

**Defendant.**

**AMENDED COMPLAINT**

NOW COMES the Plaintiff, William G. Sykes (“Sykes”) and for his Amended Complaint against Defendant Nash Distribution, Inc., states as follows.

**BACKGROUND**

1. This is an action for patent infringement in violation of 35 USC § 271 *et seq.* seeking monetary damages and injunctive relief, and for declaratory judgment for unenforceability of a license agreement including the unenforceability of the license agreement’s dispute resolution clause. Plaintiff’s Complaint was filed on August 5, 2021. This Amended Complaint incorporates by reference the content of that Complaint.
2. Plaintiff William G. Sykes (“Sykes”) owns all rights in US Patent No. D739,692 S (the “’692 patent”) for “Poly Stake.” A copy of the ‘692 patent is attached as Exhibit 1.
3. Sykes is the owner and operator of Crawl Space Door System, Inc. (“CSD”), which sells devices covered by the ‘692 patent (the “Sykes Stake”).
4. Defendant Nash Distribution, LLC (“Nash”) manufactures and sells devices which

infringe on the '692 patent (the "Nash Stake").

5. Sykes and Nash entered into a license agreement (the "Agreement") whereby Nash would have the right to make, use, and sell products covered by the '692 patent and in return Sykes would receive compensation in through free shipping of products that he ordered from Nash. A true and accurate copy of the Agreement is attached as Exhibit 2.

6. Nash never provided free shipping to Sykes.

### **PARTIES**

7. Plaintiff Sykes is an individual residing at 3669 Seagull Bluff Drive, Virginia Beach, Va. 23455. Sykes is the owner and operator of CSD.

8. Defendant Nash is an Ohio limited liability company with three locations: 13659 National Road, SW, Etna, Ohio 43068, 1350 B Progress Industrial Blvd., Lawrenceville, GA 30043, and 3026 Owen Dr #114, Antioch, TN 37013. Nash is a wholesaler providing, among other things, painting supplies.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this matter and the parties under 28 USC § 1331 and 28 USC § 1338, and under the terms of the Agreement. Ex. 2, p. 2 "Jurisdiction."

10. Venue is proper in this forum as the parties agreed to exclusive jurisdiction and venue in Virginia, and waived any other venue to which it might be entitled. Ex. 2, p. 2 "Jurisdiction."

### **FACTS**

11. Crawl space moisture barriers have become an important tool in the construction and maintenance of homes. Such barriers are generally comprised of some form of plastic or polymer to create a barrier that is impervious to moisture. During installation of such barriers, however, the portion of the barrier that is placed on the ground loosely can move causing gaps in

the ground coverage as well as increasing the risk of tearing or otherwise damaging the barrier. The barriers may also be impacted by flooding or other outside forces. In order to overcome this problem, Sykes invented the Poly Stake invention which is the subject of the '692 patent, a copy of which is attached herein as Exhibit 3.

12. The Sykes Poly Stake as described in the '692 patent is shown here in Figure 1:

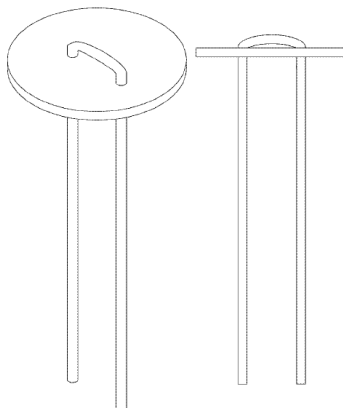


Figure 1

the Sykes Poly Stake, manufactured for and sold by CSD, is shown here in

Figure 2:



Figure 2

and consists of two portions: the round, flattened disc portion and the staple portion that runs through two corresponding holes in the flattened disc.

13. The Poly Stake is used to secure the barrier to the ground within a crawl space or other void by inserting the staple through the flattened disc portion, and then pushing the staple

through the barrier so that the flattened disc in combination with the staple holds the barrier to the ground.

14. The device manufactured and sold by Nash is shown here in Figures 3, 4, and 5:

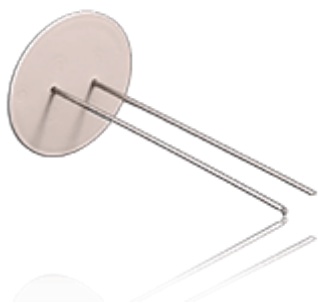


Figure 3

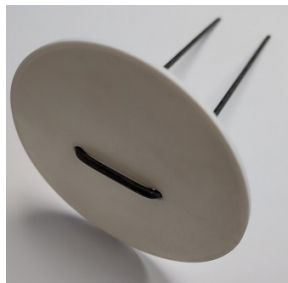


Figure 4

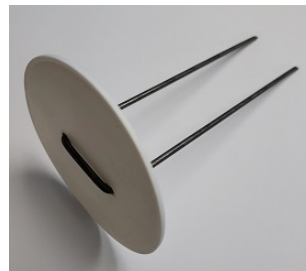


Figure 5

15. In addition to the devices being identical in appearance, the discs of the CSD device and the Nash device are identical in size, each having a diameter of three (3) inches and a thickness of one sixteenth (1/16) of an inch at the edge.

16. The '692 patent is valid and enforceable and has been for all of the time period of the acts complained of in this action.

17. Nash and Sykes entered into discussions for Sykes to provide to Nash a license to make, use, and/or sell the patented Poly Stake in return for Sykes not being required to pay for shipping on goods ordered from Nash.

18. Among those items ordered from Nash by Sykes were the Sykes Poly Stakes.

19. During the course of the discussion, Nash demanded that the license royalty fees paid to Sykes would be free shipping of "full truckloads" of products.

20. Sykes countered that the free shipping was to be for "truckloads" and not "full truckloads."

21. The free shipping identified in the License Agreement is for “free truckloads” and not “free full truckloads” or “full truckloads.” Ex. 2, p. 1 “Royalties.”
22. In addition, Nash agreed that it would be responsible for ensuring that shipments met the terms under the Agreement.
23. The License Agreement by its terms commenced upon the last signed date which was September 27, 2017.
24. Nash signed the License Agreement and sent it to Sykes for endorsement on September 19, 2017.
25. On September 22, 2017, Sykes was invoiced by Nash for \$893.00 in shipping.
26. On October 5, 2017, Sykes was invoiced by Nash for \$153.00 in shipping.
27. The License Agreement states that “[t]his Agreement terminates if and when [Nash] stops providing [Sykes] free truckload shipping or when [Sykes’s] patent expires. Ex. 2, p. 2 “Termination.”
28. By operation of the Termination clause of the License Agreement, the License Agreement terminated on the earliest of September 22, 2017 or at the latest on October 5, 2017 when Nash did not provide free truckload shipping to Sykes.
29. Despite the termination of the License Agreement, Nash has and continues to manufacture and sell products that infringe on the Patent.
30. Nash induced Sykes to enter into the License Agreement by promising that the shipping would be free as consideration for the License Agreement, never intending to provide free shipping and intentionally failed to alert Sykes that it would not honor its agreement to ensure truckloads that complied with the terms of the Agreement, a false representation of an existing intention to perform.

31. As a result of Nash withholding that material fact, Sykes entered into the License Agreement not knowing that Nash would never fulfill its obligation to ensure shipments that met the terms of the Agreement.

32. Sykes never received any consideration for his agreement to license the '692 Patent.

33. Nash has failed to follow the terms of the Dispute Resolution provision in the Agreement and has therefore waived any claim to enforcement of that provision.

#### **COUNT I: PATENT INFRINGEMENT**

34. The allegations of Paragraphs 1 - 33 are incorporated in this Count I.

35. Nash has and continues to willfully and knowingly apply the Patented Design or a colorable imitation thereof to an article of manufacture for sale and has sold or exposed for sale the article of manufacture to which the Patented Design has been applied.

36. The Nash stake gives the same overall impression as the Sykes stake.

37. Sykes has been and continues to be harmed by the sales of the manufacture, use, and sale of the Nash stake.

#### **COUNT II: DECLARATORY JUDGMENT FOR UNENFORCEABILITY OF LICENSE AGREEMENT.**

38. The allegations in Paragraphs 1 - 37 are incorporated herein.

39. Nash provided no consideration for Sykes to enter into the License Agreement and such insufficient consideration renders the License Agreement *void ab initio*.

40. Further, Sykes was coerced into entering into the License Agreement by the promised "free truckloads" by Nash and Nash's promise to ensure that the shipping met the terms of the License Agreement while Nash had no intention of fulfilling its obligations.

41. That coercion provided Nash with a free license as well as a designed way out of its responsibilities if and when Sykes realized Nash's deception and breach; Nash included a dispute resolution clause that it would rely upon to preclude Sykes from being able to litigate his patent infringement claim if and when Sykes realized Nash's deception and the failure of consideration.

42. As a result, the License Agreement should be held to be unenforceable.

**COUNT III: DECLARATORY JUDGMENT FOR  
BREACH OF LICENSE AGREEMENT**

43. The allegations of Paragraphs 1-42 are incorporated herein.

44. By and through its failure to provide free shipping as required under the terms of the License Agreement, Nash breached the License Agreement.

45. Sykes was harmed in that he received no consideration for his agreement to license the '692 Patent to Nash.

**COUNT IV: DECLARATORY JUDGMENT FOR WAIVER OF  
THE DISPUTE RESOLUTION PROVISION CONTAINED IN  
THE LICENSE AGREEMENT**

46. The allegations of Paragraphs 1-45 are incorporated herein.

47. By choosing not to employ the provisions of the Dispute Resolution provisions of the License Agreement, Nash has waived those provisions.

**COUNT V: FRAUD IN THE INDUCEMENT**

48. The allegations of Paragraphs 1-47 are incorporated herein.

49. Sykes was induced to enter into the License Agreement by Nash promising to coordinate and provide free shipping of goods ordered from it by Sykes.

50. That promise was made without the present intention to perform.





[dbyers@pwhd.com](mailto:dbyers@pwhd.com)

[adean@pwhd.com](mailto:adean@pwhd.com)

*Counsel for the Plaintiff,*

*William G. Sykes.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of October, 2021, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (CM/ECF) to the following:

Siddhesh V. Pandit, VA Bar No. 75,686

[svp@maierandmaier.com](mailto:svp@maierandmaier.com)

Timothy J. Maier, VA Bar No. 46,354

[tjm@maierandmaier.com](mailto:tjm@maierandmaier.com)

**MAIER & MAIER PLLC**

345 South Patrick Street

Alexandria, VA 22314

(703) 740-8322 (phone)

(703) 991-7071 (fax)

Michael J. Collins (*pro hac vice to be filed*)

[mjc@maierandmaier.com](mailto:mjc@maierandmaier.com)

**MAIER & MAIER PLLC**

2777 Allen Parkway

Suite 1000

Houston, Texas 77019

(713) 452-2620 (phone)

(703) 991-7071 (fax)

ATTORNEYS FOR DEFENDANT

NASH DISTRIBUTION, LLC.

/s/

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Duncan G. Byers