

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION**

ARGONICS, INC.,)
)
 Plaintiff,)
)
 v.) C.A.No.
)
 STEPHENS MANUFACTURING CO., INC.,)
)
 Defendant.)

FILED - MQ
April 2, 2009 11:57 AM
TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: slk /

2:09-cv-80
Gordon J. Quist, U.S. District Judge

**COMPLAINT FOR PATENT AND TRADE DRESS INFRINGEMENT
DEMAND FOR JURY TRIAL**

Plaintiff, ARGONICS, INC., ("Argonics") for its Complaint of Patent Infringement and Trade Dress Infringement against Defendant, STEPHENS MANUFACTURING CO., INC., ("Stephens"), avers and alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Argonics is a Michigan corporation having a principle place of business at 1110 Wright Street, Marquette, Michigan 49855.
2. On information and belief, Stephens is a corporation having a place of business at 711 West 4th Street, Tompkinsville, Kentucky 42167-0488.
3. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§1331, 1132(a), 1338(a) and 1367(a).
4. This Court has personal jurisdiction over Stephens because Stephens has sold and offered for sale accused products in the State of Michigan and this District.
5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

PATENTS-IN-SUIT

6. On November 9, 1999, U.S. Patent No. 5,979,638, entitled “Conveyor Belt Wiper Blade” (hereinafter “the ‘638 Patent”), was duly and legally issued to Argonics, the assignee of the patent from the inventor, Daniel G. Wiggins. A copy of the ‘638 Patent is attached hereto as Exhibit A.

7. On May 2, 2000, U.S. Patent No. 6,056,112, entitled “Apparatus For Preloading A Scraper Blade In A Conveyor Cleaning System” (“the ‘112 Patent”), was duly and legally issued to Argonics, the assignee from the named inventor, Daniel G. Wiggins. A copy of the ‘112 Patent is attached as Exhibit B.

8. Argonics has exclusively held the entire right, title and interest in and to both the ‘638 Patent and the ‘112 Patent during the entire time period relevant to this action, and has standing to bring this action for patent infringement.

FACTS GIVING RISE TO PATENT INFRINGEMENT

9. Argonics is the leader in polyurethane products for the conveyor, concrete, mining, aggregate and agriculture industries. For over a decade, Argonics has manufactured belt cleaning systems that are used to remove debris and other materials that adhere to the belts of conveyor systems used to convey bulk material such as sand and gravel. A typical conveyor with a belt cleaning system is shown in Exhibit C.

10. Belt cleaning systems are typically exposed to various combinations of moisture, dirt, abrasive materials, and/or corrosive materials and liquids. Minimizing the amount of maintenance, repair and replacement is a continuing need in this work environment.

11. Argonics’ belt cleaning systems incorporate an innovative wiper blade that is placed close to, or against, a belt and used to remove debris which has accumulated on the belt

during use. During operation of a conveyor belt, this wiper blade retains an improved structural profile reducing the possibility of the blade buckling and failing under pressure from debris. On August 21, 1997, Argonics filed a patent application on its new wiper blade. This application issued on November 9, 1999 as the '638 Patent.

12. Argonics' belt cleaning systems also include an apparatus for supporting a wiper blade against a conveyor belt in a conveyor cleaning system in a manner whereby the wiper blade is allowed to reposition and deform to pass over belt irregularities, such as seams or the like. Unlike the traditional spring-loaded system, this system utilizes an enclosed torsion bar member that is not exposed to debris that has accumulated on the belt during use. The Argonics system uses a polyurethane component that is deformed by twisting to produce a resilient loading force on a wiper blade. This eliminates typical moving mechanical parts that are prone to failure. On May 20, 1998, Argonics filed a patent application on its new apparatus. This application issued on May 2, 2000 as the '112 Patent.

13. For many years, Stephens, a manufacture of belt conveyor systems, purchased Argonics' belt cleaning systems. These systems included Argonics' innovative wiper blade as well as its apparatus for supporting and preloading a wiper blade. Over the course of the parties' relationship, Argonics sold hundreds of these belt cleaning systems to Stephens.

14. During 2008, without notice, Stephens terminated its relationship with Argonics and ceased purchasing Argonics' belt cleaning systems.

15. Stephens is currently offering for sale, and selling, a belt cleaning system that incorporates the Argonics technology patented in each of the '112 and '638 Patents. This includes Stephens' "Titan Belt Wiper Belt Cleaning System".

FACTS GIVING RISE TO TRADE DRESS INFRINGEMENT

16. Argonics' belt cleaning systems and its corresponding packaging in which they are offered to the public incorporate an arbitrary, non-functional and distinctive trade dress. For many years, Argonics has extensively and continuously used and promoted its unique trade dress in interstate commerce in connection with its line of belt cleaning systems to identify Argonics as the source of its high quality products. As a direct result of Argonics' extensive and continuous use and promotion of its trade dress, Argonics has developed an exceptional reputation for its products and services in the belt cleaning industry and now owns substantial good will and valuable rights in its unique trade dress.

17. Argonics' unique trade dress has come to be associated in the minds of purchasers with a high level of quality of the goods and services that are provided by Argonics.

18. One example of Argonics' trade dress is the overall look of its belt cleaning system. A comparison of Argonics' belt cleaning system and the nearly identical Stephens' belt cleaning system is shown in Exhibit D.

19. Another example of Argonics' trade dress is the distinctive label it places on the end of its belt cleaning systems. Stephens, without Argonics' permission, uses a nearly identical label placed on the end of its belt cleaning system. A comparison of the two is shown in Exhibit E.

COUNT I INFRINGEMENT OF THE '638 PATENT

20. Paragraph 1-19 are incorporated by reference as if fully restated herein.

21. The '638 Patent is directed toward a cleaning blade for an "endless conveyor belt" such as those used in conveying bulk composite material, such as sand, gravel, etc.

22. Stephens has made, used, sold, offered for sale and/or imported cleaning blades that infringe the claims of the '638 Patent.

23. Upon information and belief, Stephens has engaged in activities that constitute contributory infringement and/or inducement of infringement of the '638 Patent.

24. Upon information and belief, Stephens' infringement of the '638 Patent has been and continues to be willful and deliberate.

25. Stephens has infringed the '638 Patent and will continue to infringe the '638 Patent unless enjoined by this Court. Stephens' wrongful conduct has caused Argonics to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the patented invention.

26. Argonics has suffered damages by reason of Stephens' infringement of the '638 Patent for which Argonics is entitled to relief under 35 U.S.C. §284.

**COUNT II
INFRINGEMENT OF THE '112 PATENT**

27. Paragraphs 1-26 are incorporated by reference as if fully restated herein.

28. The '112 Patent is directed toward an apparatus for preloading a cleaning blade in a conveyor belt cleaning system.

29. Stephens has made, used, sold, offered to sell, and/or imported products that infringe the '112 Patent.

30. Upon information and belief, Stephens has engaged in activities that constitute contributory infringement and/or inducement of infringement of the '112 Patent.

31. On information and belief, Stephens infringement of the '112 Patent has been and continues to be willful and deliberate.

32. Stephens has infringed the '112 patent and will continue to infringe the '112 Patent unless enjoined by this Court. Stephens wrongful conduct has caused Argonics to suffer irreparable harm resulting from the loss of its lawful patent right to exclude others from making, using, selling, offering to sell and/or importing the patented invention.

33. Argonics has suffered damages by reason of Stephens' infringement of the '112 Patent for which Argonics is entitled to relief under 35 U.S.C. §284.

**COUNT III
TRADE DRESS INFRINGEMENT**

34. Argonics incorporates by reference Paragraphs 1-33 as if fully restated herein.

35. The adoption and use by Stephens of the distinctive, aesthetic, non-functional trade dress of Argonics' belt cleaning systems including, *inter alia*, the safety/warning labels and installation instructions, in interstate commerce in connection with Stephens' goods and commercial activities, without the consent of Argonics, are likely to cause confusion, or to cause mistake, or to deceive customers as to an affiliation, connection or association of Stephens with Argonics or as to the origin, sponsorship or approval of Stephens' goods, services or commercial activities by Argonics, in violation of 15 U.S.C. § 1125(a) and the common law.

36. The aforementioned actions and activities of Stephens have caused and will continue to cause damage and irreparable harm and injury to Argonics unless and until they are enjoined by this Court.

**COUNT IV
FALSE DESIGNATION OF ORIGIN**

37. Argonics incorporates by reference Paragraphs 1-36 as if fully restated herein.

38. The adoption and use by Stephens of the unique Argonics trade dress as embodied in Argonics' belt cleaning systems including, *inter alia*, the safety/warning labels and installation

instructions, without Argonics consent, is likely to cause confusion, to cause mistake, or to deceive consumers as to an affiliation, connection or association of Argonics with Stephens, or as to the origin, sponsorship, or approval of Stephens' goods or commercial activities by Argonics, in violation of 15 U.S.C. §1125(a)(1).

39. Upon information and belief, the adoption and use by Stephens of Argonics' trade dress identified herein in connection with its goods and commercial activities was in bad faith and in willful disregard of Argonics' rights, with the intent to trade on and appropriate the reputation and good will which Argonics has built up in its trade dress, so as to divert customers and revenues from Argonics to Stephens.

40. The aforementioned action and activities of Stephens have caused and will continue to cause damage and irreparable harm and injury to Argonics unless and until such time as they are enjoined by this Court.

**COUNT V
COMMON LAW UNFAIR COMPETITION**

41. Argonics incorporates by reference Paragraphs 1-40 as if fully restated herein.

42. The adoption and use by Stephens of the distinctive, aesthetic, non-functional trade dress of Argonics' belt cleaning systems including, *inter alia*, the safety/warning labels and the installation instructions, in interstate commerce in connection with Stephens' goods and commercial activities, without the consent of Argonics, constitute unauthorized copying of Argonics non-functional trade dress.

43. The foregoing activities cause a likelihood of confusion as to an affiliation, connection or association between Stephens' products and Argonics' products, or an approval or sponsorship by Argonics of Stephens' products, and falsely represent or implicitly connote an equivalence of quality between Stephens' products and the corresponding Argonics products.

44. The aforementioned activities of Stephens constitute unfair competition, including but not limited to the unlawful passing off of its goods as those of Argonics, in violation of the common law of the State of Michigan.

45. Upon information and belief, the adoption and use by Stephens of the non-functional trade dress of Argonics' belt cleaning systems including, *inter alia*, the safety/warning labels and the installation instructions, was done in bad faith and in willful disregard of Argonics rights, with the intent to trade on and appropriate the reputation and good will which Argonics has built up for its trade dress identified herein, and to divert customers and revenues from Argonics.

46. The aforementioned actions and activities of Stephens have caused and will continue to cause damage and irreparable harm and injury to Argonics unless and until such time as they are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Argonics prays for entry of a judgment:

- A. Finding that Stephens has infringed the '638 and the '112 Patents pursuant to 35 U.S.C. §101 *et seq.*
- B. Finding that Stephens has infringed Argonics' distinctive non-functional trade dress for its cleaning blades, apparatus for supporting and preloading wiper blades, safety/warning labels and installation instructions.
- C. Permanently enjoining Stephens, its officers, subsidiaries, parents, agents, servants, employees, attorneys and all parties in active concert with Stephens, from any further infringement of the '638 and the '112 Patents.
- D. Permanently enjoining Stephens, its officers, subsidiaries, parents, agents, servants, employees, attorneys and all parties in active concert with Stephens, from committing further acts of infringement of the distinctive, aesthetic, non-functional trade dress of Argonics' cleaning blades, apparatus for supporting and preloading wiper blades, the safety/warning labels and installation instructions.

- E. Awarding damages to Argonics for Stephens' infringement of the '638 and the '112 Patents, together with prejudgment interest and costs pursuant to 35 U.S.C. §284.
- F. Awarding damages to Argonics for Stephens trade dress infringement, together with prejudgment interest and costs pursuant to 15 U.S.C. §1117(a).
- G. Increasing up to three times the damages awarded pursuant to 35 U.S.C. §284 for Stephens' willful infringement of the '638 and the '112 Patents.
- H. Increasing the damage award up to three times in accordance with 15 U.S.C. §1117(a) for Stephens' willful trade dress infringement.
- I. Declaring this to an exceptional case under 35 U.S.C. §285 and 15 U.S.C. §1117(a), and awarding Argonics its reasonable attorneys fees and costs.
- J. Awarding Argonics such other and further relief as is just and proper.

JURY DEMAND

Argonics demands trial by jury of any issue triable of right by a jury.

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