

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF SOUTH CAROLINA
GREENVILLE DIVISION

Edward W. Van Romer and Basic)	Case No. <u>8:10-2209-HFF</u>
Concepts, Inc.,)	
)	
Plaintiffs,)	
)	COMPLAINT
v.)	
)	
Husky Portable Containment Company,)	
)	
Defendant.)	

Plaintiffs Edward W. Van Romer and Basic Concepts, Inc., complaining of the defendant Husky Portable Containment Company, would respectfully show unto the Court:

JURISDICTION AND PARTIES

1. This action arises out of the patent laws of the United States, more particularly 35 U.S.C. §§ 271 and 281. Jurisdiction is appropriate pursuant to 28 U.S.C. §1338, and venue is proper pursuant to 28 U.S.C. §§ 1400(a) and 1391(b) as the defendant is subject to personal jurisdiction in the State of South Carolina.

2. Plaintiff Edward W. Van Romer (“Van Romer”) is an individual residing in Anderson County, South Carolina. Van Romer is the inventor and owner of United States Patent No. 5,762,233 (the “233 Patent”) and United States Patent No. RE39,971 (a reissue of U.S. Patent No. 6,880,720) (the “720 Patent”). The ‘233 and the ‘720 Patents are referred to herein as the “Van Romer Patents.”

3. Plaintiff Basic Concepts, Inc. (“Basic”) is a corporation organized pursuant to the laws of the State of South Carolina with a principal place of business in Anderson County, South Carolina.

4. Basic is the exclusive licensee under the '233 Patent and the '720 Patent, with exclusive rights to import, manufacture, sell, or use portable spill containments or berms under the Van Romer patents. Basic manufactures, sells, and offers to sell spill containments covered by one or more of the Van Romer Patents.

5. Upon information and belief, Husky Portable Containment Company ("Husky") is a corporate entity organized pursuant to the laws of the State of Oklahoma with a principal place of business in Skaitook, Oklahoma.

6. Upon information and belief, Husky manufactures or causes to be manufactured, sells, offers to sell, uses, and/or imports spill containments that infringe the Van Romer Patents throughout the United States, including within this judicial district. Husky's offers to sell involve promotions and offers through advertisements, catalogs, internet offers, and other media occurring within South Carolina and throughout the United States.

FOR A FIRST CAUSE OF ACTION
(Infringement of U.S. Patent No. 5,762,233)

7. The allegations of paragraphs 1-6 above of this Complaint are restated and reiterated as if fully set forth herein.

8. On June 9, 1998, U.S. Patent No. 5,762,233 was duly and legally issued to plaintiff Van Romer for the invention of a foldable spill container. Since the issue date, and at all other times relevant to this litigation, plaintiff Van Romer has been and remains the owner of the '233 Patent, a copy of which is attached to this Complaint as Exhibit 1. The '233 Patent remains in force.

9. Upon information and belief, the defendant manufactures, causes to be manufactured, offers for sale and sells spill containment devices that infringe the '233 Patent, either literally or under the doctrine of equivalents. Such infringing devices include, but are not

limited to the defendant's "A-Side Wall (Pop-Up) Berms – Freedom Series I" and its "A-Side (Pop-Up) Berms – Liberty Series," all such infringing products being referred to herein as the "Infringing Products." The Infringing Products include each and every limitation of at least Claims 1, 2, 9 and 16 of the '233 Patent, either literally or under the doctrine of equivalents.

10. On April 28 and May 9, 2006, counsel for Basic sent a notice of infringement of the '233 Patent to the defendant, with a demand that defendant cease making, using or selling an earlier model portable containment (the "2006 Husky Berm") that infringed the '233 Patent. In a letter dated July 6, 2006, defendant assured Basic that its infringing activities would cease. Defendant was thus fully aware of the '233 Patent and plaintiff's assertion of rights and intent to enforce such Patent.

11. The infringing elements of the 2006 Husky Berm, to which the plaintiff's April 28 and May 9th written demands were directed, are incorporated into the Infringing Products which are the subject of this Complaint.

12. Defendant's continuing infringing activities, in light of its prior assurances to plaintiffs render defendant's infringement willful and deliberate. Such actions further indicate that defendant will continue its infringing activities unless and until it is required to cease the same. The.

13. Defendant's infringement of the '233 Patent has damaged and continues to damage the plaintiffs, in the form of lost sales, lost profits, diminution of market potential and diminution in asset values. Such damages are immediate, irreparable, and not susceptible to adequate compensation through the award of monetary damages.

14. Plaintiffs are entitled to collect damages from the defendant pursuant to 35 U.S.C. §284, together with its attorneys' fees pursuant to 35 U.S.C. §285. Plaintiffs are further entitled

to a trebling of damages in view of defendant's willful and deliberate infringement, pursuant to 35 U.S.C. §284.

15. Plaintiffs are further entitled to an order of preliminary and permanent injunctive relief, preventing the defendant from continuing or undertaking further infringing activities throughout the remaining term of the '233 Patent.

FOR A SECOND CAUSE OF ACTION
(Infringement of U.S. Patent No. 6,880,720)

16. The allegations of paragraphs 1-15 above of this Complaint are restated and reiterated as if fully set forth herein.

17. On April 19, 2005, U.S. Patent No. 6,880,720 was duly and legally issued to plaintiff Van Romer for a portable containment invention. Since that date, and throughout all times relevant to this litigation, Van Romer has been and remains the owner of the '720 Patent. The patent, a copy of which is attached as Exhibit 2, was reissued on January 1, 2008 (No. RE39,971E) and remains in full effect.

18. The defendant manufactures, sells, offers to sell, uses and/or imports spill containments that infringe the '720 Patent, including but not limited to its "A-Side Wall (Pop-Up) Berms – Freedom Series I."

19. The Infringing Products include each and every limitation of at least Claims 10, 18, 20 and 25 of the '720 Patent, either literally or pursuant to the doctrine of equivalents.

20. Defendant's infringement of the '720 Patent has damaged and continues to damage the plaintiffs, in the form of lost sales, lost profits, diminution of market potential and diminution in asset values. Such damages are immediate, irreparable, and not susceptible to adequate compensation through the award of monetary damages.

21. Plaintiffs are entitled to collect damages from the defendant pursuant to 35 U.S.C. §284, together with its attorneys' fees pursuant to 35 U.S.C. §285.

22. Plaintiffs are further entitled to an order of preliminary and permanent injunctive relief, preventing the defendant from continuing or undertaking further infringing activities throughout the term of the '720 Patent.

WHEREFORE, having fully pled, plaintiffs pray for an order of this Court:

1. Granting plaintiffs judgment on their First and Second Causes of Action; and
2. Preliminarily and permanently enjoining the defendant from continued infringement of the '233 and/or the '720 Patents, pursuant to 35 U.S.C. §283; and
3. Assessing damages against the defendant pursuant to 35 U.S.C. §284, based on its infringement of the '233 and the '720 Patents; and
4. Assessing interest, costs, and attorneys' fees against the defendant pursuant to 35 U.S.C. §285; and
5. Awarding the plaintiffs trebled damages for defendant's willful and deliberate infringement of the '233 Patent, pursuant to 35 U.S.C. §284; and
6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/Natalma M. McKnew

Natalma M. McKnew, Fed. ID #186
Smith Moore Leatherwood LLP
300 E. McBee Avenue, Suite 500 (29601)
P.O. Box 87
Greenville, SC 29602
(864) 242-6440/(864) 240-2477 (Fax)
Email: tami.mcknew@smithmoorelaw.com

Dated: August 24, 2010

Attorneys for Plaintiffs Edward W. Van Romer
and Basic Concepts, Inc.