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DISTRICT OF UTAH
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF UTAH

HARRIS RESEARCH, INC., a Utah
corporation, d/b/a CHEM-DRY,

Plaintiff,

vs.

EBBERTS ENTERPRISES, LLC, an
Oklahoma Limited Liability Company,

Defendant.

COMPLAINT

1:02 CV 00097

BSJ

Case No. _____

Judge _____

Plaintiff Harris Research, Inc. alleges as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff Harris Research, Inc. ("HRI") is a Utah corporation with its principal place of business in Logan, Utah. HRI is the owner and worldwide franchisor of the chemical

carpet and upholstery cleaning system known as "Chem-Dry" ("*Chem-Dry*"), for which it has various trademarks and patents.

2. Defendant Ebbert Enterprises, LLC ("Ebbert Enterprises") is an Oklahoma limited liability company, with its headquarters in Ardmore, Oklahoma.

3. Jurisdiction of this Court arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, under the laws of the United States of America concerning actions relating to patents, 28 U.S.C. § 1338(a), and under federal question jurisdiction, 28 U.S.C. § 1331. Jurisdiction for the non-federal question claims arise under 28 U.S.C. § 1337.

4. Venue is proper under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

5. Since it began operations in the 1970's, HRI's *Chem-Dry* business has become known for its "carbonated" carpet and upholstery cleaning solutions, processes, and equipment, which HRI sells and provides exclusively to its *Chem-Dry* franchisees.

6. HRI has obtained various patents for its carbonated cleaning solutions and equipment, including but not limited to the following: 1) U.S. Patent No. 5,244,468 for "Urea Containing Internally-Carbonated Non-Detergent Cleaning Composition and Method of Use" ("HRI '468"); 2) U.S. Patent No. 5,718,729 for "Composition and Method of Use For An Internally Carbonating Non-Surfactant Cleaning Composition" ("HRI '729"); and 3) U.S. Patent No. 5,593,091 for "Dual Solution Application System" ("HRI '091").

7. HRI had also obtained a patent for its original "Carbonated Cleaning Solution", U.S. Patent No. 4,449,333, which recently expired in the year 2000.

8. HRI currently has over 2500 *Chem-Dry* franchises in the United States and another 1300 worldwide.

9. Ebberts Enterprises is wholly owned and controlled by Jeff Ebberts ("Ebberts") and his wife Rieta Ebberts (collectively, "the Ebberts"), who are former *Chem-Dry* franchisees. The Ebberts owned and operated several different *Chem-Dry* franchises, both in California and Oklahoma, over a period of more than ten (10) years.

10. As part of his various *Chem-Dry* franchises, Ebberts was trained to use all of the various *Chem-Dry* products, solutions, and equipment, and given confidential information regarding their composition and theoretical bases.

11. In or about 1995, Ebberts developed and began using a modified equipment system to apply the Chem-Dry cleaning solutions (the "Miser") instead of HRI's authorized *Chem-Dry* Velda Hot Carbonating Unit (the "Velda").

12. From that time, Ebberts repeatedly and continuously used the Miser equipment publicly to apply cleaning solutions, and charged his *Chem-Dry* customers for its use.

13. In or about March of 1996, Ebberts sent a letter to HRI describing the Miser equipment and its use.

14. In or about April of 1999, Ebberts sent a direct mailing to various *Chem-Dry* franchisees advertising the Miser equipment and describing how to build and use it.

15. In or about 1997, Ebberts developed and began using another cleaning solution with the Miser equipment as part of his *Chem-Dry* operations. Ebberts has referred to this cleaning solution as the "No Soap" solution.

16. From that time forward, Ebberts used the No Soap solution publicly and continuously, and charged his *Chem-Dry* customers for its use.

17. On April 1, 1999, during the time that he was still operating as a *Chem-Dry* franchise, Ebberts applied for a patent on his cleaning solution and method of use, entitled "Multiple Carbonate Cleaning Compound", application No 09/283, 254. That application was later abandoned in favor of a partial continuation of that application, filed on December 15, 1999, application No. 09/461,261.

18. Ebberts' patent application copied verbatim large portions of HRI's prior patent application for one of its cleaning solutions, for which HRI had already received the HRI '468 Patent in 1993.

19. Ebberts formed Ebberts Enterprises in or about September of 2000, while the Ebberts were still *Chem-Dry* franchisees.

20. On October 3, 2000, Ebberts was issued a United States Patent on for his cleaning solution and method of use, No. 6,126,697 ("Ebberts '697").

21. On March 20, 2001, Ebberts also applied for a patent on the Miser equipment, entitled "Application Apparatus For Multiple Solution Cleaner", application No. 09/812,503.

22. On or about November 1, 2000, Ebberts apparently assigned Ebberts '697 to Ebberts Enterprises, and recorded that transfer with the U.S. Patent Office.

23. Ebberts Enterprises manufactures, markets, and sells the No Soap solution and the Miser equipment, which it refers to as the "No Soap System".

24. Ebberts Enterprises markets and sells the No Soap System across the United States and Canada, and advertises both through mass mailings and an Internet website, *nosoapseries.com*.

25. In its various advertisements, Ebberts Enterprises claims to offer a new and unique patented carpet cleaning system of solution and equipment.

26. Upon information and belief, the only patent owned or licensed by Ebberts Enterprises is Ebberts '697.

27. While Ebberts '697 describes a single solution and method of use, the No Soap solution marketed and sold by Ebberts Enterprises is a split-solution, with one solution being mildly acidic and the other mildly base. These two solutions are sold in two (2) separate packages in powder form, which Ebberts Enterprises directs its purchasers to mix separately and then join together and apply to create a carbonating cleaning effect, with a resulting solution containing a neutral pH balance. Ebberts '697 does not describe such a split-solution cleaner or method of use.

28. However, HRI '091 does teach this method of use. In addition, HRI '729 and '468 also teach the use of a split-solution composition, with one mildly acidic solution and one mildly base solution, which are mixed at the point of application to produce a "self-carbonating" cleaner, with a neutral pH balance.

29. HRI '729 also teaches the method of heating the joined split-solutions to create a "hot carbonating" cleaning effect, in order to employ both the cleaning strengths of both effervescence and heat.

30. While Ebberts Enterprises does not provide a heater with its split-solution cleaning solution and equipment system, it encourages and directs its purchasers to use an in-line heater to obtain better cleaning results.

31. Ebberts Enterprises, through its agents and attorneys, has charged HRI with infringement of Ebberts '697, by reason of the cleaning solutions and/or equipment HRI sells.

32. Ebberts Enterprises and HRI are direct competitors, as they market and sell very similar carpet and upholsterly cleaning products and equipment to the same general population of carpet and upholsterly cleaners.

33. HRI has notified Ebberts Enterprises that Ebberts '697 is invalid, and that it is contributing to and/or inducing others to infringe HRI's patents.

34. Ebberts Enterprises has refused to modify its conduct, and continues to market and sell its products and equipment in the same fashion.

35. Ebberts Enterprises markets its products and equipment to HRI's franchisees, who are contractually required to purchase their products and equipment from HRI, and to persons or entities who might otherwise become HRI franchisees.

36. In order to obtain Ebberts '697, despite the obvious teaching of HRI's prior-issued patents and the prior art in this areas, Ebberts represented to the United States Patent Office that he had obtained "unexpected results" from adding a second carbonate salt to his cleaning solution. In reality, no such results were ever obtained by Ebberts, or scientifically documented by anyone, and could not be replicated under controlled conditions.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment--28 U.S.C. §§ 2201, et seq.)

37. Plaintiff repeats and incorporates by reference the preceding allegations of this Complaint.

38. There is a substantial and continuing justiciable controversy between HRI and Ebberts Enterprises, as to the validity and scope of Ebberts '697, Ebberts Enterprises' claimed right to threaten or maintain suit against HRI for its infringement, and whether any of HRI's products or processes infringe any valid claim thereof.

39. Pursuant to 28 U.S.C. §§ 2201 and 2202, HRI is entitled to a declaration that Ebberts '697 is invalid, unenforceable, and void in law.

40. Ebberts '697 is invalid, unenforceable, and void for one or more of the following reasons:

- a. More than one year prior to the filing of the application which matured into Ebberts '697, the alleged invention was in public use and/or on sale in this country, and Ebberts '697 is therefore invalid under 35 U.S.C. § 102(b);
- b. HRI's previously issued patents teach each and every element of Ebberts '697, and/or were already disclosed by other prior art, and is therefore invalid under 35 U.S.C. § 102(a); and
- c. Ebberts' representations of "unexpected results" to the United States Patent Office were undocumented, biased, and subjective, and such claimed results cannot be replicated and are not true;

41. In the alternative, HRI is also entitled to a declaration that '697 is not infringed by HRI because of the making, selling or using of any of its solutions, processes or equipment.

WHEREFORE, Plaintiff respectfully requests equitable relief as is more fully set out in its Prayer for Relief.

SECOND CLAIM FOR RELIEF
(Contributory Infringement/Inducement in violation of 35 U.S.C. § 271(b) & (c))

42. Plaintiff incorporates the preceding allegations as though set forth fully herein.

43. Ebberts Enterprises is producing, marking and selling a split-solution carbonated carpet and upholstery cleaning compound and method of use which is not covered by its sole patent, Ebberts '697.

44. Ebberts Enterprises is also producing, marking and selling equipment designed and intended to simultaneously mix the split-solutions and apply them to clean carpet and upholstery.

45. Ebberts Enterprises is also instructing, advising and/or recommending that its end users use an in-line heater with its equipment.

46. By instructing, enabling and directing the end user of its products and equipment to join, heat, and apply the split-solutions to clean carpets and upholstery, Ebberts Enterprises is guilty of contributory infringement and/or inducement of infringement of one or more of HRI's patents.

47. Defendant's actions violate the provisions of 35 U.S.C. § 271(b) and/or (c).

48. HRI has suffered harm for which damages at law are not adequate and will suffer irreparable harm unless Defendant is restrained and enjoined from further violations.

49. HRI has also suffered monetary damages, and Ebberts Enterprises unjustly enriched, in an amount to be determined at trial.

WHEREFORE, Plaintiff requests relief as hereafter described in its Prayer for Relief.

THIRD CLAIM FOR RELIEF

(Tortious Interference With Economic Relations)

50. Plaintiff incorporates the preceding allegations as though fully set forth herein.

51. Ebberts Enterprises' misrepresentation, which it has directed to HRI's current and potential franchisees, has interfered with HRI's existing and prospective contractual and other economic relations with these current and potential *Chem-Dry* franchisees.

52. Such communications are wrongful, because they are not made in good faith, and are made knowing that the Ebberts '697 is invalid and/or does not cover the cleaning solution and/or equipment being marketed and sold by Ebberts Enterprises.

53. As a result of such communications, HRI's contractual and other relations with its current and potential franchisees have been disrupted, and HRI has been damaged thereby.

54. HRI has also suffered monetary damages, and Ebberts Enterprises has been unjustly enriched by its improper conduct, in an amount to be determined at trial.

55. The actions of Ebberts Enterprises and its agents, attorneys and/or employees have been willful, and HRI is therefore also entitled to punitive damages, in an amount to be determined at trial.

WHEREFORE, Plaintiff requests relief as hereafter described in its Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Harris Research, Inc. ("Plaintiff") demands entry of judgment in its favor and against defendant Ebberts Enterprises, LLC ("Defendant"), as follows:

A. Entry of Declaratory Judgment stating that: a) Defendant is without right or authority to threaten or to maintain suit against Plaintiff or its franchisees for alleged infringement of the Ebberts '697 patent; b) that the Ebberts '697 patent is invalid, unenforceable, and void in law; and c) that the Ebberts '697 patent is not infringed by Plaintiff because of the making, selling, or using of Plaintiff's solutions, processes or equipment;

B. Entry of a permanent injunction enjoining Defendant, its owners, members, managers, agents, servants, employees, and attorneys, and those persons in active concert or participation with it who receive actual notice thereof, from the following conduct:

1. Initiating or threatening infringement litigation, against HRI or any of its franchisees, manufacturers, agents, servants, or employees, or any prospective or present sellers, dealers, manufacturers, or users of Plaintiff's products, or charging any of them, either verbally or in writing, with infringement of the Ebberts '697 patent because of the manufacture, use, or selling, or offering for sale of the products made or sold by Plaintiff;
2. Representing that the cleaning solution and/or equipment it offers are patented, and
3. Instructing, enabling or directing its customers to infringe HRI's patents.

C. Entry of a monetary Judgment on Plaintiff's Second and Third Claims for Relief in

an amount sufficient to compensate Plaintiff for its damages and Defendant's unjust enrichment,
in an amount to be proven at trial;

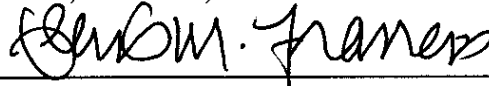
D. Entry of an award of punitive or exemplary damages sufficient to punish
Defendant and to deter future misconduct;

E. Entry of Judgment for Plaintiff's costs and reasonable attorneys' fees as may be
allowed by law; and

F. For such other or further relief as the Court may deem appropriate.

Dated this 5th day of August, 2002.

JONES, WALDO, HOLBROOK & MCDONOUGH



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