

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

**HEINZ KETTLER GMBH & CO., KG and
KETTLER INTERNATIONAL, INC.**)

Plaintiffs,)

v.)

ITALTRIKE, s.r.l. and)

**FOUNDATIONS WORLDWIDE, INC.
f/k/a SHAMROCK INDUSTRIES, INC.
f/k/a SHAMROCK IMPORTING**)

Defendants.)

Civil Action No.: 1:09cv148-TCB-AJT

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs HEINZ KETTLER GMBH & CO., KG (hereinafter referred to as “Heinz KETTLER”) and KETTLER INTERNATIONAL, INC. (hereinafter referred to as “KETTLER Int.”) (hereinafter collectively referred to as “KETTLER” or “Plaintiffs”) submit this Amended Complaint against Defendants Italtrike s.r.l. (hereinafter referred to as “Italtrike”) and Foundations Worldwide, Inc. f/k/a Shamrock Industries f/k/a Shamrock Importing (hereinafter referred to as “Foundations”). Italtrike and Foundations are sometimes collectively referred to herein as “Defendants.”

THE PARTIES

1. Heinz KETTLER is a corporation, organized and existing under the laws of the Federal Republic of Germany, having its principal place of business at Hauptstrasse 28, D-59469 Ense-Parsit, Germany.

2. KETTLER Int. is a corporation established under the laws of the Commonwealth of Virginia, with its principal place of business at 1355 London Bridge Road, Virginia Beach, Virginia 23453. KETTLER Int. is owned by KETTLER International Beteiligungsgesellschaft GmbH of Hauptstrasse 28, D-59469 Ense-Parsit, Germany, which is owned by KETTLER Management GmbH of Hauptstrasse 28, D-59469 Ense-Parsit, Germany. Both Heinz KETTLER and KETTLER Management GmbH are owned by Dr. Karin KETTLER.

3. Italtrike is, upon information and belief, a corporation, organized and existing under the laws of Italy, with a place of business at 31010, Paderno del Grappa (TV) Italy.

4. Foundations is, upon information and belief, a corporation, organized and existing under the laws of Ohio, with a place of business at 5216 Portside Drive, Medina, Ohio 44256. Upon information and belief, Foundations may have traded as or done business as “Italtrike USA” at some point.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. §§ 1331, 1332 and 1338.

6. This Court can properly exercise personal jurisdiction over the Defendants because the Defendants and their agents have sold, continue to sell, and/or import infringing devices and use infringing trademarks in the Eastern District of the Commonwealth of Virginia, including the Norfolk Division.

7. Venue for the present action properly lies against Defendants in this District and Division pursuant to 28 U.S.C. §§ 1391(c).

BACKGROUND

8. This action is based upon Defendants' unauthorized appropriation and use of KETTLER's patented technology and unauthorized use, adoption, appropriation, and/or copying of KETTLER's federally registered trademarks.

9. Heinz KETTLER manufactures, among other things, numerous children's "ride-on" vehicles including various models of tricycles, bicycles, scooters, etc.

10. Heinz KETTLER's children's "ride-on" vehicles, which have won numerous awards, are sold in many countries all over the world, including the United States. KETTLER Int. is Heinz KETTLER's exclusive United States distributor of KETTLER products.

11. Heinz KETTLER has obtained patents covering various features of its trikes in countries throughout the world, including U.S. patent No. 6,378,884 (the "'884 patent"), which issued in the United States on April 30, 2002.

12. U.S. Patent No. 7,487,988 (the "'988 Patent") issued on February 10, 2009 from a continuation of application of U.S. Patent No. 7,156,408 (the "'408 patent"), issued on January 2, 2007 from a U.S. continuation application of parent U.S. Patent No. 6,799,772 (the "'772 patent"), which, in turn, issued on October 5, 2004 from a U.S. continuation application of parent U.S. patent No. 6,378,884. The '988 patent, '884 patent, the '772 patent, and the '408 patent are directed to a vehicle steering head, limited turn system, and/or steering lock system and were duly and legally issued to Heinz KETTLER. Heinz KETTLER is the sole owner of the '988 patent, '884 patent, the '772 patent, and the '408 patent. The '988 patent, '884 patent, '772 patent and the '408 patent are collectively referred to as "the patents-in-suit."

13. The patents-in-suit contain claims covering, among other things, a vehicle steering head, limited turn system, and/or steering lock system which can, among other things,

prevent a child user from over-steering the vehicle and which allows an adult to lock the front wheel of a vehicle in a straight position.

14. Upon information and belief, Italtrike copied the vehicle steering head, limited turn system, and/or steering lock system used on one or more of KETTLER's trike models, and used such copied system in a number of Defendants' trike models, including, but not limited to the following: Italtrike's Outside Passenger Trike Model 1200 (Model Nos. 2150 and 216060); Italtrike's Be Happy Tricycle (Model No.2170); Italtrike Be Happy Passenger (Model No. 2180); and Italtrike Oko (Model No. 2200).

15. Upon information and belief, all of the Italtrike tricycle models referenced above are manufactured abroad and imported into the United States by Foundations. Upon information and belief, Foundations sells and imports the infringing tricycles as the United States distributor of Italtrike tricycles, including to some of KETTLER Int.'s long time customers.

16. Defendants have imported, distributed, sold and offered for sale, and continues to import, distribute, sell, and offer for sale, tricycle models, through certain retailers and over the Internet, which include a limited turning system and locking device that infringes the patents-in-suit.

17. True and correct copies of these the '988 patent, '884 patent, '772 patent and the '408 patent are attached hereto as Exhibits 1, 2, 3, and 4, respectively.

18. KETTLER owns U.S. Registrations No. 3144936 for the trademark HAPPY for tricycles (hereinafter referred to as the "KETTLER Mark"). A copy of the registration certificate is attached hereto as Exhibit 5 and is incorporated herein by reference. KETTLER's federal registration gives the company the exclusive right to use the mark throughout the United States of America.

19. KETTLER has advertised, promoted, and sold tricycles under the HAPPY mark for over ten years. This advertising and promotion has been accomplished by means of brochures, media advertising, the internet, signage, catalogs, and store display. Tricycles sold under the HAPPY mark have won multiple awards.

20. KETTLER has spent a significant amount of money advertising and promoting its tricycles under the trademark HAPPY which serves to distinguish the tricycles of KETTLER from those of others and to indicate to the consuming public the quality, source, and origin of tricycles from KETTLER.

21. Upon information and belief, Italtrike and Foundations have used, adopted, appropriated and/or copied, without authorization, the KETTLER HAPPY mark by use of the BE HAPPY trademark on its tricycles.

22. Through its use of the BE HAPPY trademark for its tricycles, Italtrike and Foundations are attempting to profit from KETTLER's investment of time and money.

23. Italtrike's and Foundations' use, adoption, appropriation, and/or copying of KETTLER's trademark to identify, advertise, market, import, and sell tricycles has caused, and unless enjoined, is likely to continue to cause confusion or to deceive the consuming public as to the source, origin, and quality of the tricycles imported and sold by Italtrike and Foundations.

24. KETTLER has been damaged by Italtrike and unauthorized use, adoption, appropriation and/or copying of KETTLER's patented technology and trademarks.

25. Additionally, Italtrike knows and has known of the patents-in-suit and the subject matter of the patents-in-suit. Upon information and belief, Stefano Gandolfi, President of Italtrike, was subpoenaed in *Heinz Kettler GmbH, et al v. Radio Flyer, Inc.* (E.D. Va), Case Number 2:04cv614, filed October 13, 2004 (hereinafter referred to as the "Radio Flyer Case").

Mr. Gandolfi was to be deposed in the case. The Radio Flyer Case also concerned alleged infringement by Radio Flyer of the patents-in-suit for, among other things, vehicle steering head, limited turn system, and/or steering lock system which can prevent a child user from oversteering the vehicle and which allows an adult to lock the front wheel of a tricycle. Furthermore, Italtrike has attended the Nurembeg Toy Fair in close proximity to Heinz KETTLER for a number of years.

26. On information and belief, Stefano Gandolfi and Italtrike knew or should have known that the above mentioned Italtrike models infringed the patents-in-suit and have willfully infringed the valid intellectual property of KETTER and is thus liable for damages or lost profits in an amount to be proved at trial and for that amount to be trebled.

COUNT I
(Patent Infringement)

27. KETTLER incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in the foregoing paragraphs above, inclusive.

28. Italtrike and Foundations have imported, made, used, offered to sell, and/or sold in the United States, and/or imported into the United States, trikes or tricycles covered by one or more claims of the patents-in-suit, without KETTLER's authorization.

29. Italtrike and Foundations continue to import, make, use, offer to sell, and/or sell in the United States, and/or import into the United States, trikes or tricycles covered by one or more claims of the patents-in-suit, without KETTLER's authorization.

30. One or more claims of the patents-in-suit is infringed by one or more trikes or tricycles made, used, offered for sale, sold and/or imported by Defendants, including but not limited to Italtrike's Outside Passenger Trike Model 1200 (Model Nos. 2150 and 2160);

Italtrike's Be Happy Tricycle (Model No.2170); Italtrike Be Happy Passenger (Model No. 2180); and Italtrike Oko (Model No. 2200).

31. Defendants do not have a license to make, use, sell, offer for sale or import products which incorporate the technology which infringes the patents-in-suit.

32. Defendants' infringement of the patents-in-suit has been, and continues to be, willful.

COUNT II
(Federal Trademark Infringement)

33. KETTLER incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in the foregoing paragraphs above, inclusive.

34. Italtrike's and Foundations' unauthorized use, adoption, appropriation and/or copying of the KETTLER Mark is likely to cause confusion or to cause mistake, or to deceive, and constitutes an infringement of KETTLER's federal trademark rights in its registered trademarks and service marks in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a).

35. Italtrike's and Foundations' actions have damaged KETTLER and its business.

36. Unless temporarily, preliminarily and permanently enjoined, Italtrike's and Foundations' conduct will cause KETTLER irreparable harm for which there exists no adequate remedy at law.

37. KETTLER is entitled to recover from the Italtrike and Foundations all damages KETTLER has sustained due to Italtrike's and Foundations' improper conduct, as well as Italtrike's and Foundations' profits obtained from its infringing conduct, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

38. Itatrike's and Foundations' actions are willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to KETTLER pursuant to 15 U.S.C. § 1117.

COUNT III
(Federal Unfair Competition)

39. KETTLER incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in the foregoing paragraphs above, inclusive.

40. Itatrike's and Foundations' unauthorized use, adoption, appropriation and/or copying of the KETTLER Marks has caused a likelihood of confusion, mistake or deception as to the source, origin, sponsorship or approval of the products sold by Itatrike and Foundations and by KETTLER, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

41. Itatrike's and Foundations' unauthorized use, adoption, appropriation and/or copying of the KETTLER Marks falsely suggests an affiliation or connection with, or sponsorship or approval of, Itatrike and Foundations and its products by KETTLER, and/or of KETTLER and its products by Itatrike and Foundations, in violation of 15 U.S.C. § 1125(a).

42. Itatrike's and Foundations' actions have damaged KETTLER and its business.

43. Unless temporarily, preliminarily and permanently enjoined, Itatrike's and Foundations' conduct will cause KETTLER irreparable harm for which there exists no adequate remedy at law.

44. KETTLER is entitled to recover from Itatrike and Foundations all damages KETTLER has suffered due to Itatrike's and Foundations' improper conduct, as well

as Italtrike's and Foundations' profits obtained from its infringing conduct, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

45. Italtrike's and Foundations' actions are willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to KETTLER pursuant to 15 U.S.C. § 1117.

COUNT IV
(Common Law Trademark Infringement)

46. KETTLER incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in the foregoing paragraphs above, inclusive.

47. KETTLER has prior and exclusive rights to use its KETTLER Mark to identify, market, promote and sell its tricycles.

48. Italtrike's and Foundations' unauthorized use, adoption, appropriation and/or copying of the KETTLER Marks for its tricycles and ride-on vehicles has created a likelihood of confusion, mistake or deception, and therefore infringes on the KETTLER Mark in violation of the common law of the Commonwealth of Virginia.

49. Italtrike's and Foundations' actions have damaged KETTLER and its business.

50. KETTLER is entitled to recover its damages from Italtrike and Foundations in an amount to be proved at trial.

51. Unless preliminarily and permanently enjoined, Italtrike's and Foundations' conduct will cause KETTLER irreparable harm for which there exists no adequate remedy at law.

COUNT V
(Common Law Unfair Competition)

52. KETTLER incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in the foregoing paragraphs above, inclusive.

53. Italtrike's and Foundations' unauthorized use, adoption, appropriation and/or copying of the KETTLER Marks constitutes unfair competition in violation of the common law of the Commonwealth of Virginia.

54. Italtrike's and Foundations' actions have damaged KETTLER and its business.

55. KETTLER is entitled to recover its damages from Italtrike and Foundations in an amount to be proved at trial.

56. Unless temporarily, preliminarily and permanently enjoined, Italtrike's and Foundations' conduct will cause KETTLER irreparable harm for which there exists no adequate remedy at law.

PRAYER FOR RELIEF.

WHEREFORE, Plaintiffs pray for the following relief and seek a judgment against Defendant:

1. Declaring that Defendants has infringed the '988 patent, '884 patent, '772 patent and the '408 patent and the KETTLER Mark;

2. Declaring that Defendants, its agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with Defendants be preliminarily and permanently enjoined and restrained from further infringing the patents-in-suit and the KETTLER Mark;

3. Awarding KETTLER damages for Defendants' infringement of the patents-in-suit and the KETTLER Mark;
4. Awarding judgment in favor of KETTLER on all counts of the Complaint;
5. Declaring that Defendants' infringement of the patents-in-suit is and has been willful;
6. Awarding KETTLER increased damages in the amount of three times the damages found or assessed in accordance with 35 U.S.C. § 283 and 15 U.S.C. § 1117;
7. Declaring the case exceptional and awarding KETTLER their costs and attorney fees in accordance with 35 U.S.C. § 285 and with 15 U.S.C. § 1117 ;
8. Requiring Defendants to provide a full accounting of all tricycles, trikes, and ride-on vehicles which infringe the patents-in-suit, including but not limited to Italtrike's Outside Passenger Trike Model 1200 (Model Nos. 2150 and 2160); Italtrike's Be Happy Tricycle (Model No.2170); Italtrike Be Happy Passenger (Model No. 2180); and Italtrike Oko (Model No. 2200), and which have been and/or will be sold, imported, offered for sale in the U.S. on or after April 30, 2002;
9. Ordering Defendants to recall all infringing products and products including the infringing Mark in the U.S. and its territories which have not been sold and/or shipped to consumers from all retailers, re-sellers and shippers, and others in possession of such products; and
10. Awarding KETTLER such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b), KETTLER hereby demands trial by jury as to all claims in this litigation.

Respectfully submitted,

HEINZ KETTLER GMBH & CO., KG and
KETTLER INTERNATIONAL, INC.

By: /s/ John C. Lynch
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and KETTLER International Inc.*

CERTIFICATE OF SERVICE

I hereby certify this 27th day of March, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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