

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MPT, INC.,

Plaintiff,

vs.

MARATHON LABELS, INC. and
POLYMERIC CONVERTING LLC,

Defendants

CASE NO. 1:04CV2357

JUDGE GAUGHAN

PLAINTIFF'S NOTICE OF CROSS-
APPEAL TO THE COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Pursuant to Rules 4(a)(3) and 28.1 of the Federal Rules of Appellate Procedure, plaintiff MPT, Inc. hereby cross-appeals to the United States Court of Appeals for the Federal Circuit from the Court's Memorandum and Opinion and Order entered on January 19, 2007, ECF 290, insofar as that Opinion grants judgment as a matter of law to the defendants overturning the jury's verdict that the infringement by the defendants was willful and denies plaintiff's post-verdict motion for an award of enhanced damages and an award of attorneys' fees. Plaintiff cross-appeals as well from the Judgment Entry of January 19, 2007, ECF 291, insofar as that Entry fails to incorporate in the money damage award an amount for enhanced damages and an amount for attorneys' fees.

This notice is being filed within 14 days of the Notice of Appeal filed in this case by

defendant Polymeric Converting LLC, filed on February 16, 2007, ECF 300 [subsequently docketed in the Federal Circuit Court of Appeals as Case No. 2007-1183 on February 27, 2007]. Plaintiff has filed this Notice of Cross-Appeal because of the filing of the appeal by defendant Polymeric, but notes that various motions filed by defendants in this matter are pending before the Court, including motions for new trial, for judgment as a matter of law, and to amend or alter the judgment, [ECF 292, 293 and 294] which may affect the timing of the appeal pursuant to Rule 4(a)(4) of the Federal Rules of Appellate Procedure, and which may also require deactivation of the appeal before the Court of Appeals for the Federal Circuit until those motions are disposed of, pursuant to Federal Circuit practice.

Respectfully submitted,

/s/ Thomas H. Shunk

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CERTIFICATE OF SERVICE

A copy of the foregoing was served via the Court's electronic filing system upon counsel of record on March 2, 2007. Additionally, a copy of the foregoing was mailed to James Costigan, Esq., Hedman & Costigan PC, 1185 Avenue of the Americas, New York, NY 10036 on that same day.

/s/ Thomas H. Shunk
One of the Attorneys for Plaintiff MPT, Inc.