

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEAFLEX, INC. D/B/A FLEXIBLE
LIFELINE SYSTEMS,

PLAINTIFF,

V.

FALL PROTECTION SYSTEMS, INC.,

DEFENDANT.

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CA No.

JURY DEMAND

ORIGINAL COMPLAINT

Plaintiff Seaflex, Inc. d/b/a Flexible Lifeline Systems files this Original Complaint against Defendant Fall Protection Systems, Inc. and for cause would show the Court as follows:

JURISDICTION, PARTIES, AND VENUE

1. This is a declaratory judgment action of patent non-infringement pursuant to 28 U.S.C. § 2201, unfair competition action pursuant to 15 U.S.C. § 1125, and trademark infringement and unfair competition pursuant to the laws of the State of Texas. The Court has subject matter jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1338(a) because it is a civil action involving a federal question related to claims for patent infringement arising under the Patent Act, Title 35 of the United States Code and unfair competition under the Lanham Act, 15 U.S.C. § 1121. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(b) because the Complaint includes claims for unfair competition pursuant to § 1125(a) of the Lanham Act joined with claim under U.S. patent laws. The Court has supplemental jurisdiction over all other causes of action pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

2. This Court has personal jurisdiction over Defendant Fall Protection Systems, Inc. (“Fall Protection” or “Defendant”) because Defendant is conducting business in this State and this District, including without limitation, the sales and offering for sale of its products and services, including without limitation, its fall protection systems, and committing torts, in whole or in part in, this State and this District. Thus, Defendant should reasonably anticipate being haled into court in this State.

3. Plaintiff Seaflex, Inc. d/b/a Flexible Lifeline Systems (“Flexible Lifeline” or “Plaintiff”) is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business at 14325 West Hardy Rd., Houston, Texas 77060.

4. On information and belief, Defendant Fall Protection is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at 7234 N. Lindbergh Boulevard, Hazelwood, Missouri 63042. Defendant Fall Protection may be served with process by serving its registered agent, Thomas Morhaus, at 15507 Crater, Chesterfield, Missouri 63017, or alternatively at 2901 Old Nickel Plate Road, Madison, Illinois 62060.

5. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because this is a civil action involving allegations of patent infringement; a substantial part of the events or omissions giving rise to Plaintiff’s claim occurred in this District; and Defendant Fall Protection is subject to personal jurisdiction in this District.

BACKGROUND

6. Plaintiff Flexible Lifeline is in the business of designing, manufacturing, and selling fall protection systems. These systems are designed to prevent workers from falling off

of structures varying in height, such as aircraft, rooftops, railcars, sides of buildings, and bridges. Plaintiff's fall protection systems are OSHA- and ANSI-compliant, and the systems are designed to address the demands of unusual structures and/or extreme conditions.

7. One of Flexible Lifelines' products is its "FlexRail" fall protection system. One of the benefits of the "FlexRail" system is that the design incorporates an enclosed track, thus eliminating dust and debris build-up. This has the effect of less maintenance and more reliability than traditional fall protection systems.

8. On information and belief, Defendant Fall Protection is also in the business of designing, manufacturing, and selling fall protection systems. On information and belief, Fall Protection is either the owner or exclusive licensee of U.S. Patent No. 6,269,904 (the "'904 Patent") and U.S. Patent No. D440,023 (the "'023 Patent"). Both the '904 Patent and '023 Patent are directed to a fall protection system.

9. On May 10, 2007, Plaintiff Flexible Lifeline received a cease and desist letter from Defendant Fall Protection stating that Plaintiff's "Flex Rail" trolley rail was infringing the '904 and '023 Patents. Further, Defendant stated that it would immediately file a lawsuit if Plaintiff did not agree to be licensed or remove its products. Defendant also advised that it had notified one of Plaintiff's customers that the customer had purchased an infringing product and would also be joined in the lawsuit.

10. On information and belief, if any member of the public accesses the www.google.com website and enters "flexible lifeline systems" as the search string, the resulting Google webpage will show that Defendant Fall Protection is a sponsor of that link. Further, the individual may then click on the www.fallprotectionsystems.com link to enter Defendant Fall Protection's website. Attached as Exhibits A, B, and C are true and correct copies of the Google

webpage showing the “flexible lifeline systems” as the search string; the resulting Google webpage showing Defendant’s webpage as a sponsored link; and Defendant’s homepage, respectively.

**COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 6,269,904**

11. Flexible Lifeline repeats and realleges the allegations contained in Paragraphs 1 through 10 as if fully set forth herein.

12. Flexible Lifeline’s making, using, selling or offering for sale of its products, including without limitation, its fall protection system, does not infringe the ‘904 Patent, either literally or under the Doctrine of Equivalents.

**COUNT II
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. D440,023**

13. Flexible Lifeline repeats and realleges the allegations contained in Paragraphs 1 through 12 as if fully set forth herein.

14. Flexible Lifeline’s making, using, selling or offering for sale of its products, including without limitation, its fall protection system, does not infringe the ‘023 Patent, either literally or under the Doctrine of Equivalents.

**COUNT III
FEDERAL UNFAIR COMPETITION**

15. Flexible Lifeline repeats and realleges the allegations contained in Paragraphs 1 through 14 as if fully set forth herein.

16. Plaintiff owns the mark “FLEXIBLE LIFELINE SYSTEMS” in connection with its fall protection systems and services related thereto.

17. Plaintiff, through significant effort, money, skill and experience, has acquired and enjoyed the goodwill and valuable recognition and reputation through its distinctive mark. The maintenance of high standards of quality and excellence for its fall protection systems and related services has contributed to this valuable goodwill, recognition and reputation.

18. On information and belief, commencing on a date unknown, Defendant has instructed, ordered, directed and/or sponsored Google to list Defendant's website as a "sponsored link" when an individual types in Plaintiff's mark "FLEXIBLE LIFELINE SYSTEMS" in the search string.

19. On information and belief, Defendant has knowingly misled and/or confused the public by listing its website www.fallprotectionsystems.com as a "sponsored link" to be retrieved when a Google website user types in Plaintiff's mark "FLEXIBLE LIFELINE SYSTEMS" in the search string.

20. The acts of Defendant above are likely to deceive and/or cause confusion of the public and constitute unfair competition in violation of 15 U.S.C. § 1125(a).

21. On information and belief, Defendant's acts have been committed and are being committed with the deliberate purpose and intent of appropriating and trading upon Flexible Lifeline's goodwill and reputation.

22. As a result of the foregoing acts of Defendant, Flexible Lifeline has suffered substantial damages and Defendant has acquired profits at Flexible Lifeline's expense.

23. The foregoing acts of Defendant have caused Flexible Lifeline irreparable harm. Unless enjoined, Defendant's acts as alleged herein will continue to cause Flexible Lifeline irreparable harm, loss and injury.

**COUNT IV
COMMON-LAW TRADEMARK INFRINGEMENT**

24. Flexible Lifeline repeats and realleges the allegations contained in Paragraphs 1 through 23 as if fully set forth herein.

25. The acts of Defendant above are likely to deceive and/or cause confusion of the public and constitute trademark infringement in violation of the common laws of the State of Texas.

26. On information and belief, Defendant's acts have been committed and are being committed with the deliberate purpose and intent of appropriating and trading upon Flexible Lifeline's goodwill and reputation.

27. As a result of the foregoing acts of Defendant, Flexible Lifeline has suffered substantial damages and Defendant has acquired profits at Flexible Lifeline's expense.

28. The foregoing acts of Defendant have caused Flexible Lifeline irreparable harm. Unless enjoined, Defendant's acts as alleged herein will continue to cause Flexible Lifeline irreparable harm, loss and injury.

**COUNT V
COMMON-LAW UNFAIR COMPETITION**

29. Flexible Lifeline repeats and realleges the allegations contained in Paragraphs 1 through 28 as if fully set forth herein.

30. The acts of Defendant above are likely to deceive and/or cause confusion of the public and constitute unfair competition in violation of the common laws of the State of Texas.

31. On information and belief, Defendant's acts have been committed and are being committed with the deliberate purpose and intent of appropriating and trading upon Flexible Lifeline's goodwill and reputation.

32. As a result of the foregoing acts of Defendant, Flexible Lifeline has suffered substantial damages and Defendant has acquired profits at Flexible Lifeline's expense.

33. The foregoing acts of Defendant have caused Flexible Lifeline irreparable harm. Unless enjoined, Defendant's acts as alleged herein will continue to cause Flexible Lifeline irreparable harm, loss and injury.

JURY DEMAND

34. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff Flexible Lifeline Systems prays for a judgment that:

- (a) Flexible Lifeline has not infringed the '904 Patent, either literally or under the Doctrine of Equivalents;
- (b) Flexible Lifeline has not infringed the '023 Patent, either literally or under the Doctrine of Equivalents;
- (c) Defendant has unfairly competed with and infringed Flexible Lifeline's "FLEXIBLE LIFELINE SYSTEMS" mark pursuant to 15 U.S.C. § 1125(a);
- (d) The acts of Defendant constitute willful infringement pursuant to 15 U.S.C. § 1125(a);
- (e) This case is exceptional pursuant to 15 U.S.C. § 1117;
- (f) Defendant be ordered to pay Flexible Lifeline its actual damages and any profits for violations of Flexible Lifeline's rights under 15 U.S.C. § 1125(a), and that those damages be trebled as provided by 15 U.S.C. § 1117(b);
- (g) The acts of Defendant constitute unfair competition pursuant to the common law of the State of Texas;

- (h) The acts of Defendant constitute willful unfair competition pursuant to the common law of the State of Texas;
- (1) Defendant be ordered to pay Flexible Lifeline its actual damages and any profits for violations of Flexible Lifeline's rights under the common law of the State of Texas resulting from unfair competition;
- (i) The acts of Defendant constitute trademark infringement pursuant to the common law of the State of Texas;
- (j) The acts of Defendant constitute willful trademark infringement pursuant to the common law of the State of Texas;
- (k) Defendant be ordered to pay Flexible Lifeline its actual damages, any costs for corrective advertising, and any profits for violations of Flexible Lifeline's rights under the common law of the State of Texas resulting from Defendant's trademark infringement;
- (l) Defendant, its agents, servants, employees, associates, and attorneys, and all persons acting by, through, or in active concert with any of them be temporarily, preliminarily and permanently enjoined from:
 - (1) Using the "FLEXIBLE LIFELINE SYSTEMS" mark or any mark confusingly similar thereto;
 - (2) Using any mark, or committing any other act, which falsely represents or which has the effect of falsely representing that the goods or services of Defendant are licensed, authorized by, or in any way associated with Plaintiff, unless they authorized to do so;
 - (3) Otherwise infringing Plaintiff's mark or trade name; and

- (4) Otherwise unfairly competing with Plaintiff;
- (m) Defendant be ordered to account to Plaintiff for all gains, profits and advantages derived from Defendant's wrongful acts;
- (n) Awarding Flexible Lifeline its costs and attorneys' fees; and
- (o) Granting Flexible Lifeline all other relief that the Court deems just.

Respectfully submitted,

BAKER & MCKENZIE LLP

By _____

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