

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MICHAEL L. MCGINLEY  
4504 W. 65<sup>th</sup> Street  
Prairie Village, KS 66208,

and

S.C. PRODUCTS, INC.  
4010 Washington, Ste. 201  
Kansas City, MO 64111,

Plaintiffs,

vs.

RAWLINGS SPORTING GOODS  
COMPANY, INC.,  
[Serve: CT Corporation System  
120 South Central Ave.  
Clayton, MO 63105],

and

K2, INC.,  
[Serve: CT Corporation System  
818 West 7<sup>th</sup> Street  
Los Angeles, CA 90017]

and

VOLUME SERVICES, INC. d/b/a  
"CENTERPLATE"  
[Serve: CT Corporation System  
120 South Central Ave.  
Clayton, MO 63105],

Defendants.

Case No. 05-1005-CV-W-GAF

**COMPLAINT**

Plaintiffs Michael L. McGinley and S.C. Products, Inc. state the following for their complaint in this action:

1. Plaintiff Michael L. McGinley (“McGinley”) is an individual residing in Prairie Village, Kansas.

2. Plaintiff S.C. Products, Inc. (“SCP”) is a Missouri corporation with its principal place of business in Kansas City, Missouri. SCP is in good standing with the Missouri Secretary of State.

3. Defendant Rawlings Sporting Goods Company, Inc. (“Rawlings”) is a Delaware corporation with its headquarters or principal place of business in Carlsbad, San Diego County, California.

4. Rawlings has a continuous and systematic presence within and contacts with the state of Missouri and is registered to do business in the state of Missouri. Rawlings may be served with process by serving its registered agent, CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

5. Defendant K2, Inc. (“K2”) is a Delaware corporation with its headquarters or principal place of business in Carlsbad, San Diego County, California.

6. K2 has a continuous and systematic presence in and/or contacts with the state of Missouri and is itself, and/or through one or more duly authorized agents and/or divisions, transacting business within Missouri and/or entering into contracts with Missouri residents by supplying and selling a variety of recreational and sports-related consumer products, including the infringing baseball pitching trainer product(s) described below, through Rawlings, Volume Services, Inc., and numerous Missouri residents and businesses. K-2 may be served with process by serving its registered agent, CT Corporation System, 818 West 7<sup>th</sup> Street, Los Angeles, CA 90017.

7. Defendant Volume Services, Inc. d/b/a “Centerplate” (“VSI”) is a Delaware

corporation with its headquarters or principal place of business in Spartanburg County, South Carolina.

8. VSI has a continuous and systematic presence within and contacts with the state of Missouri and is registered to do business in the state of Missouri. VSI may be served with process by serving its registered agent, CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

9. The Court has original and exclusive jurisdiction over the subject matter of this lawsuit under 28 U.S.C. § 1338 in that Plaintiffs' claims arise under the Patent Laws of the United States, specifically 35 U.S.C. §§ 1 et seq.

10. Venue in this judicial district is appropriate pursuant to 28 U.S.C. §§ 1400(b) and 1391(c) since Defendants, and each of them, have committed acts of infringement and/or are subject to personal jurisdiction in this judicial district for the reasons more fully set forth in this complaint.

11. On April 18, 1995, the United States Patent Office duly and legally issued United States Letters Patent No. 5,407,193 (the "'193 Patent") to McGinley for an invention in a baseball pitching training device.

12. McGinley is, and has been continuously since April 18, 1995, the owner of the '193 Patent.

13. SCP holds, and at all relevant times has held, an exclusive license to sell the inventions set out in the '193 Patent.

14. Since approximately May 1998, SCP has marketed and sold a commercial embodiment of an invention set out in the '193 Patent known as the *Roger Clemens' Pitching Trainer*.

15. Defendants, and each of them, have infringed the '193 Patent, specifically claims 1,

2, 6 and 7 thereof, by importing, making, using, offering to sell and/or selling one or more baseball pitching training devices that embody an invention set out in the '193 Patent including, without limitation, a baseball pitching training device labeled the "Ball-Pitch It," which Major League Baseball endorses.

16. The United States Court of Appeals, Federal Circuit, determined in *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 60 U.S.P.Q. 1001 (Fed. Cir. 2001) that the '193 Patent was not invalid as obvious.

17. The United States Court of Appeals, Federal Circuit, determined in *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 60 U.S.P.Q. 1001 (Fed. Cir. 2001) that finger-shaped marks like those on the baseball pitching training device(s) Defendants imported, made, used, offered to sell and/or sold were structural equivalents of the egg-shaped indicia disclosed in the '193 Patent.

18. Defendants, and each of them, had notice and actual knowledge of the '193 Patent and of the *Roger Clemens' Pitching Trainer* and, despite such notice and actual knowledge, imported, made, used, offered to sell and/or sold the baseball pitching training device(s) identified above.

19. The infringement committed by Defendants, and each of them, was and continues to be deliberate and willful.

20. As a result of the infringement committed by Defendants, and each of them, Plaintiffs sustained damages in amounts that have yet to be determined, but which include, without limitation, lost profits and/or other compensation due Plaintiffs as damages a matter of federal law. Plaintiffs further believe that they will continue to sustain damages unless Defendants are preliminarily and permanently enjoined from further infringing upon claims 1, 2, 6 and 7 of the '193

Patent.

WHEREFORE Plaintiffs respectfully pray that the Court enter a judgment jointly and severally against Defendants:

(a) Declaring that the '193 Patent is not invalid and that Defendants have infringed claims 1, 2, 6 and 7 thereof;

(b) Preliminarily and permanently enjoining Defendants from further infringing claims 1, 2, 6 and 7 of the '193 Patent;

(c) Requiring Defendants, at their expense, to provide an accounting of all infringing acts and awarding Plaintiffs such damages as are necessary to compensate them for the infringement of the '193 Patent, including interest, and which is in no event should be less than a reasonable royalty for the use made of the patented invention;

(d) Awarding Plaintiffs enhanced damages to the maximum extent allowed by law based on Defendants' conduct, including the deliberate and willful infringements;

(e) Awarding Plaintiffs reasonable attorneys' fees and litigation expenses, together with costs and such other and further relief as the Court deems just.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demand a trial by jury in the above-captioned civil action on all issues so triable.

Dated: October 21, 2005

Respectfully submitted,

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

By     /s/ Kip D. Richards      
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ATTORNEYS FOR PLAINTIFFS