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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Othell Bickerstaff, and Shrink Wrap
International, Inc., a Pennsylvania
corporation,

Plaintiffs,

vs.

Dr. Shrink, Inc., a Michigan
corporation, and Michael Stenberg,
individually, jointly and severally,

Defendants.

JUDGE : Woods, George E.
DECK : S. Division Civil Deck
DATE : 06/15/2004 @ 08:11:02
CASE NUMBER : 2:04CV72206
CMP OTHELL BICHERSTAFF ETAL VS
DR SHRINK, INC ET AL (LE)

MAGISTRATE JUDGE CAPEL,

THE WEINTRAUB GROUP, PLC
By: Arnold S. Weintraub (P22127)
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(248) 865-9430

NEDELMAN PAWLAK, PLLC
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COMPLAINT

Othell Bickerstaff, and Shrink Wrap International, Inc. ("Plaintiffs"), through their attorneys, The Weintraub Group, PLC and Nedelman Pawlak, PLLC, state as follows for their Complaint against Dr. Shrink, Inc., and Michael Stenberg, jointly and severally:

Parties, Jurisdiction, Venue and Standing

1. Othell Bickerstaff (sometimes referred to as "Bickerstaff") is an individual who resides within the Eastern District of Michigan.

2. Shrink Wrap International, Inc. (sometimes referred to as "Shrink Wrap") is a Michigan corporation having a principal place of business at 25188 Telegraph Rd., Brownstown, MI 48134.

3. Dr. Shrink, Inc. ("DSI") is a Michigan corporation that transacts business in and that may be found in this District.

4. Defendant Michael Stenberg ("Stenberg") is the President of DSI and an individual who transacts business in and who may be found in this District.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 USC §1338, and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

6. Venue is proper pursuant to 28 U.S.C. §1400(a).

Common Factual Allegations

7. United States Letters Patent No. 5,081,911 (the "911 Patent") was issued on January 21, 1992 for a "Vent For Shrink Film Packaging", as described therein. (See **Exhibit "1"**)

8. The '911 Patent was duly and validly issued to James A. Talbot, as inventor, which patent was duly assigned to Protect-A-Boat of New Jersey, Inc.

9. Plaintiff Bickerstaff subsequently acquired and is the owner of the '911 Patent.

10. Plaintiff Shrink Wrap acquired an oral license for the '911 Patent and is now manufacturing vents pursuant to the '911 Patent.

11. In June, 1997, Plaintiff Bickerstaff brought suit against Defendants in the United States District Court for the Western District of Michigan, Case No. 97-CV-528, entitled Bickerstaff v Stenberg, et al, (the "Prior Action") alleging, inter alia, that the Defendants were selling a louvered vent that infringed the '911 Patent.

12. On or about September 25, 2000, the parties to that action entered into a Settlement, Release and Discharge Agreement (the "Agreement"), a copy of which is attached hereto as **Exhibit "2"**.

13. Paragraph 5 of the Agreement provides as follows:

Defendants shall have until June 30, 2001 during which to sell off existing inventory (and any re-orders as provided for in paragraph 6 below) of the Accused Vents. After June 30, 2001, Defendants shall cease all sales and shipping of the Accused Vents, and shall not distribute new literature depicting the Accused Vent.

14. The "Accused Vent" is defined in the Agreement as the vent sold by Dr Shrink, Inc. that allegedly violated the '911 Patent, which is a louvered vent with an adhesive distributed about its perimeter.

15. Plaintiffs have recently learned that one or both of the Defendants have, in violation of paragraph 5 of the Agreement, initiated an advertising campaign in which they have distributed new literature depicting the Accused Vent by way of an internet web site, www.dr-shrink.com, that displays an illustration of the Accused Vent being offered for sale. (See **Exhibit "3"**, copy of web page showing infringing vent and 2003 copyright notice.)

16. The website then directs the visitor to a different air vent and other shrink-wrap accessories that Defendant DSI offers for sale.

17. The website is an "active" site at which the visitor can select and place orders for the various shrink wrap accessories sold by Defendant DSI.

18. Plaintiffs have previously requested that Defendants remove the infringing image of the Accused Vent from their web site and cease offering it for sale but Defendants have neglected or refused to do so. (See **Exhibit "4"**)

COUNT I

VIOLATIONS OF 15 U.S.C. §1125(a)(1)(A)

19. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

20. Since being introduced to the market, the vents covered by the '911 Patent have enjoyed success and have been recognized by the purchasing public as having been offered and sold by the Plaintiff Shrink Wrap to the market and have been publicized by Plaintiffs through various forms of advertising.

21. Defendants, in depicting the infringing Accused Vent on their web site as being for sale, are engaged in activities using a symbol or image that is likely to cause confusion, mistake, or deceived the public as to the affiliation, connection, or association of Defendants with the invention covered by the '911 Patent.

22. Defendants, in depicting the infringing Accused Vent on their web site as being for sale, have made (and are continuing to make) one or more misleading descriptions of fact likely to cause confusion, or to cause mistake, or to deceive the purchasing public into believing that Defendants' louvered vent is licensed from or otherwise sanctioned by Plaintiff Bickerstaff.

23. Defendants, in depicting the infringing Accused Vent on their web site as being for sale, have made (and are continuing to make) one or more false and/or misleading representations of fact likely to cause confusion, or to cause mistake, or to deceive the purchasing public into believing that Defendants' louvered vent is licensed from or otherwise sanctioned by Plaintiff Bickerstaff.

24. Each and every one of the above-referenced acts of Defendants occurred in the course of commerce, was deliberate and was made in blatant disregard of Plaintiffs' business property rights.

25. Each and every one of the above-referenced acts of Defendants have proximately resulted in, and will continue to result in, irreparable harm and damage to the Plaintiffs that cannot be adequately compensated by an award of monetary damages, alone.

WHEREFORE, Plaintiffs pray that this Court enter its Order:

- A. Granting preliminary injunctive relief in favor of Plaintiffs and against Defendants and permanently enjoining Defendants from any further commercial use or promotion of the Accused Vent, or any colorable imitation thereof.
- B. Ordering an accounting of all monies received resulting from their use of the image depicting the Accused Vent in advertising on Defendants' website and elsewhere;

- C. Granting judgment in favor of Plaintiffs and against Defendants, jointly and severally, in such amount of damages, including interest, as may be proven;
- D. Awarding in favor of Plaintiffs and against Defendants, jointly and severally, exemplary damages based upon Defendant's intentional, unauthorized use and imitation of Plaintiffs' custom and original design and blatant disregard for the business property rights of Plaintiffs;
- E. Awarding in favor of Plaintiffs and against Defendants, jointly and severally, those costs, including reasonable attorneys fees, incurred in bringing this action as this Court may deem appropriate; and
- F. Awarding such other relief as may be just and equitable under the circumstances.

COUNT II

**VIOLATIONS OF 15 U.S.C. §1125(a)(1)(B)
"Bait and Switch"**

26. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

27. Since being introduced to the market, vents covered by the '911 Patent have enjoyed success and have been recognized by the purchasing public as having been offered and sold by the Plaintiff Shrink Wrap to the market and have been publicized by Plaintiffs through various forms of advertising.

28. Defendants, in depicting the infringing Accused Vent on their web site and simultaneously directing the visitor to a different vent being offered for sale, have used (and are continuing to use) a symbol or image that is likely to deceive the purchasing public as to the affiliation with Plaintiffs, namely that Defendants are authorized to sell vents covered by the '911 Patent.

29. Defendants, in depicting the infringing Accused Vent on the web site and simultaneously directing the visitor to a different vent being offered for sale, have by false or misleading description of fact, misrepresented the nature, characteristics, and qualities of the vents actually being sold by Defendants.

30. Defendants, in depicting the infringing Accused Vent on the web site and simultaneously directing the visitor to a different vent being offered for sale, have by false or misleading representation of fact, misrepresented the nature, characteristics and qualities of the vents actually being sold by Defendants.

31. All of the above-referenced acts of Defendants, including false designations, false or misleading descriptions of fact, and false or misleading representations of fact, occurred in the course of commerce, were deliberate and were made in blatant disregard of Plaintiffs' business property rights.

32. All of the above-referenced acts of Defendants have proximately resulted in, and will continue to result in, irreparable harm and damage to the Plaintiffs that cannot be adequately compensated by an award of monetary damages, alone.

WHEREFORE, Plaintiff prays that this Court enter its Order:

- A. Granting preliminary injunctive relief in favor of Plaintiffs and against Defendants and permanently enjoining Defendants from any further commercial use or promotion of the Accused Vent, or any colorable imitation thereof;
- B. Ordering an accounting of all monies received resulting from their use of the image depicting the Accused Vent in advertising on Defendants' website and elsewhere being used to sell a different vent;
- C. Granting judgment in favor of Plaintiffs and against Defendants, jointly and severally, in such amount of damages as may be proven;
- D. Awarding in favor of Plaintiffs and against Defendants, jointly and severally, exemplary damages based upon Defendants' deliberate unauthorized use and imitation of Plaintiffs' custom and original design and blatant disregard for the business property rights of Plaintiff.
- E. Awarding in favor of Plaintiff and against Defendants, jointly and severally, those costs, including reasonable attorneys fees, incurred in bringing this action as this Court may deem appropriate; and
- F. Awarding such other relief as may be just and equitable under the circumstances.

COUNT III
BREACH OF AGREEMENT

33. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

34. Plaintiff Bickerstaff and both Defendants were parties to the Prior Action and entered into a Settlement, Release and Discharge Agreement, dated September 2000.

35. In paragraph 5 of the Agreement, Defendants promised that, "after June 30, 2001 they shall cease all sales and shipping of the Accused Vents, and shall not distribute new literature depicting the Accused Vent."

36. Upon information and belief, Defendants, in violation and breach of ¶5 of the Agreement, have after June 30, 2001 distributed new literature depicting the Accused Vent and continued to offer the Accused Vent for sale, namely, by continuing to represent on its aforementioned website the Accused Vent even though Defendants updated their website in 2003.

37. Plaintiff Bickerstaff has fully performed his obligations under the Agreement.

38. Defendants' breach of the Agreement has proximately resulted in current and future damages to Plaintiff Bickerstaff.

WHEREFORE, Plaintiff Bickerstaff requests entry of an appropriate order:

- A. Granting judgment in favor of Plaintiff and against Defendants, jointly and severally, in such amount of damages as may be proven; and
- B. Awarding in favor of Plaintiff and against Defendants, jointly and severally, exemplary damages based upon Defendants' intentional, and deliberate unauthorized use and imitation of Plaintiff's custom and original design and blatant disregard for the business property rights of Plaintiff, in breach of the Settlement Agreement.

COUNT IV
PATENT INFRINGEMENT
VIOLATIONS OF 35 U.S.C. §271

39. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

40. Defendants have been and still are willfully infringing the '911 Patent in violation of 35 USC §271 by offering for sale, and using, within this judicial district and elsewhere, their louvered vent which infringes the claims of the '911 Patent.

41. The claims of the patent in the aforementioned civil action were construed by the Federal Circuit in a manner such that the Defendants' louvered vent then infringed on the claims of the '911 Patent and continues to do so.

42. On information and belief, Defendants have been and will continue to offer for sale an infringing device in violation of 35 USC §271 unless and until they are enjoined from doing so by this Court.

43. Plaintiffs have suffered damages in an amount that cannot yet be fully ascertained.

44. Plaintiffs have been irreparably harmed by Defendants' infringing activities and will continue to be harmed unless Defendants are enjoined from infringing the '911 Patent.

45. The allegations in the above paragraphs are likely to have evidentiary support after a reasonable opportunity for investigation or discovery.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter an Order finding the '911 Patent to be valid and infringed;
- B. Enter an Order enjoining Defendants from further infringing Plaintiffs' '911 Patent;
- C. Award Plaintiffs damages against Defendants, jointly and severally, in an amount to adequately compensate Plaintiff for the infringement of Plaintiff's '911 Patent, which amount shall be trebled pursuant to 28 USC §284;

- D. Enter an Order finding the Defendants to have willfully infringed the '911 Patent;
- E. Find the case to be exceptional and award attorney fees in favor of Plaintiff pursuant to 28 USC §285;
- F. Award Plaintiff interest and costs; and
- G. Award Plaintiff such other relief as is fair and equitable.

COUNT V
UNTRUE, DECEPTIVE OR MISLEADING ADVERTISING
MCL 445.351, et seq.

44. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

45. Defendants are depicting the Accused Vent by way of an internet web site, www.dr-shrink.com, that displays an illustration of the Accused Vent.

46. To the extent that the Accused Vent is not itself being sold, the visitor to the website is being directed to a different air vent that Defendant DSI offers for sale.

47. Defendants, in depicting on its internet site an image of the Accused Vent with the intent not to sell the Accused Vent but instead a different air vent, are disseminating, circulating or placing before the public an advertisement that is untrue, deceptive or misleading in violation of MCL 445.356.

48. Plaintiffs have been damaged as a direct and proximate result of Defendants' violation of the above statute.

49. Plaintiffs are entitled to damages as provided for by MCL 445.360(2).

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a declaratory judgment finding Defendants' practice is a violation of the Act;
- B. Enjoin Defendants from further violation of the Act; and
- C. Award Plaintiffs damages in the amount of \$250.00 per day for each day on which violations of the Act are found to have occurred.

COUNT VI
ACCOUNTING

50. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

51. Defendants are depicting the Accused Vent by way of an internet web site, www.dr-shrink.com, that displays an illustration of the Accused Vent.

52. However, to the extent that the Accused Vent is not itself being sold, the website is directing the visitor to a different air vent and other shrink-wrap accessories that Defendant DSI offers for sale.

53. On information and belief, Defendants are thus using their image of the louvered vent covered by the '911 Patent to generate sales of shrink-wrap accessories in an unknown dollar amount.

54. Plaintiffs cannot even with liberal discovery reasonably be expected to ascertain and determine the extent of business conducted by Defendants in this manner.

55. Plaintiffs do not know what amounts, if any may be revealed by such an accounting as being owed to Plaintiffs and, therefore, make no specific demand for monetary relief at this time.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a judgment compelling Defendants to prepare, at their sole expense, a true and accurate accounting of all sales generated from shrink-wrap accessories advertised on its website in connection with their use of the image of the louvered vent that is covered by the '911 Patent; and
- B. Award Plaintiffs such other relief as is fair and equitable under the circumstances.

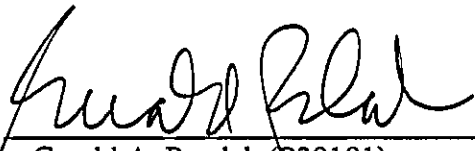
Respectfully submitted,

THE WEINTRAUB GROUP, P.L.C.

By: 
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NEDELMAN PAWLAK, PLLC

By: 
Gerald A. Pawlak (P39181)

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32000 Northwestern Highway, Suite 240
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Telephone: (248) 855-8888

Dated: June 11, 2004

JURY DEMAND

Plaintiffs Othel Bickerstaff and Shrink Wrap International, Inc., through their attorneys, The Weintraub Group, PLC and Nedelman Pawlak, PLLC, hereby demand a trial by jury on all issues to which they are so entitled.

Respectfully submitted,

THE WEINTRAUB GROUP, P.L.C.

By:  _____

Arnold S. Weintraub (P22127)

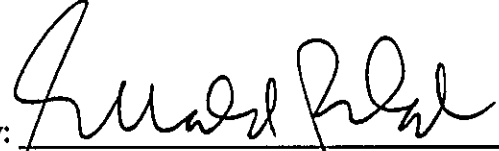
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NEDELMAN PAWLAK, PLLC

By:  _____

Gerald A. Pawlak (P39181)

Co-counsel for Plaintiffs

32000 Northwestern Highway, Suite 240

Farmington Hills, Michigan 48334

Telephone: (248) 855-8888

Dated: June 11, 2004

VERIFICATION

I, Othell Bickerstaff, state that I am the named Plaintiff in the above action. I further state that I have reviewed the factual allegations contained in the Verified Complaint and declare that they are true to the best of my present information, knowledge and belief.

By: *Othell Bickerstaff*
Othell Bickerstaff

Subscribed and sworn to before me this
11th day of June, 2004.

Lora Jean David
Notary Public, Wayne County
My commission expires: 6/27/06

LORA JEAN DAVID
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Jun 27, 2006