FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 21 2004
DAVID J. MALAND, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DISPLAYS BY MARTIN PAUL, INC. - CREATIVE CENTER, INC., doing business as DISPLAYS BY MARTIN PAUL CREATIVE CENTER, INC.,	§	**Civil Action**
Plaintiff,	§	**No.** 4:04CV132
v.	§	
DISPLAY INDUSTRIES, LLC,	§	**Jury Trial Demanded**
Defendant.	§	

COMPLAINT

Plaintiff alleges and states the following for its Complaint against Defendant:

Parties

1. Displays by Martin Paul, Inc. - Creative Center, Inc., doing business as Displays by Martin Paul Creative Center, Inc. ("Plaintiff") is a Texas corporation having its principal place of business at 9307 Interstate 35, Denton, Texas 76202.

2. On information and belief, Display Industries, LLC ("Defendant") is a Georgia limited liability corporation having its principal place of business at 5850 Peachtree Industrial Boulevard, Norcross, Georgia 30071.

Jurisdiction and Venue

3. This is an action for patent infringement that arises under the patent laws of the United States, Title 35, United States Code.

4. This Court has jurisdiction of this action under 28 U.S.C. § 1338(a) (actions arising under any Act of Congress relating to patents).

5. On information and belief, Defendant regularly and continuously conducts business in the State of Texas and in this judicial district, has committed acts of infringement in this district, and is subject to the personal jurisdiction of this Court.

6. On information and belief, Defendant has sufficient contacts with this district to subject it to personal jurisdiction in this district.

7. Venue is proper in this district under 28 U.S.C. § 1391(e) and (c).

Background

8. Plaintiff is an innovative leader in the display shelf field. Plaintiff develops, manufactures and sells a wide range of point-of-purchase display shelves, which are used to display and sell a variety of products, such as, for example, soft drinks and candy bars.

9. Plaintiff's display shelves have been commercially successful for many years and are used in thousands of convenience stores, supermarkets, gas stations and other retail outlets throughout the United States.

10. On information and belief, Defendant has started manufacturing, and selling and distributing throughout the United States, a display shelf for selling and distributing a product known as FLAVOR HIT (the "Flavor Hit Shelf"). On information and belief, FLAVOR HIT, which is a colored, flavoring product for use in Sprite soft drinks, is being rolled out nationally by The Coca-Cola Company. A true and correct copy of a photograph of the Flavor Hit Shelf is attached hereto and made a part hereof as Exhibit A.

11. On information and belief, the Flavor Hit Shelf is being sold and distributed by Defendant to all of the Coca-Cola distributors throughout the United States.

Infringement of U. S. Patent No. 5,913,433

12. On June 22, 1999, U.S. Patent No. 5,913,433 (the "'433 Patent"), entitled *Display Shelf for Elongated Products*, was duly and legally issued to Paul Belokin, Martin P. Belokin and Norman P. Belokin. A true and correct copy of the '433 Patent is attached hereto as Exhibit B.

13. Plaintiff is the owner to all right, title and interest in and to the '433 Patent, and has the right to bring this action, to enforce the patent and recover for infringement thereof.

14. Upon information and belief, Defendant is infringing, contributing to infringement and inducing infringement of the '433 Patent by making, offering for sale, selling, distributing or causing others to use, in this judicial district and elsewhere in the United States, the Flavor Hit Shelf, which is covered by and within the scope of one or more of the claims of the '433 Patent.

15. Plaintiff has for many years notified and advised the industry, as well as its customers and prospective customers, that its display shelves are patented. On or about November 2003, Plaintiff began marking its products covered by the '433 Patent with the number of the patent in accordance with 35 U.S.C. § 287(a).

16. Upon information and belief, Defendant has willfully infringed the '433 Patent.

17. As a direct and proximate result of Defendant's infringement of the '433 Patent, Plaintiff has suffered substantial harm and damages in amounts which are presently undetermined.

18. Defendant's infringement of the '433 Patent has caused Plaintiff irreparable harm and injury for which it has no adequate remedy at law. As a result of Defendant's infringement of the '433 Patent, Plaintiff will continue to suffer irreparable harm and injury for which it has no adequate remedy at law, unless a temporary restraining order is issued and, upon hearing and

final trial, preliminary and permanent injunctions are issued enjoining and restraining Defendant from infringing the '433 Patent.

WHEREFORE, Plaintiff prays for:

A. entry of a temporary restraining order immediately enjoining and restraining Defendant, its officers, agents, servants , employees, distributors and attorneys, and all other persons in active concert or participation with them or any of them, from manufacturing, using, selling, offering for sale, distributing, advertising or promoting in any manner the Flavor Hit Shelf and from otherwise infringing or contributorily infringing, or inducing infringement of, any of the claims of the '433 Patent;

B. after notice and hearing, entry of a preliminary injunction enjoining and restraining Defendant, its officers, agents, servants , employees, distributors and attorneys, and all other persons in active concert or participation with them or any of them, from manufacturing, using, selling, offering for sale, distributing, advertising or promoting in any manner the Flavor Hit Shelf and from otherwise infringing or contributorily infringing, or inducing infringement of, any of the claims of the '433 Patent;

C. upon final hearing, entry of a permanent injunction enjoining and restraining Defendant, its officers, agents, servants , employees, distributors and attorneys, and all other persons in active concert or participation with them or any of them, from manufacturing, using, selling, offering for sale, distributing, advertising or promoting in any manner the Flavor Hit Shelf and from otherwise infringing or contributorily infringing, or inducing infringement of, any of the claims of the '433 Patent;

D. an award of damages to compensate Plaintiff for Defendant's infringement of the '433 Patent, and for such damages to be trebled pursuant to 35 U.S.C. § 284 based on Defendant's deliberate and willful infringement;

E. judgment that this case is exceptional, and an award of Plaintiff's attorney fees incurred herein, pursuant to 35 U.S.C. § 285;

F. an award of all costs incurred herein, and prejudgment and post-judgment interest on any damages or any other monetary awards as permitted by law; and,

G. such other and further relief, both general and special, at law or in equity, as the Court deems just and proper.

Demand for Jury Trial

Plaintiff, Displays by Martin Paul, Inc. - Creative Center, Inc., doing business as Displays by Martin Paul Creative Center, Inc., hereby demands trial by jury on all issues so triable .

Respectfully submitted,

By: John Pinkerton by R. Sanders by permission

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EXHIBIT "A"

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FLAVOR HIT