

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FIELDTURF INTERNATIONAL, INC., a
Florida corporation; and FIELDTURF INC., a
Canadian company,

Plaintiffs,

v.

KASH CONTRACTING INC., d/b/a
PREMIER FIELD DEVELOPMENT INC., a
Washington Company, and BETHEL SCHOOL
DISTRICT,

Defendants.

CASE NO.

COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR
JURY TRIAL

The Plaintiffs, FieldTurf International, Inc., and FieldTurf Inc. (sometimes collectively referred to herein as "FieldTurf"), for their complaint against Defendants Kash Contracting Inc. d/b/a Premier Field Development Inc. (sometimes referred to herein as "Premier") and Bethel School District (sometimes referred to herein as "Bethel"), state as follows:

PARTIES AND NATURE OF ACTION

1. FieldTurf International, Inc., is a Florida corporation, with its principal place of business in Dalton, Georgia. FieldTurf International, Inc., manufactures, sells and installs synthetic turf products throughout the United States.

4. FieldTurf International, Inc., is the exclusive licensee from FieldTurf Inc. under the '412 patent for the right to manufacture, sell, offer to sell and install synthetic turf products in the United States.

6. Bethel School District is, on information and belief, a school district organized under the laws of Washington, having a principal place of business at 516 176th Street East, Spanaway, Washington 98387.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal question), 28 U.S.C. § 1332 and, 28 U.S.C. § 1338(a) (arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*).

8. Venue is proper in this Court under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b).

HISTORY OF SYNTHETIC GRASS

9. Synthetic grass surfaces, also known generically as “artificial turf,” are widely utilized on playing fields for a variety of sporting activities, including soccer and football. Synthetic grass surfaces are designed to duplicate and improve upon the properties of natural grass surfaces while providing better durability, reducing the maintenance costs, and allowing for more intensive use of the playing field.

10. The first synthetic grass surfaces were installed in university and professional stadiums in 1966. Since these early installations, it has become clear that some types of synthetic surfaces may result in injuries to players. For example, these surfaces can be so hard that they do not provide enough shock absorbency; the weave of the fibers over time may cause a player’s cleats to lock in the synthetic surface and cause a severe knee or ankle injury; and/or, abrasiveness of the fibers may cause skin burns. Because of these problems, owners and operators of sports fields have sought safer synthetic grass surfaces. In response, the industry, and more particularly FieldTurf, has focused on developing synthetic surfaces that are more like natural grass in that the blades are longer and are held up by an infill material that includes resilient granules.

FIELDTURF’S SYNTHETIC GRASS

11. After extensive research and development, FieldTurf’s predecessor-in-interest began offering a synthetic grass surface in 1993. The current FieldTurf product provides a resilient and forgiving playing surface due to its many innovations, including its ribbon row design and layered sand and rubber infill system (“the FieldTurf product”). Many of these innovations are covered by patents. The artificial blades of grass are attached to a woven backing layer and protrude upward. The blades are typically supported by a three layer infill system consisting of, for example, a bottom layer of sand, a middle layer comprising a mixture of sand and rubber particles, and a top layer of rubber particles. The sand and rubber used in the

1 infill system are premium materials, including rounded silica sand and cryogenically ground
2 rubber. By using these materials, in these formations, the FieldTurf product is safer than the
3 earlier types of synthetic surfaces, reacts more like natural grass, and is playable even in
4 extremely wet conditions.

5 12. The FieldTurf product has been very successful in the marketplace. Upon
6 information and belief, once most players, owners, and others experience playing on the
7 FieldTurf product, they believe that it is superior to other synthetic turf products.

8 13. Major customers of the FieldTurf product include National Football League
9 teams, such as the Oakland Raiders, Pittsburgh Steelers, and New York Jets, and colleges, such
10 as the University of Washington, University of Nebraska, San Diego State University, to name a
11 few.

12 14. One particular FieldTurf patent, the '412 patent, discloses and claims, among
13 other things, (1) a synthetic grass surface comprising a flexible backing member; (2) parallel
14 rows of synthetic ribbons representing blades of grass that project upwardly from the backing
15 member, (3) rows of ribbons spaced apart from each other; and (4) a relatively thick layer of
16 particulate material on the backing member supporting the ribbons in a relatively upright
17 position relative to the backing member. The relationship of the length of the ribbons and the
18 spacing between the rows is such that the length of the ribbons is at least twice the spacing, and
19 the particulate material (infill) has a thickness of substantially two-thirds of the length of the
20 ribbons.

21 **BETHEL DEVELOPED SPECIFICATIONS AND SOUGHT BIDS FOR**
22 **INSTALLATION OF AN ARTIFICIAL TURF SURFACE**

23 15. Sometime in early 2004, Bethel began the process of seeking bids for a new
24 artificial turf surface in connection with the renovation of its "Art Crate Field."
25

1 16. As a part of the process, Bethel had specifications prepared on its behalf
2 (hereinafter referred to as "Specifications"). These Specifications included specifications
3 associated with the synthetic turf system it was eliciting bids for. (A copy of the relevant portion
4 of the Specifications is attached as Exhibit B).

5 **PREMIER SUBMITS, AND BETHEL ACCEPTS, AN**
6 **INFRINGING BID**

7 17. Upon information and belief, Bethel accepted a bid, for a specified price, for the
8 sale and installation of a synthetic turf field made available by a company called Sportexe.

9 18. Upon information and belief, the Sportexe product offered to and accepted by
10 Bethel specified a synthetic turf system that will infringe at least claim 12 of the '412 patent.

11 19. Upon acceptance of the offer for the purchase of the Sportexe product, Bethel
12 entered into a formal contract with Premier, whereby Premier agreed to sell and install the
13 Sportexe product at Art Crate Field.

14 20. The contract between Bethel and Premier resulted in an infringing offer to sell a
15 product by Premier—a product covered by the '412 patent.

16 21. Inasmuch as Bethel was responsible for the development of the Specifications,
17 and inasmuch as it elicited an infringing offer to sell, Bethel's actions resulted in contributory
18 and/or inducing infringement of at least the '412 patent.

19 22. Upon learning of Bethel's and Premier's infringing activity, a letter notifying
20 Premier of the '412 patent was transmitted to it. (A copy of a letter from Jody Factor to Premier
21 Field Development dated July 16, 2004, is attached as Exhibit C).

22 23. Likewise, upon learning of Bethel's and Premier's infringing activity, a letter
23 notifying Bethel of the '412 patent was transmitted to it. (A copy of a letter from Jody Factor to
24 Bethel School District dated July 16, 2004, is attached as Exhibit D).

25. If the Sportex product is ultimately installed, both Bethel and Premier will commit further acts of infringement of at least the '412 patent through actual sales, installation and use of an infringing product.

COUNT I

Infringement of U.S. Patent No. 6,723,412

COUNT I

Infringement of U.S. Patent No. 6,723,412

26. FieldTurf repeats and incorporates by reference the allegations of paragraphs 1 through 23 above as if fully set forth herein.

27. Based at least on the actions set forth herein above, Premier has infringed the ‘412 patent, specifically by offering to sell an infringing product to Bethel in violation of 35 U.S.C. § 271.

28. Based at least on the actions set forth hereinabove, Bethel has infringed the ‘412 patent, specifically by acting as a contributory infringer and/or by inducing Premier to submit an infringing offer to sell a product covered by the ‘412 patent in violation of 35 U.S.C. § 271.

29. As a result of Premier's and Bethel's acts of infringement, FieldTurf has sustained and will continue to sustain economic damages. FieldTurf is entitled to recover its damages from Premier and Bethel pursuant to 35 U.S.C. § 284.

30. Notwithstanding the infringing offer for sale, any installation of the offered turf product will result in a further infringement of the '412 patent.

31. Since Premier and Bethel had actual knowledge of the '412 patent, and have chosen to disregard FieldTurf's patent rights, such further infringement will be willful, entitling FieldTurf to recover treble damages and attorney's fees pursuant to 35 U.S.C. §§ 284 and 285.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand a judgment in its favor and against the Defendants, Premier and Bethel, and request that this Court:

A. Order, adjudge and decree that the Defendants have infringed the '412 patent, and will further willfully infringe the '412 patent if the Sportex product is installed at Art Crate Field;

B. Issue a preliminary and permanent injunction prohibiting Defendants and all of their respective representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with them, from infringing any claim of the '412 patent, including, but not limited to, further infringement by offering to sell, selling, installing, and/or directing the installation of any turf product that infringes any claim of the '412 patent, including, but not limited to, further infringement as a result of installation and use of the turf product at Art Crate Field;

C. Award damages for infringement of the '412 patent, including, but not limited to, FieldTurf's lost profits as a result of Premier's and Bethel's infringement;

D. Declare this case as exceptional within the meaning of 35 U.S.C. § 285 and award FieldTurf attorneys' fees, costs, and expenses that it incurs in prosecuting this action; and

E. Provide any further relief as this Court may deem equitable and proper.

JURY DEMAND

Plaintiffs demand trial by jury of all issues triable to a jury.

1 DATED this 28th day of July, 2004.

2 SUMMIT LAW GROUP PLLC

3
4 By 

Philip S. McCune, WSBA #21081
philm@summitlaw.com

6 And by:

Jody L. Factor

7 FACTOR & LAKE, LTD.

1327 W. Washington Blvd., Suite 5G/H

Chicago, IL 60607

(312) 226-1818 Telephone

(312) 226-1919 Facsimile

jfactor@factor-lake.com

Attorneys for Plaintiffs FieldTurf

International, Inc. and FieldTurf, Inc.