

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KWIKSET CORPORATION and	)	
NEWFREY LLC,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 10-064 (GMS)
v.	)	
	)	DEMAND FOR JURY TRIAL
SCHLAGE LOCK COMPANY LLC,	)	
	)	
Defendant.	)	

**SECOND AMENDED COMPLAINT**

Plaintiffs Kwikset Corporation and Newfrey LLC, for their second amended complaint against defendant Schlage Lock Company LLC, state the following:

**NATURE OF LAWSUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, and for false advertising under the Lanham Act, Title 15 of the United States Code, and corresponding state law.

**PARTIES**

2. Kwikset Corporation ("Kwikset") is a Delaware corporation with headquarters in Lake Forest, California. Kwikset manufactures and sells, among other products, an extensive line of door hardware including rekeyable locksets under the "SmartKey" trademark.

3. Newfrey LLC ("Newfrey") is a Delaware limited liability company with its principal place of business in Newark, Delaware.

4. Schlage Lock Company LLC ("Schlage") is a Delaware limited liability company having a principal place of business in Carmel, Indiana. Schlage's agent for service of process in this judicial district is The Corporation Trust Company, 1209 Orange Street, Wilmington,

Delaware 19801. Schlage sells a variety of lock and door hardware products throughout the United States including in this judicial district. Schlage's products include rekeyable door locks that infringe the '429, '431, and '036 patents, as described herein.

**JURISDICTION AND VENUE**

5. Newfrey is the owner of title to United States Patent No. 7,213,429 B2 titled "Rekeyable Lock Assembly," issued on May 8, 2007 (the "'429 patent," a copy of which is attached as Exhibit A to this second amended complaint), United States Patent No. 7,434,431 B2 titled "Keying System and Method," issued on October 14, 2008 (the "'431 patent," a copy of which is attached as Exhibit B to this second amended complaint), and United States Patent No. 7,878,036 B2 titled "Rekeyable Lock Cylinder," issued on February 1, 2011 (the "'036 patent," a copy of which is attached as Exhibit C to this second amended complaint).

6. Kwikset is an affiliate of Newfrey, and the sole licensee of the '429, '431 and '036 patents in the United States, except for sublicenses by Kwikset. Kwikset has sufficient exclusive rights in the '429, '431 and '036 patents to sue for infringement with the title holder, Newfrey.

7. Kwikset and Newfrey have standing to sue Schlage for infringement of the '429, '431 and '036 patents, and to recover damages for all infringement.

8. Kwikset, as seller of competing products, has been damaged and is likely to be damaged by Schlage's false advertising, and therefore has standing to sue under the Lanham Act.

9. This Court has exclusive jurisdiction over the subject matter of this complaint for patent infringement, pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court has jurisdiction over the Lanham Act claim pursuant to 27 U.S.C. §§ 1331 and 1338, and over the corresponding state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(b) and 1391(b). Schlage Lock Company LLC is a Delaware limited liability company that resides in this judicial district and does business in this district.

**PATENT INFRINGEMENT**

11. Kwikset and Newfrey reallege and incorporate herein the allegations contained in paragraphs 1-10 above.

12. Schlage has infringed the '429, '431 and '036 patents by committing at least the following acts of infringement in the United States: use, making and/or importing, sale and offer for sale of rekeyable lock products that are covered by one or more claims of the '429, '431 and '036 patents. The Schlage products that infringe the '429, '431 and '036 patents include at least the Schlage "SecureKey" line of products with rekeyable lock cylinders.

13. Schlage has also committed and, unless enjoined by this Court, will continue to commit acts throughout the United States, which constitute, with knowledge of the '429, '431 and '036 patents, knowing and intentional inducement of infringement of one or more of the claims of the '429, '431 and '036 patents by others (such as its customers, end-users and business partners) within the meaning of 35 U.S.C. § 271(b) through, among other things, its acts of making, using, marketing, distributing, providing, testing, configuring, promoting, soliciting business for, selling and/or offering to sell in the United States and importing into the United States the above-referenced products.

14. Schlage has also committed and, unless enjoined by this Court, will continue to commit acts throughout the United States, which constitute, with knowledge of the '429, '431 and '036 patents, contributory infringement by others such as customers, users and business partners, within the meaning of 35 U.S.C. § 271(c) through, among other things, its acts of making, using,

marketing, distributing, providing, testing, configuring, promoting, soliciting business for, selling and/or offering to sell in the United States and importing into the United States the above-referenced products.

15. Schlage's infringement has injured Kwikset and Newfrey, and they are entitled to recover damages adequate to compensate for such infringement, including lost profits, but in no event less than a reasonable royalty.

16. At least with respect to the '429 patent, Kwikset and Newfrey have satisfied the marking and notice requirements of 35 U.S.C. § 287.

17. Schlage's infringement will continue to injure Kwikset and Newfrey, unless and until this Court enters an injunction prohibiting further infringement by importation, manufacture, use, sale and/or offer for sale of door hardware products within the scope of the '429, '431 and '036 patents.

#### **FALSE ADVERTISING**

18. Kwikset realleges and incorporates herein the allegations contained in paragraphs 1-17 above.

19. This claim is for false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125, and under the applicable laws of the states in which Schlage has advertised the SecureKey products, including at least Wis. Stat. § 100.18, and the Delaware Deceptive Trade Practices Act, Del. Code Title 6 § 2531 *et seq.*

20. Schlage, in commercial advertising or promotion for the SecureKey rekeyable locks, has made false and misleading descriptions of its products, and Kwikset's competing SmartKey products.

21. Schlage, in commercial advertising or promotion for the SecureKey rekeyable locks, has misrepresented the nature, characteristics or qualities of its own SecureKey rekeyable locks as well as the Kwikset SmartKey products.

22. Schlage's false and misleading advertising of the SecureKey products includes statements in product packaging, point of purchase advertising at retail locations, internet advertising including Schlage's website, and print advertising.

23. In Schlage's advertising, Schlage has made false and misleading assertions that SecureKey products are "10 times more secure" than other locks (other locks meaning Kwikset's SmartKey products), and other similar statements.

24. Schlage's advertising also has made false and misleading assertions that SecureKey products have "10 times more key combinations" than other locks (the other locks including Kwikset SmartKey products), and other similar statements.

25. Schlage's SecureKey products are not 10 times more secure, and do not have 10 times more key combinations, than Kwikset SmartKey locks.

26. Schlage's use of false and misleading statements in advertising is intended to disparage Kwikset products, and to persuade customers to purchase SecureKey products instead of Kwikset's SmartKey locks that have become the industry-leading rekeyable locks.

27. Schlage's false and misleading statements made in connection with its SecureKey rekeyable lock products are literally false or actually misleading to the consuming public.

28. If Schlage's false and misleading statements made in connection with its SecureKey rekeyable lock products are not deemed literally false, the statements are deceptive or misleading to the consuming public.

29. Schlage's false advertising is intended to confuse the buying public and is likely to do so.

30. As a result of the false advertising, Kwikset has been damaged and is likely to be further harmed by Schlage's actions.

31. Schlage's false and misleading advertising in interstate commerce has violated the Lanham Act, 15 U.S.C. § 1125(a)(1) and at least Wis. Stat. § 100.18 and the Delaware Deceptive Trade Practices Act.

32. Schlage's false and misleading advertising will continue to injure Kwikset, unless and until this Court enters an injunction prohibiting further false advertising by Schlage.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court to enter judgment against the defendant Schlage, and against any subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

- A. An award of damages adequate to compensate Plaintiffs for the patent infringement that has occurred, but in no event less than a reasonable royalty, together with prejudgment interest from the date infringement began;
- B. Increased damages for willful infringement as provided by 35 U.S.C. § 284;
- C. A finding that this case is exceptional and an award to Plaintiffs of their attorneys' fees and costs as provided by 35 U.S.C. § 285;
- D. A permanent injunction prohibiting further infringement of United States Patent Nos. 7,213,429 B2, 7,434,431 B2 and 7,878,036 B2;

E. An award of (1) disgorgement of Schlage's profits; (2) Kwikset's damages; (3) costs of the action, and (4) enhanced damages and other relief as provided by the Lanham Act, 15 U.S.C. § 1117;

F. Other damages and relief for false advertising as provided by federal and state law;

G. An injunction against further false advertising of the SecureKey products;

H. A finding that this case is exceptional and an award of attorneys' fees and costs pursuant to the Lanham Act and applicable state law; and

I. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable in this case.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Thomas C. Grimm*

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March 8, 2011  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2011 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused to be served copies of the foregoing document on March 8, 2011 upon the following in the manner indicated:

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