

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)

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JAMES BONINI
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION DAYTON

MAGUIRE PRODUCTS, INC. 11 Crozerville Road Aston, Pennsylvania 19014,	:	CASE NO. C-3-03-198
	:	(Judge Thomas M. Rose)
Plaintiff,	:	
v.	:	FIRST AMENDED COMPLAINT FOR
COMET AUTOMATION SYSTEMS, INC. 2220 West Dorothy Lane Dayton, Ohio 45439	:	PATENT INFRINGEMENT, TRADEMARK INFRINGEMENT, <u>AND UNFAIR COMPETITION</u>
	:	
and	:	(JURY TRIAL DEMANDED)
	:	
FERLIN TRADING B.V. Marconistraat 11 7701 S.J. Dedemsvaart Postbus 25, 7700 AA Dedemsvaart The Netherlands,	:	
	:	
Defendants.	:	

Plaintiff Maguire Products, Inc. ("Maguire"), by and through its undersigned attorneys, by way of its Complaint against Defendants Comet Automation Systems, Inc. ("Comet") and Ferlin Trading B.V. ("Ferlin") (Comet and Ferlin are collectively referred to as "Defendants"), respectfully represent as follows:

INTRODUCTION

1. By this action, Maguire seeks injunctive, statutory and compensatory redress against Defendants for (a) patent infringement concerning Defendants' infringement of two (2) of Maguire's patents covering one (1) of Maguire's gravimetric blenders, and (b) trademark

infringement and unfair competition concerning Defendants' unlawful use of the term "GraviMix Micro blender" when Maguire is the holder of a trademark for the term "MicroBlender"™.

Among the relief sought here by Maguire against Defendants is:

(a) preliminary and final injunctive relief barring Defendants from any further infringement of Maguire's patents; and,

(b) an accounting for damages resulting from Defendants' infringement of Maguire's patents; and,

(c) preliminary and final injunctive relief barring Defendants from any further use or publication of the term "GraviMix Micro blender" either alone or in combination with any mark, name or symbol; and,

(d) actual damages against Defendants due to such trademark infringement and unfair competition; and,

(e) an accounting for:

(i) all gains, profits and advantages derived by Defendants by such trade practices and unfair competition; and

(ii) all gains, profits and advantages derived by Defendants by their infringement of Maguire's trademark or such damages as to the Court shall appear proper within the provisions of the unfair competition statutes; and,

(f) an order impounding during the pendency of this action all copies of any item or material bearing the term “GraviMix Micro blender,” the mark “MicroBlender,” or any colorable variant thereof in Defendants' possession or under their control and to deliver up for destruction all infringing copies, and all plates, molds, and other matter for making such infringing copies; and,

(g) an order commanding that Defendants pay to Maguire the costs of this action and reasonable attorneys' fees; and,

(h) an order granting such other and further relief as is just and proper, including treble damages.

THE PARTIES

2. Maguire is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and maintains its principal place of business at 11 Crozerville Road, Aston, Pennsylvania 19014. Maguire is engaged in the business of material management systems for plastics molding, extrusion, and compounding. Maguire designs, manufactures and sells gravimetric blenders, granulators, liquid color pumps, volumetric auger feeders, vacuum dryers, Venturi loaders, resin dryers, controllers, level sensing alarm systems, and networking software for controlling the same.

3. Comet is an Ohio corporation that maintains its principal place of business at 2220 West Dorothy Lane, Dayton, Ohio 45439. According to its promotional material, Comet “is a leading manufacturer of auxiliary equipment (gravimetric blenders, volumetric blenders, feeders, dryers, economy hopper loaders, vacuum conveying) for plastics processing.”

4. Ferlin is a Dutch corporation that maintains its principal place of business at Marconistraat 11, 7701 S.J. Dedemsvaart, Postbus 25, 7700 AA Dedemsvaart, The Netherlands. Ferlin, a manufacturer of gravimetric blenders, engages in commerce in the United States, and manufactures products which are imported, sold and distributed throughout this country, including in this district.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§1331, 1367, and 1338, and 15 U.S.C. §1121.

6. This Court also has original jurisdiction over this matter pursuant to 28 U.S.C. §1332, as the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states, and between a citizen of the United States, and a citizen of a foreign state.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and 1400 because this is the judicial district where (a) Comet resides, (b) a substantial part of the events or omissions giving rise to this claim occurred, and (c) Defendants are subject to personal jurisdiction in this district. Venue over the claims against Ferlin are also proper under 28 U.S.C. §1391(d).

COUNT ONE

INFRINGEMENT OF U.S. PATENT DES. 424,587

8. Maguire hereby repeats and realleges all of the allegations set forth in Paragraphs 1 through 7, inclusive, of this complaint as if each such allegation was set forth herein at length.

9. On May 9, 2000, United States Letters Patent No. Des. 424,587 were duly and legally issued for the design of a reduced size gravimetric blender known as the “MicroBlender”™ and, at all relevant times since that date, Maguire has been and is still the owner of those Letters Patent; a true and correct copy of United States Letters Patent No. Des. 424,587 is attached hereto as Exhibit A and is made a part hereof by reference.

10. Defendants have for a long time past been and still are infringing Letters Patent No. Des. 424,587 by importing, making, selling, offering for sale, and distributing gravimetric blenders embodying the patented design, and will continue to do so unless enjoined by this Court.

11. Maguire has placed the required statutory notice on all designs of the reduced size gravimetric blenders manufactured and sold by Maguire under Letters Patent No. Des. 424,587.

WHEREFORE, Maguire demands judgment in its favor and against Defendants for:

(a) preliminary and final injunctive relief barring Defendants from any further infringement of Maguire’s Letters Patent No. Des. 424,587; and,

(b) an accounting for damages resulting from Defendants' infringement of Maguire’s Letters Patent No. Des. 424,587; and,

(c) actual damages against Defendants due to such patent infringement and unfair competition and to account for:

(i) all gains, profits and advantages derived by Defendants by such patent infringement; and

(ii) all gains, profits and advantages derived by Defendants by their infringement of Maguire's Letters Patent No. Des. 424,587 or such damages as to the Court shall appear proper within the provisions of 35 U.S.C. §271, et seq.; and,

(d) an order impounding during the pendency of this action all copies of any item or material which infringes on Maguire's Letters Patent No. Des. 424,587 in Defendants' possession or under their control and to deliver up for destruction all infringing material; and,

(e) an order commanding that Defendants pay to Maguire the costs of this action and reasonable attorneys' fees; and,

(f) an order granting Maguire such other and further relief as is just and proper.

COUNT TWO

INFRINGEMENT OF U.S. PATENT NO. 6,467,943

12. Maguire hereby repeats and realleges all of the allegations set forth in Paragraphs 1 through 11, inclusive, of this complaint as if each such allegation was set forth herein at length.

13. On October 22, 2002, United States Letters Patent No. 6,467,943 were duly and legally issued to Maguire for a reduced size gravimetric blender known as the "MicroBlender"™

and, since that date, Maguire has been and is still the owner of Letters Patent No. 6,467,943; a true and correct copy of United States Letters Patent No. 6,467,943 is attached hereto as Exhibit B and is made a part hereof by reference.

14. Defendants have for a long time past been and still are infringing Letters Patent No. 6,467,943 by importing, making, selling, offering for sale, and distributing gravimetric blenders embodying the patented invention, and will continue to do so unless enjoined by this Court.

15. Maguire has placed the required statutory notice on all reduced size gravimetric blenders manufactured and sold by Maguire under Letters Patent No. 6,467,943, and has given written notice to Comet of Comet's infringement of Letters Patent No. 6,467,943; a true and correct copy of the written notice to Comet of its infringement of Letters Patent No. 6,467,943 is attached hereto as Exhibit C and, respectively, is made a part hereof by reference.

WHEREFORE, Maguire demands judgment in its favor and against Defendants for:

- (a) preliminary and final injunctive relief barring Defendants from any further infringement of Maguire's Letters Patent No. 6,467,943; and,
- (b) an accounting for damages resulting from Defendants' infringement of Maguire's Letters Patent No. 6,467,943; and,
- (c) actual damages against Defendants due to such patent infringement and unfair competition and to account for:

(i) all gains, profits and advantages derived by Defendants by such patent infringement; and

(ii) all gains, profits and advantages derived by Defendants by their infringement of Maguire's Letters Patent No. 6,467,943 or such damages as to the Court shall appear proper within the provisions of 35 U.S.C. §271, et seq.; and,

(d) an order impounding during the pendency of this action all copies of any item or material which infringes on Maguire's Letters Patent No. 6,467,943 in Defendants' possession or under their control and to deliver up for destruction all infringing material; and,

(e) an order commanding that Defendants pay to Maguire the costs of this action and reasonable attorneys' fees; and,

(f) an order granting Maguire such other and further relief as is just and proper.

COUNT THREE

TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

16. Maguire hereby repeats and realleges all of the allegations set forth in Paragraphs 1 through 15, inclusive, of this complaint as if each such allegation was set forth herein at length.

17. On or about June 15, 1997, Maguire commenced use in interstate commerce of the trademark "MicroBlender"™ on its gravimetric blender now covered by Maguire's Letters Patent Des. 424,587 and No. 6,467,943.

18. As a result of Maguire's long, continuous and exclusive use of the trademark "MicroBlender"™ to describe its patented gravimetric blender, the trademark "MicroBlender"™ has acquired a secondary meaning, implicitly identifying Maguire as the manufacturer thereof.

19. Maguire's trademark "MicroBlender"™ is arbitrary and fanciful.

20. Defendants, in connection with their manufacture and sale of the "GraviMix Micro Blender," have used, are using and will continue to use in commerce words, terms (including "Micro Blender"), names, symbols, or devices, or any combination thereof, or a false designation of origin, which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Maguire, or as to the origin, sponsorship, or approval of Defendants' "GraviMix Micro Blender."

21. As a direct and proximate result of Defendants' trademark infringement and acts of unfair competition, Maguire has been damaged.

WHEREFORE, Maguire demands judgment in its favor and against Defendants for:

(a) preliminary and final injunctive relief barring Defendants from any further use or publication of the term "GraviMix Micro blender"; and,

(b) actual damages against Defendants due to such trademark infringement and unfair competition and to account for:

(i) all gains, profits and advantages derived by Defendants by such trade practices and unfair competition; and

(ii) all gains, profits and advantages derived by Defendants by their infringement of Maguire's trademark or such damages as to the Court shall appear proper within the provisions of the unfair competition statutes, but not less than the damages allowed pursuant to 15 U.S.C. §1111, et seq.; and,

(c) an order impounding during the pendency of this action all copies of any item or material bearing the term "GraviMix Micro blender" in Defendants' possession or under their control and to deliver up for destruction all infringing copies, and all plates, molds, and other matter for making such infringing copies; and,

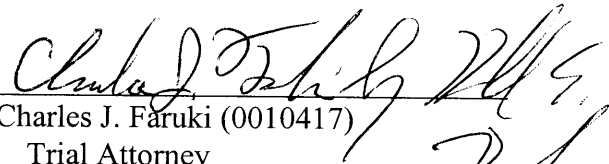

(d) an order commanding that Defendants pay to Maguire the costs of this action and reasonable attorneys' fees; and,

(e) an order granting such other and further relief as is just and proper.

Respectfully submitted,

OF COUNSEL:

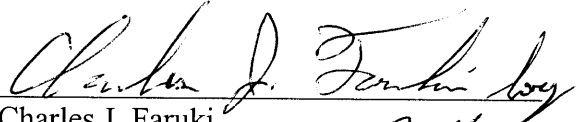
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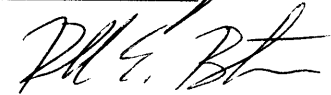

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JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Maguire Products, Inc. hereby demands trial by jury on all issues so triable.


Charles J. Faruki



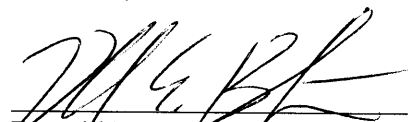
CERTIFICATE OF SERVICE

I hereby certify that a copy of First Amended Complaint for Patent Infringement, Trademark Infringement, and Unfair Competition has been served via the methods indicated below, upon the following counsel of record, this 20th day of January, 2004:

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