

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EASTERN MOLDING INTERNATIONAL, LLC

Plaintiff,

v.

Civil No. 03-CV-0513S(Sc)

PLASTIC SAFETY SYSTEMS, INC.,

Defendant.

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**AMENDED COMPLAINT**

Plaintiff Eastern Molding International, LLC (“Eastern”), through its attorneys, Hodgson Russ LLP, alleges for its amended complaint:

**Parties**

1. Eastern Molding International, LLC (“Eastern”) is a corporation engaged in the business of designing and manufacturing custom plastic blow molded products. Eastern’s principal office is located on Elizabeth Street in Batavia, New York.

2. Plastic Safety Systems, Inc. (“PSS”) is a corporation engaged in the business of designing and manufacturing custom plastic blow molded products. Its principal office is in Cleveland, Ohio.

**Jurisdiction and Venue**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a), 2201, and 2202 because there is an actual justiciable controversy between the parties concerning the validity, enforceability, and/or scope of a patent owned by PSS and Eastern's liability for infringement of that patent. In addition, this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 15 U.S.C. § 1125(a), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400.

**Factual Background**

5. Upon information and belief, PSS is the owner of United States Patent No. 5,234,280, entitled "Traffic Channeling Devices" (the "'280 patent"). A copy of the '280 patent is attached as Exhibit A.

6. By letter dated April 10, 2003, which was sent by PSS into this district, counsel for PSS accused Eastern of manufacturing and selling products that infringe the '280 patent. Counsel for PSS further stated that Eastern is liable for damages for its allegedly infringing activity. A copy of the April 10, 2003 letter is attached as Exhibit B.

7. Since April 10, 2003, counsel for PSS has been sending letters to customers of Eastern, accusing Eastern's products of infringing the '280 patent and threatening its customers with liability. These include letters dated May 15, 2003 and May 30, 2003.

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8. Accordingly, there is an actual and concrete controversy between the parties as to whether Eastern has engaged in any conduct that infringes a patent owned by PSS, the validity of any such patent, and/or the scope of such patent.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

9. Repeats the allegations in paragraph 1 through 8.

10. The '280 patent is void, invalid, and/or unenforceable under one or more of the following provisions: 35 U.S.C. §§ 102, 103, 112, and 282.

11. Eastern denies infringement of the '280 patent. Unless Eastern is found not to have infringed the '280 patent, PSS will continue to harass Eastern in the sale of its products and will continue to harass Eastern's customers.

12. Pursuant to 28 U.S.C. §§ 2201-02, Eastern is entitled to judgment declaring that it does not infringe the '280 patent and that the '280 patent is void, invalid, and/or unenforceable.

**SECOND CAUSE OF ACTION**  
**(Product Disparagement)**

13. Repeats the allegations contained in paragraphs 1 through 12.

14. PSS is a commercial competitor of Eastern.

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15. Upon information and belief, PSS has knowingly, intentionally, willfully, and in bad faith given to Eastern's customers and distributors false information that Eastern's products infringe a valid and enforceable patent owned by PSS — the '280 patent — and that any involvement with manufacturing, selling, or purchasing Eastern's products will expose them to liability.

16. Upon information and belief, the purpose of PSS communicating false statements about Eastern's products was to coerce Eastern's customers to buy goods from PSS rather than Eastern and to cause Eastern's distributors to cease selling Eastern's products.

17. Eastern has sustained, and will sustain, monetary damages as a result of PSS's intentional, willful, and unlawful conduct. Eastern has sustained, and will sustain, irreparable harm to its reputation and goodwill and to the reputation and goodwill of its products as a result of PSS's intentional, willful, and unlawful conduct.

18. PSS's conduct violates section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), and state common law.

**THIRD CAUSE OF ACTION**  
**(Unfair Competition)**

19. Repeats the allegations in paragraph 1 through 18.

20. PSS's conduct constitutes a violation of the common law of unfair competition.

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**Jury Demand**

21. Eastern demands trial by jury of all claims in the complaint.

WHEREFORE, Eastern demands judgment:

(1) On the first cause of action:

- a. Declaring that the '280 patent is not infringed by Eastern and that the Patent is void, invalid, and/or unenforceable.
- b. Enjoining PSS, its agents, attorneys, and persons in concert or participation with them, from asserting the '280 patent against Eastern and/or Eastern's suppliers, distributors, and customers.
- c. Finding this to be an exceptional case under 35 U.S.C. § 285, and awarding Eastern its costs and expenses, including attorneys' fees, incurred in bringing this action.

(2) On the second cause of action, enjoining PSS from disparaging Eastern's products and awarding damages sustained by Eastern, PSS's profits resulting from its unlawful conduct, the costs, expenses, and attorneys' fees of this action, and any other relief as provided by 15 U.S.C. § 1117.



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**CERTIFICATE OF SERVICE**

I herby certify that on March 5, 2004, I electronically filed the foregoing Amended Complaint, with Exhibits A and B, with the Clerk of the District Court for the Western District of New York using the CM/ECF system, which sent notification of such filing to the following:

1. Stephen M. O'Neill, Esq., Damon & Morey, soneill@damonmorey.com

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