

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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|--|---|------------------------|
| TIC/WRH, LLC, |) | |
| |) | |
| PLAINTIFF, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. _____ |
| |) | |
| KEITH R. BUCHER II, CHARLES B. INGRAM, |) | |
| DAVID C. THOMPSON, CLYDE Z. NUNN, |) | |
| SCIENTIFIC UTILIZATION, INC., and |) | |
| INNOVATIVE INVENTORS GROUP, |) | |
| |) | |
| DEFENDANTS. |) | |

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,
AND FOR DAMAGES**

COMES NOW the Plaintiff, TIC/WRH, LLC, and for its Complaint against the Defendants, Keith R. Bucher, II, Charles B. Ingram, David C. Thompson, Clyde Z. Nunn, Scientific Utilization, Inc., and Innovative Inventors Group (collectively, "Defendants"), would show unto the Court as follows:

THE PARTIES

1. Plaintiff TIC/WRH, LLC ("TIC/WRH" or "Plaintiff") is a limited liability company organized under the laws of the State of Alabama, with its principal place of business in Jefferson County, Alabama.

2. Upon information and belief, Defendant Keith R. Bucher ("Bucher") is an adult resident citizen of the State of Alabama.

3. Upon information and belief, Defendant Charles B. Ingram ("Ingram") is an adult resident citizen of the State of Tennessee.

4. Upon information and belief, Defendant David C. Thompson ("Thompson") is an adult resident citizen of the State of Alabama.

5. Upon information and belief, Defendant Clyde Z. Nunn ("Nunn") is an adult resident citizen of the State of Kentucky.

6. Defendant Scientific Utilization, Inc. ("SUI"), is a corporation organized under the laws of the State of Alabama, with its principal place of business in Huntsville, Alabama.

7. Upon information and belief, Innovative Inventors Group ("IIG") is a partnership or joint venture operated by Bucher, Nunn, and perhaps others.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the claims asserted by Plaintiff under 28 U.S.C. §§ 1331 and 1338 (a), as some of Plaintiff's claims arise under the Lanham Act, 15 U.S.C. §§ 1051 - 1127, and the Patent Act, 35 U.S.C. §§ 1-376. This Court has supplemental jurisdiction over Plaintiff's remaining claims under 28 U.S.C. §§ 1338(b) and 1367.

9. This Court has authority to issue preliminary and permanent injunctions and other equitable relief pursuant to 28 U.S.C. § 2202 (injunctive relief), 15 U.S.C. § 1116 (Lanham Act), and 35 U.S.C. § 283 (Patent Act).

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b), because Defendants have engaged in, and continue to engage in, active and infringing use of Plaintiff's intellectual property and other wrongful acts within this district. Venue is also proper in this judicial district because one or more Defendants reside within this district, and because a substantial part of the events or omissions giving rise to the claims occurred within this district.

FACTUAL BACKGROUND

11. SUI is an Alabama corporation originally formed to develop and market certain proprietary technology. Of particular relevance to this case, SUI was engaged in the development of an alternating current plasma generator, which it referred to in advertising and promotional efforts as the "AC Plasmatron" or "SUI Plasmatron." SUI obtained both U.S. Patent No. 5,801,489 Three-Phase Alternating Plasma Generator (hereafter the "'489 Patent") and U.S. Patent No. 6,781,087 Three-Phase Plasma Generator Having Adjustable Electrodes (hereafter the "'087 Patent"), to cover the AC Plasmatron and related technology (hereafter the "'489 Patent and the '087 Patent are collectively referred to as the "'489 and '087 Patents"). The AC Plasmatron and related technology, as well as all trade secrets and other proprietary information developed by SUI and related thereto, is referred to herein as the "Plasmatron Technology."

12. SUI was also engaged in the development of proprietary technology for the disposal of municipal and other wastes, referred to herein as the "Waste Disposal Technology."

13. SUI's research and development efforts were supported by loans provided by two local private investors. On or about April 23, 1996, Thompson Tractor Company, Inc. ("TTC") made a loan to SUI in the original principal amount of Two Million Dollars (\$2,000,000) pursuant to a loan agreement dated April 23, 1996 and evidenced by a Borrower's Convertible Subordinated Debenture dated April 23, 1996. On or about July 29, 1999, TTC made an additional loan to SUI in the original principal amount of Three Hundred Ninety Thousand Dollars (\$390,000) evidenced by a Borrower's 10% Senior Convertible Debenture Series B dated July 29, 1999. Also on July 29, 1999, Wyatt Haskell ("Haskell") made a loan to SUI in the original principal amount of One Million Three Hundred Ninety Thousand Dollars (\$1,390,000).

The above described loans and debentures are hereinafter collectively referred to as the "Debentures."

14. To secure its obligations under the Debentures, SUI executed a Security Agreement dated July 29, 1999 in favor of TTC and Haskell (the "Security Agreement"), whereby SUI granted to TTC and Haskell a security interest in all of the intellectual property of SUI, described as follows:

whether owned or hereafter acquired by [SUI] or used in [SUI's] business (the "Collateral"):

all [SUI's] right, title and interest in **all manufacturing and processing rights, processes, formulas, trade secrets, patents, patent rights, patent applications, products, licenses, franchises, privileges, trademarks, trade names and copyrights and any and all industrial and intellectual property rights**, including without limitation, those patents listed on Exhibit A [to the Security Agreement] attached hereto and incorporated herein by reference, and

(2) all royalties, rents, proceeds, franchise fees, licensing fees, fees, payments and any other revenues derived from the foregoing Collateral or any use or licensing thereof and any and all documents, agreements, code, software, magnetic data and the like relating to or evidencing the foregoing Collateral.

(emphasis added). A true and correct copy of the Security Agreement is attached hereto as Exhibit "I."

15. The Collateral under the Security Agreement (the "Collateral") included the '489 and '087 Patents and all rights in the Plasmatron Technology and the Waste Disposal Technology. The Collateral also included all of SUI's right and interest in all of SUI's trade names, trademarks, and service marks, including but not limited to the "AC Plasmatron," "SUI Plasmatron" and "SUI" names and marks, along with SUI's federal registration for the "SUI" mark (U.S. Reg. No. 2,301,180).

16. SUI defaulted on several of its obligations under the Debentures. Effective December 31, 2002, SUI and TTC executed a Settlement and Forbearance Agreement pursuant

to which TTC agreed to forbear until April 23, 2003 from seeking to enforce or exercise any remedies available under its Debentures. In exchange for TTC's forbearance, SUI agreed not to further default under the Debentures or breach, default or otherwise fail to perform any obligation under the Settlement and Forbearance Agreement.

17. TTC assigned to Thompson Investment Company ("TIC"), an affiliate of TTC, all of TTC's right, title and interest in and to the Debentures, the Security Agreement, and the Collateral in or about April, 2004. TIC and TTC are hereinafter collectively referred to as "Thompson."

18. SUI proved unable to successfully commercialize its technology, and again defaulted on its obligations to Thompson and Haskell under the Debentures, the Security Agreement and the Settlement and Forbearance Agreement. SUI failed to timely cure these defaults.

19. Accordingly, after giving notice of the time and place pursuant to §7-9A-611 of the Alabama Code, Thompson and Haskell advertised the sale of the Collateral at public auction (the "Initial Foreclosure Sale") in order to generate funds to pay all or part of SUI's lawful debts to Haskell and Thompson. The Initial Foreclosure Sale was scheduled to take place at 12:00 p.m. on June 2, 2004.

20. On the morning of June 2, 2004, just prior to the Initial Foreclosure Sale, SUI filed a Chapter 11 Voluntary Petition in the United States Bankruptcy Court for the Northern District of Alabama. The Initial Foreclosure Sale was not held by virtue of the automatic stay imposed by 11 U.S.C. § 362.

21. The automatic stay was subsequently lifted by the Bankruptcy Court on September 9, 2004, upon agreement of the parties including SUI. After the automatic stay was

lifted, Thompson and Haskell again advertised the Collateral for sale at public auction, this time on October 12, 2004 (the "Second Foreclosure Sale"). The only bid made at the Second Foreclosure Sale was a joint bid by Thompson and Haskell. That bid was accepted and on October 12, 2004, Thompson and Haskell purchased the Collateral at the Second Foreclosure Sale. A true and correct copy of the Amended and Restated Bill of Sale by Secured Party to Purchaser at Foreclosure Sale transferring ownership of the Collateral to Thompson and Haskell is attached hereto as Exhibit "2."

22. As a result of the second foreclosure sale, Thompson and Haskell became the owners of all of SUI's right and interest in the Collateral, including, but not limited to, the Plasmatron Technology, the Waste Disposal Technology, and SUI's trade names and marks.

23. On December 10, 2004, the Bankruptcy Court dismissed the SUI bankruptcy case without discharge. SUI continues to owe Thompson and Haskell in the aggregate in excess of three million dollars (\$3,000,000.00), and has made no payments on those debts in several years.

24. On January 25, 2005, Thompson and Haskell organized Plaintiff TIC/WRH. Each transferred to TIC/WRH, effective January 25, 2005, all of their respective right, title and interest in and to the Collateral purchased at the Second Foreclosure Sale.

25. On September 21, 2005, bills of sale transferring the rights of Thompson and Haskell in the Collateral to TIC/WRH were recorded with the United States Patent and Trademark Office. As a result, TIC/WRH is the record owner of the '489 and '087 Patents and U.S. Reg. No. 2,301,180 for the mark "SUI," as well as the other U.S. patents and federally registered trademarks included in the Collateral. Each of the federal patents and trademarks against which the bills of sale were recorded remain in full force and effect.

26. As a result of the above events, Defendants have no rights in the Plasmatron Technology, the Waste Disposal Technology, or any other intellectual property formerly belonging to SUI, and have no right to use the names "SUI," "SUI Plasmatron," or "AC Plasmatron" in the advertising or sale of goods or services.

27. TIC/WRII has become aware that the Defendants have nonetheless approached various potential customers and business affiliates of TIC/WRII, and have falsely asserted that Defendants have the right to exploit the Plasmatron Technology and the Waste Disposal Technology. Defendants have offered to sell AC Plasmatrons, in direct violation of the '489 and '087 Patents and of TIC/WRII's rights in the Plasmatron technology. Upon information and belief, Defendants have also asserted to potential customers that Defendants have contracts to sell a number of AC Plasmatrons. TIC/WRII believes, based on the information currently available to it, that these representations by Defendants are false. However, in the alternative, if these representations are true, such sales constitute additional infringements of the '489 and '087 Patents.

28. Upon information and belief, Defendants have used the names and marks "SUI," "SUI Plasmatron," and "AC Plasmatron" in their attempts to exploit the Plasmatron Technology, in violation of TIC/WRII's rights in these names and marks.

29. Upon information and belief, Defendants have falsely asserted to potential customers and business affiliates that Defendants continue to have the financial backing of Thompson, Haskell, and TIC/WRII, and that Defendants are authorized to act on their behalf.

30. Upon information and belief, Defendants are attempting to capitalize upon and exploit the Plasmatron Technology and the Waste Disposal Technology, which is rightfully the property of TIC/WRII, for Defendants' own financial gain.

31. Defendants' wrongful actions have and will continue to interfere with TIC/WRIH's efforts to develop and market these technologies, and to exercise its rights in the Collateral. TIC/WRIH has been and will continue to be damaged and irreparably injured thereby.

COUNT I
(Misappropriation of Trade Secrets)

32. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

33. Plaintiff possesses information concerning its business, including but not limited to information concerning the Plasmatron Technology and the Waste Disposal Technology, that is not known to the public generally, and which provides Plaintiff with a business advantage.

34. Plaintiff's confidential information constitutes a trade secret in that it is used or intended for use in Plaintiff's business; it is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process; it is not generally known in the marketplace; it cannot be readily ascertained or derived from publicly available information; it is the subject of reasonable efforts to maintain its secrecy; and it has significant economic value.

35. Defendants obtained this information in confidence, and have made unauthorized use of it in violation of statutory and common law.

36. Upon information and belief, Defendants have disclosed or will disclose Plaintiff's trade secrets to third parties.

37. Defendants' actions were intentional and/or were undertaken with malice, recklessness, or wantonness.

38. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful actions.

COUNT II
(Federally Registered Trademark Infringement, 15 U.S.C. § 1114)

39. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

40. Plaintiff has established valid trademark rights in the "SUI" mark under state, federal and common law.

41. Plaintiff's "SUI" mark is duly registered on the principal register of the United States Patent and Trademark Office, U.S. Reg. No. 2,301,180.

42. Defendants have used in commerce, subject to regulation by the U.S. Congress, in connection with the offering for sale, distribution, and/or advertising of goods or services, a word, term, name, symbol, or device, or combination thereof, which is likely to cause confusion, or to cause mistake or to deceive.

43. Defendants' acts are in violation of 15 U.S.C. § 1114, and Plaintiff has been and is likely to be damaged by these acts.

44. Defendants' actions will cause harm to Plaintiff's business, goodwill, reputation, and customer relations, as well as violate Plaintiff's proprietary rights in the "SUI" mark.

45. Defendants have taken the actions described above with full knowledge of Plaintiff's registered trademark, of the unauthorized nature of its use in the industry, and in willful disregard of Plaintiff's federal, state and common law rights.

46. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful acts if Defendants are not enjoined from using the SUI mark.

COUNT III
(Federal Trademark Infringement, Unfair Competition and
False Designation of Origin, 15 U.S.C. § 1125(a))

47. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

48. Plaintiff has established valid trademark rights in the "SUI Plasmatron," "AC Plasmatron," and "SUI" names and marks under state, federal and common law. Such marks are inherently distinctive and have acquired secondary meaning in the marketplace.

49. Defendants have used in commerce, subject to regulation by the U.S. Congress, in connection with the offering for sale, distribution, and/or advertising of goods or services, a word, term, name, symbol, or device, or combination thereof, which is likely to cause confusion, or to cause mistake or to deceive.

50. Defendants have infringed Plaintiff's marks, have unfairly passed off their goods and services as being associated with those of Plaintiff, and have caused, and threaten to cause, confusion as to the source and origin of Defendants' goods and services.

51. Defendants' actions are in violation of 15 U.S.C. § 1125(a).

52. Defendants have taken the actions described above with full knowledge of Plaintiff's established rights in its marks, of the unauthorized nature of its use, and in willful disregard of Plaintiff's federal, state and common law rights.

53. Defendants' actions will cause harm to Plaintiff's business, goodwill, reputation, and customer relations, as well as violate Plaintiff's proprietary rights in its marks.

54. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful acts if Defendants are not enjoined from using Plaintiff's marks.

COUNT IV
(Federal False Advertising, 15 U.S.C. § 1125(a))

55. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

56. Defendants have, in commercial advertising and promotion, made representations of fact about their goods and services and about Plaintiff's goods and services, and those representations were false, deceptive and misleading.

57. Such misrepresentations are material and have either deceived, or had the capacity to deceive, a substantial segment of potential consumers.

58. The goods and services at issue have been offered for sale or sold in interstate commerce.

59. Defendants' actions are in violation of 15 U.S.C. § 1125(a).

60. Defendants' aforementioned acts have violated and continue to violate the rights of Plaintiff, and have caused damage in an amount to be determined at trial.

61. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful acts if Defendants are not enjoined.

COUNT V
(Common Law Trademark Violations
and Unfair Competition)

62. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

63. Defendants knew or should have known that Plaintiff has marks which are generally recognizable, and have developed substantial goodwill in the marketplace.

64. Defendants used Plaintiff's marks in an unauthorized fashion and in violation of statutory and common law.

65. Defendants have taken the actions described above with full knowledge of Plaintiff's marks and goodwill, of the unauthorized nature of their use, and in willful disregard of Plaintiff's federal, state, and common law rights.

66. Defendants' acts are likely to cause confusion.

67. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful conduct.

68. Defendants' wrongful conduct has and will continue to result in profits to Defendants.

COUNT VI
(Patent Infringement)

69. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

70. On September 1, 1998, United States Letters Patent 5,801,489 ("489 Patent") entitled "Three-Phase Alternating Current Plasma Generator" was duly and legally issued. Plaintiff is the current owner of all rights in the '489 Patent.

71. On August 24, 2004, United States Letters Patent 6,781,087 ("087 Patent") entitled "Three-Phase Plasma Generator Having Adjustable Electrodes" was duly and legally issued. Plaintiff is the current owner of all rights in the '087 Patent.

72. Upon information and belief, Defendants have directly, indirectly, contributorily, and/or by inducement infringed the claims of the '489 and '087 Patents in this judicial district and elsewhere in the United States.

73. Defendants' actions were intentional and/or were undertaken with malice, recklessness, or wantonness.

74. Plaintiff has been and will continue to be damaged and irreparably injured by Defendants' wrongful conduct.

COUNT VII
(Intentional Interference with Business Relations
and Prospective Business Relations)

75. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

76. With knowledge of the existing and expectant business relations that Plaintiff had with customers, potential customers, investors, potential investors, business affiliates, and potential business affiliates, Defendants intentionally interfered with these relations.

77. Defendants were not justified in intentionally interfering with these existing and expectant relations, and Plaintiff has been and continues to be damaged and irreparably injured by Defendants' intentional interference.

COUNT VIII
(Declaratory Judgment)

78. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

79. There is a present and actual controversy between the parties.

80. Plaintiff hereby requests, and is entitled to, a declaration of its rights and other legal relations with respect to Defendants, including that: Plaintiff owns all rights in the Plasmatron Technology and the Waste Disposal Technology, along with all other intellectual property of SUI; Defendants have no rights in the Plasmatron Technology, the Waste Disposal Technology, or any other intellectual property of SUI, and no right to exploit or use such intellectual property and technology; all rights in such intellectual property and technology, or any technology derived therefrom, have been or should be transferred to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff prays for judgment in its favor and against Defendants and further prays that this Court:

(i) issue preliminary and permanent injunctions against Defendants enjoining and restraining Defendants and their agents, servants and employees from exploiting or using the Plasmatron Technology and the Waste Disposal Technology in any way, including by selling or offering for sale products or services utilizing such Technologies;

(ii) issue preliminary and permanent injunctions against Defendants enjoining and restraining Defendants and their agents, servants and employees from infringing Plaintiff's '489 and '087 Patents, including the manufacture, sale, use, or offer for sale of the AC Plasmatron or any other system within the scope of such patents, and enjoining the delivery or use of any such systems heretofore made or sold which infringe such patents;

(iii) award damages to Plaintiff pursuant to 35 U.S.C. § 284, including interest, costs, and treble damages;

(iv) award reasonable attorney fees to Plaintiff, pursuant to 35 U.S.C. § 285;

(v) issue preliminary and permanent injunctions against Defendants enjoining and restraining Defendants and their agents, servants and employees from making unauthorized use of Plaintiff's names and marks;

(vi) issue preliminary and permanent injunctions against Defendants enjoining and restraining Defendants and their agents, servants and employees from engaging in unfair competition and forbidding them from representing that

Plaintiff's intellectual property is owned by or in the control of Defendants, or that Defendants have any right to make use of such intellectual property;

(vii) award damages and profits to Plaintiff pursuant to 15 U.S.C. § 1117(a);

(viii) award reasonable attorney fees, costs and expenses in this action to Plaintiff pursuant to 15 U.S.C. § 1117(a);

(ix) award Plaintiff actual and treble damages pursuant to 15 U.S.C. § 1117;

(x) declare Plaintiff's rights and other legal relations with respect to Defendants, including that Plaintiff owns all rights in the Plasmatron Technology and the Waste Disposal Technology, along with all other intellectual property of SUI; Defendants have no rights in any such intellectual property and no right to exploit or use it in any way; and all rights in such intellectual property have been or should be transferred to Plaintiff;

(xi) order Defendants to cease claiming any rights in the Plasmatron Technology, the Waste Disposal Technology, and any other intellectual property of SUI, and to assign to Plaintiff any claimed rights in such intellectual property or technology, or any technology deriving therefrom; and

(xii) award such other and further relief as this Court may deem just and proper.

DATED: November , 2006

Respectfully submitted,

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