

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CALEDONIAN TREE COMPANY, Ltd.

Plaintiff,

Case No. 6:03-cv-761-071-31

FILED
U.S. DISTRICT COURT
ORLANDO, FLORIDA
JUL 1 2003
JGG

v.

ROOTMAKER, INC., a/k/a ROOTMAKER
PRODUCTS COMPANY, LLC,
and DR. CARL E. WHITCOMB,

Defendants.

**PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF
AND DAMAGES AND DEMAND FOR JURY TRIAL**

Plaintiff, Caledonian Tree Company, Ltd. a limited company registered in Scotland, the United Kingdom ("Caledonian"), by and through its undersigned counsel, hereby files its Complaint for Declaratory Relief and Damages and Demand for Jury Trial against Defendants, RootMaker, Inc., a/k/a RootMaker Products Company, LLC, a foreign corporation or business entity ("RootMaker"), and Dr. Carl E. Whitcomb ("Whitcomb") (collectively, "Defendants"), and states as follows:

GENERAL ALLEGATIONS

1. This is an action seeking declaratory judgment under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, and tortuous interference with contractual relationships and advantageous business relationships under the common law of Florida.

2. Caledonian is a limited company registered in Scotland, the United Kingdom with its principal place of business in Cowbraehill Tynehead Pathhead Midlothian, Scotland, U.K.

3. Caledonian manufactures, distributes and sells root enhancement systems on a global basis, including Caledonian's Superroots Air-Pot ("Air-Pot"), and has developed customers and distributors in the United States, including the State of Florida.

4. Caledonian's Air-Pot is a device used to produce plants in commercial nursery applications for successful transplant into various landscapes. Caledonian's Air-Pot has proven effective in providing vigorous, radial root systems, which allows its customers (commercial nurseries) to provide superior plant materials to their end-users.

5. Due to the success of its Air-Pot and other products, Caledonian has developed a growing customer base in the United States, and has also developed distributorship relations with certain of its customers in the United States, including the State of Florida.

6. Defendant RootMaker purports to be the owner of U.S. Patent No. 4,939,865 (the "'865 Patent"). Upon information and belief Defendant Carl E. Whitcomb is listed on the '865 Patent as inventor along with Harold D. Stephens. Defendant RootMaker has represented through its counsel to be the owner of the '865 Patent. Upon information and belief, Defendant Whitcomb is affiliated with Defendant RootMaker and has also asserted an ownership interest in the '865 Patent. Thus, upon information and belief, Defendant Whitcomb and/or Defendant RootMaker own the '865 Patent.

7. On or about February 13, 2003, Defendants, by and through their counsel, made demand upon Caledonian to immediately cease importing, offering to sell and selling the Air-Pot in the United States. Defendants demand was based on its allegation that the Air-Pot infringed on the '865 Patent. However, the February 13, 2003 demand failed to state which claims, if any, of the '865 Patent were allegedly infringed.

8. On or about March 3, 2003, Caledonian responded to Defendants' February 13, 2003 demand setting forth several reasons why the Air-Pot did not infringe upon any of the claims of the '865 Patent and requesting that Defendants reconsider their position and inviting Defendants to provide additional details as to the nature of the alleged infringement so that the issues in contention could be discussed further.

9. On or about April 29, 2003, Defendants responded to Caledonian's March 3, 2003 letter by refusing to address certain issues raised by Caledonian that distinguished the Air-Pot from the claims in the '865 Patent, and instead asserted that the distinguishing features described in Caledonian's March 3, 2003 correspondence were insufficient to avoid infringing upon the '865 Patent and again demanded that Caledonian cease importing the Air-Pot for sale in the U.S. This demand included a demand that all "affiliated companies" immediately cease importing, offering to sell and selling the Air-Pot in the U.S. Upon information and belief, between March 3, 2003 and April 29, 2003, Defendants communicated with certain of Caledonian's customers advising them that Caledonian's Air-Pot infringed upon the '865 Patent.

10. On or about May 12, 2003, Caledonian responded to Defendants' April 29, 2003 demand again pointing out reasons why the Air-Pot does not infringe upon the claims of the '865 Patent.

11. On or about May 14, 2003, Defendants again refused to acknowledge the existence of the distinguishing features in the Air-Pot and instead demanded that Caledonian and its "affiliated companies" cease importing, offering to sell and selling the Air-Pot in the U.S.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367(a).

13. This Court has personal jurisdiction over all Defendants pursuant to the Florida Long-Arm Statute, 48.193(1) and (2) Fla. Stat. (2002), and federal due process standards.

14. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b), (c) and 1400(b) since the Middle District of Florida is a judicial district where a substantial part of the events or omissions giving rise to the claims and controversies arose.

15. Caledonian has retained the undersigned counsel to represent it in this action and is obligated to pay that counsel reasonable attorneys fees and costs for bringing this action.

COUNT I
FEDERAL DECLARATORY JUDGMENT ACT-NON-INFRINGEMENT OF PATENT
(28 U.S.C. § 2201)

16. Caledonian reincorporates and realleges paragraphs 1 through 15 as if fully set forth herein.

17. This claim is brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and involves an actual controversy regarding Caledonian's right to distribute and sell its Air-Pot in the U.S.

18. As alleged above, Caledonian manufactures, distributes, and sells its Air-Pot globally and in the U.S.

19. As alleged above, Defendants' claim that Caledonian's Air-Pot infringes upon the '865 Patent.

20. Caledonian disputes that its Air-Pot infringes upon the '865 Patent. Defendants' know that Caledonian disputes the alleged infringement, but nonetheless has demanded that Caledonian and its "affiliated companies" cease the importing and sale of the Air-Pot in the U.S.

21. Until this issue is resolved by this Court, the controversy will continue and Caledonian will continue to suffer and/or risk suffering damages as Defendants, upon

information and belief, have communicated to Caledonian's customers that the Air-Pot infringes upon the Defendants' '865 Patent and that Caledonian's customers should not participate in the distribution of the Air-Pot in the U.S. which has damaged and is damaging Caledonian's business in the U.S. and in Florida.

22. The issue is of immediate concern to Caledonian because the U.S. is an emerging market for Caledonian's products, including the Air-Pot, and the Defendants' actions in alleging infringement and communicating same to Caledonian's customers has affected the sales of the Air-Pot and more importantly, has quashed an established plan to create distributing relationships with certain of Caledonian's customers.

23. Defendants' actions have caused and will continue to cause damages to Caledonian.

24. Caledonian is entitled to recover reasonable attorneys' fees and costs in bringing this action pursuant to 28 U.S.C. § 2202.

Wherefore, Caledonian respectfully requests that this Court enter an order (1) declaring that the Air-Pot does not infringe upon any of the claims of the '865 Patent; (2) awarding Caledonian damages; (3) granting Caledonian its costs and reasonable attorney's fees, and (4) granting all other relief this Court deems just and proper.

COUNT II
TORTUOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS ADVANTAGE
AND WITH CONTRACTUAL RELATIONSHIPS

25. Caledonian reincorporates and realleges paragraphs 1 through 15 as if fully set forth herein.

26. As alleged above, Caledonian has developed a growing customer base in the United States, and has also developed distributorship relations with certain of its customers in the United States, including the State of Florida.

27. One such customer who agreed to act as a distributor of the Air-Pot is located in Lake County, Florida.

28. Upon information and belief, Defendants communicated to Caledonian's Lake County customer that the Air-Pot infringed upon the '865 Patent and that Defendants could not allow widespread distribution of the Air-Pot to occur in the United States.

29. Upon information and belief, at the time that Defendants communicated with Caledonian's Lake County customer, Defendants knew that the Lake County customer and Caledonian planned to enter into a distributorship contract whereby the Lake County customer would act as the distributor of Caledonian's Air-Pot in the Southeast portion of the United States.

30. Upon information and belief, Defendants intentionally and unjustifiably interfered with Caledonian's customer relationships and contracts, most specifically though falsely communicating to the Lake County customer that Caledonian's Air-Pot infringed on the '865 Patent, when it clearly does not.

31. As a result of Defendants' actions, which have no justification or privilege, Caledonian has been damaged in that the Lake County customer now refuses to undertake distribution of Caledonian's Air-Pot, specifically citing the Defendants' allegations of infringement as the cause.

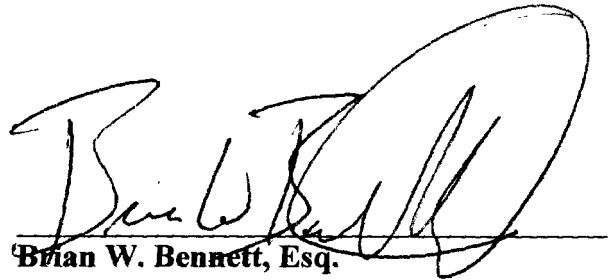
Wherefore, Caledonian respectfully requests that this Court enter an order enjoining Defendants from further interference with its business relationships, awarding Caledonian

damages, granting Caledonian its costs, and granting all other relief this Court deems just and proper.

JURY DEMAND

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL CLAIMS SO TRIABLE.

Dated: This 5th day of June, 2003.

A large, stylized handwritten signature in black ink, appearing to read "Brian W. Bennett". The signature is written over a horizontal line.

Brian W. Bennett, Esq.

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