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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CLARENCE B. LIND
CLERK U.S. DIST. CT.
S.D. OF FL. - MIAMI

Rally Manufacturing Inc.)
)
Plaintiff,)
)
v.)
)
International Distributors USA Inc., and)
Sherco Automotive Supply)
)
Defendants.)

Case No **07-21766**
CIV-MORENO
MAGISTRATE JUDGE
SIMONTON

**COMPLAINT AND
JURY TRIAL REQUEST**

Rally Manufacturing Inc. (hereinafter "Rally"), and for its cause of action against Defendants, International Distributors USA Inc. (hereinafter "International Distributors"), and Sherco Automotive Supply, hereinafter "Sherco") and collectively herein after referred to as "Defendants," for patent infringement for which Rally alleges:

Parties and Jurisdiction

1. Rally is a corporation formed under the laws of Florida having its principal place of business at 5225 NW 159th Street Miami Florida 33014.

2. On information and belief Defendant International Distributors is a New York corporation having a principal place of business at One Wall Street Court, Suite 1003, New York NY 10005.

3. On information and belief Defendant Sherco is a Florida Corporation having a principal place of business at 5431 NW 15 St #9, Margate, FL 33063.

4. This is a complaint for infringement of U.S. Patent No. 6,279,746 (hereinafter “the ‘746 Patent”) under 35 U.S.C. §271.

5. This Court has original and exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331, 1338(a). Venue is proper under 28 U.S.C. §§ 1391 and 1400(a).

General Allegations

6. Rally is in the business of designing, manufacturing, importing distributing and selling high-end automotive accessories and amongst a host of products manufactures and sells wiper blades with associated packaging.

7. Rally’s in-house designers conceived of and reduced to practice a new reclosable packaging for wiper blades. As a result of Rally’s in-house design efforts, Rally filed for and obtained U.S. Patent No. 6,279,746 (hereinafter referred to as “the ‘746 Patent). (A copy of the ‘746 Patent is attached hereto as Exhibit 1 and is incorporated herein by reference). The ‘746 Patent was filed for on May 22, 2000 and issued on August 28, 2001. The inventors of the ‘746 Patent are Saied Hussaini and Marc Iacovelli.

8. The ‘746 Patent is presumed valid by virtue of 35 U.S.C. § 282.

9. Plaintiff Rally is the owner of the ‘746 Patent by virtue of an assignment from the inventors to Rally which was properly recorded at the U.S. Patent Office. The ‘746 Patent is enforceable until March 22, 2020.

10. International Distributors sells, has sold or has offered to sell within the United States and within this Judicial District, wiper blades within packaging that infringes the ‘746 Patent and duplicates nearly every aspect of Rally’s patented design.

11. Defendant Sherco sells, has sold, and or has offered to sell within the United States and within this Judicial District, wiper blades within packaging that infringes the '746 Patent and duplicates nearly every aspect of Rally's patented design..

12. On information and belief International Distributors is using the same overseas manufacturer as Rally to manufacture the infringing reclosable packaging.

COUNT I
Patent Infringement

13. Paragraphs 1 through 12 are adopted and incorporated herein by reference as if fully set out in this paragraph 13.

14. Rally is the owner of the '746 Patent.

15. The '746 Patent is based on fundamental discoveries and inventions in the field of recloseable product packaging.

16. The invention set forth in the '746 Patent responds to a long felt need in the art of reclosable packaging and has been commercially successful.

17. The Defendants sell, distribute, and offer for sale within this Judicial district the invention covered by the '746 Patent.

18. Defendants have infringed upon the '746 Patent in violation of Title 35 U.S.C. §271 by making, using, selling, offering to sell, and/or importing wiper blades within packaging which infringes the '746 Patent, all to the damage and injury of Plaintiff Rally.

19. International Distributors has sold and offered for sale wiper blades in reclosable packaging that infringes the '746 Patent after constructive notice of the '746

Patent and on information and belief continues to sell the accused infringement packaging after having notice of the accusation of infringement.

20. Defendants sell and have sold windshield wiper blades with associated infringing reclosable packaging within the United States without license from the Plaintiff.

21. On information and belief International Distributors' actions were willful and in direct disregard of Plaintiff's patent rights.

22. Plaintiff Rally has suffered and continues to suffer irreparable damage and injury for which there is no adequate remedy at law against the Defendants for their infringement of the '746 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rally prays that judgment be entered by this Court in its favor and against Defendants International Distributors and Sherco providing the following relief:

A. That Defendants, their agents, affiliates, subsidiaries, servants, employees and attorneys and those persons in active concert with or controlled by them be permanently enjoined from:

1. Making, using and selling products which infringe the '746 Patent;
2. Inducing others to infringe the '746 Patent;

B. That Defendants be required to account to Plaintiff for Plaintiff's lost profits and for all damages sustained by and entitled to Plaintiff by reason of the infringement of the '746 Patent (35 U.S.C. § 284, 289);

C. That judgment be entered against Defendants for Plaintiff's damages in an amount to be determined at trial, and for prejudgment interest based on infringement damages accruing from the date of Defendants' respective acts of infringement;

D. That a determination be made that Defendant International Distributor's actions were willful in disregard to Plaintiff's rights and be required to pay to Plaintiff the costs of this action and Plaintiff's reasonable attorneys' fees (35 U.S.C. § 285), and that damages be trebled;

E. An order directing Defendants to deliver to Rally for immediate destruction all remaining infringing packaging, advertisements, circulars, brochures or other promotional or advertising items, web site or other materials for their infringing packaging;

F. Rally also seeks such other and further relief as may be proper and just.

Request for Trial by Jury

Plaintiff Rally requests a trial by jury.

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CIVIL COVER SHEET 07-21766

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1.(a) PLAINTIFFS
RALLY MANUFACTURING, INC.

DEFENDANTS
INTERNATIONAL DISTRIBUTORS, USA, INC., AND
SHERCO AUTOMOTIVE SUPPLY
 COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT **CIV-MORENO**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Miami-Dade

(IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(EXCEPT IN U.S. PLAINTIFF CASES)
DADE-07-21766-CV-MORENO-SIMONTON

ATTORNEYS (IF KNOWN)
MAGISTRATE JUDGE
SIMONTON

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Steven I. Peretz, Kluger Peretz Kaplan & Berlin, PL
201 South Biscayne Blvd., Seventeenth Floor, Miami, FL 33131
Telephone 305 379 9000

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

Citizen of This State	PTF DEF : 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 : 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

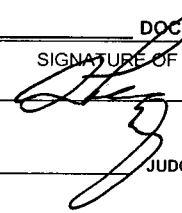
A. CONTRACT	A TORTS		FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran \$ Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> B 610 Agriculture <input type="checkbox"/> B 620 Other Food & Drug <input type="checkbox"/> B 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> B 630 Liquor Laws <input type="checkbox"/> B 640 RR & Truck <input type="checkbox"/> B 650 Airline Regs. <input type="checkbox"/> B 660 Occupational Safety/Health <input type="checkbox"/> B 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395it) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitution of the State Statutes : 890 Other Statutory Actions A OR B
A REAL PROPERTY <input checked="" type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> B 510 Motions to Vacate Sentence HABES CORPUS <input type="checkbox"/> B 530 General <input type="checkbox"/> A 535 Death Penalty <input type="checkbox"/> B 540 Mandamus & Other <input type="checkbox"/> B 550 Civil Rights <input type="checkbox"/> B 555 Prison Condition	A LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> A 791 Empl Ret Inc. Security Act	B FEDERAL TAX SUITS <input type="checkbox"/> A 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> A 871 IRS - Third Party 26 USC 7609	

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

LENGTH OF TRIAL 5 days estimated (for both sides to try entire case)
 via Patent Trademark infringement under 35 U.S.C. § 271

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: YES : NO

VIII. RELATED CASE(S) (See Instructions):
 IF ANY JUDGE _____ DOCKET NUMBER: _____

DATE JULY 9, 2007 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY
 RECEIPT # 962902 AMOUNT \$350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

07/10/07