

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNCOMMON USA, INC.,

Civil Action

Plaintiff,

Case Number: 0:05-cv-00975-RHK-AJB

vs.

AMENDED COMPLAINT

MICHAEL WIESE, individually and
MICHAEL WIESE, as President of American
Engineered Products, LLC,

Defendants.

Plaintiff, for its claim for relief against Defendants herein, states and alleges as follows, to-wit:

I.

Plaintiff is now, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the state of Minnesota, with its principal place of business in the City of Willmar, County of Kandiyohi, State of Minnesota.

II.

Defendant Michael Wiese is now, and at all time hereinafter mentioned was, an individual residing at 16835 Oakridge Way, Elko, Minnesota 55020.

Defendant Michael Wiese, as President of American Engineered Products, LLC, is now, and at all times hereinafter mentioned was, an individual residing at 16835 Oakridge Way, Elko, Minnesota 55020.

III.

On or about December 14, 1988, Plaintiff entered into an agreement (hereinafter referred to as "1988 Agreement") with Harold Wiese under which Harold Wiese sold and conveyed to Plaintiff his interest as owner of the patent for telescopic flag poles. The 1988 Agreement contained provisions entitling Harold Wiese to royalty payments from Plaintiff based on subsequent sales of telescopic flag poles. Additionally, the 1988 Agreement contained language stating that any modifications or improvements resulting from additional research and development undertaken by Harold Wiese would be transferred under the Initial Agreement and would go with the product to the benefit of Plaintiff.

IV.

Under the 1988 Agreement, Wiese was guaranteed to receive a minimum of \$5,000.00 per year from Plaintiff as royalty payments for sales of telescopic flag poles.

V.

On or about March 3, 1997, Plaintiff entered into an additional agreement (hereinafter referred to as "1997 Agreement") with Harold Wiese under which, among other things, the parties agreed "that the rights under this Agreement and the preceding Agreement and any preceding Amendments between the parties shall be subject to assignment by either of the parties and as so shall be controlling upon any successors, heirs, or assigns."

VI.

Prior to May 26, 1999, Harold Wiese passed away.

VII.

On or about May 26, 1999, Plaintiff entered into an agreement (hereinafter referred to as 1999 Agreement) with the Estate of Harold A. Wiese, the Harold Wiese Revocable Living Trust, and the heirs and beneficiaries of the Estate and Trust individually, which included defendant named herein

Michael Wiese. Said 1999 Agreement specifically amended the 1988 Agreement, a 1992 Agreement, and the 1997 Agreement as follows: "This Agreement resolves any issues between the parties regarding patent ownership and other than completing patent registration and transfer, Wiese shall not be involved in Research and Development molds, parts, production, manufacture, or marketing in any way beyond the date hereof on the original patent or any related patents arising therefrom."

VIII.

On or about July 27, 1999, Barbee Kranz, Personal representative of the Estate of Harold Wiese, assigned Patent No. 4,918,896 for Telescopic Flagpole issued April 24, 1990, to Plaintiff.

IX.

Upon information and belief, Defendant Wiese is the son and an heir of decedent Harold Wiese.

X.

Upon information and belief, Defendant Wiese is the President of Defendant American Engineered Products, LLC.

XI.

Upon information and belief, Defendants have engaged in or have caused others to be engaged in the manufacturing, distribution, and sale of telescoping flagpoles in direct breach of the various contractual agreements entered into between Plaintiff, causing damages to Plaintiff in an amount exceeding FIFTY THOUSAND DOLLARS (\$50,000.00).

XII.

Upon information and belief, Defendants have published or caused others to publish incorrect, false, and slanderous communications regarding Plaintiff, causing damages to Plaintiff in an amount exceeding FIFTY THOUSAND DOLLARS (\$50,000.00).

WHEREFORE, Plaintiff demands judgment against Defendants in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), together with Plaintiff's costs and disbursements incurred herein, including reasonable attorney's fees, and for such other and further relief as the Court may deem just and equitable in the premises.

ANDERSON & BURGETT

Dated: May 23, 2005

By: s/ Donald H. Burgett
Attorney for Plaintiff
License No. 13092
416 SW Sixth Street
P.O. Box 306
Willmar, MN 56201
(320) 235-3171

STATE OF MINNESOTA)
) ss.
COUNTY OF KANDIYOHI)

VERIFICATION

Mark Erickson, being duly sworn, deposes and states as follows: he is the President of Plaintiff Uncommon USA, Inc., he has read the foregoing Amended Complaint and knows the contents thereof, and the same is true except as to those matters stated on information and belief, and as to those matters he believes them to be true.

s/ Mark Erickson
Mark Erickson, President
Uncommon USA, Inc.

Subscribed and sworn to before me
this 23rd day of May, 2005.

s/ Donald H. Burgett
Notary Public