

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
ASHEVILLE, N.C.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

RANJO'S INCORPORATED,
a North Carolina corporation, and
RANDY R. SAWTELLE,
an individual,

Plaintiffs,

v.

SSPS, INC. d/b/a SMITH MANUFACTURING
COMPANY,
a Florida corporation, and
STEVEN J. SMITH,
an individual,

Defendants.

Civ. A. No. 1:01 CV 96-C

COMPLAINT (Jury Trial Demanded)

Plaintiffs, complaining of Defendants, alleges and says:

1. This is an action brought by Plaintiffs pursuant to the patent laws of the United States to seek legal redress for Defendants' willful infringement of U.S. Patent No. 5,775,781 ("the '781 patent"), entitled "PAVEMENT MARKING REMOVAL TOOL AND METHOD" and attached hereto as Exhibit 1, and for Defendants' conduct in violation of federal and state unfair competition and unfair/deceptive trade practice laws, as well as for Defendants' conduct in violation of the common law, such redress to include, without limitation, treble damages, attorney fees, and costs.

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PARTIES

2. Plaintiff Ranjo's Incorporated ("Ranjo's") is a corporation organized under the laws of the State of North Carolina with a principal place of business located at 355 Paint Fork Road, Barnardsville, North Carolina 28709.

3. Plaintiff Randy R. Sawtelle ("Sawtelle") is an individual resident of the State of North Carolina, and Vice President and Secretary of Ranjo's. Sawtelle has an address in or near Barnardsville, North Carolina.

4. Defendant SSPS, Inc. d/b/a Smith Manufacturing Company ("Smith Manufacturing") is a corporation organized under the laws of Florida with a principal place of business located at 1090 N.E. 43rd Street, Fort Lauderdale, Florida 33334.

5. Defendant Steven J. Smith ("Smith") is an individual resident of the State of Florida, and President and Treasurer of Smith Manufacturing. Smith has an address in or near, on information and belief, Fort Lauderdale, Florida.

6. On information and belief, Smith directs the activities of Smith Manufacturing, including the activities complained of herein. Smith Manufacturing is therefore the alter ego of Smith and vice versa.

7. Ranjo's and Sawtelle may sometimes hereinafter be referred to collectively as "Ranjo's/Sawtelle"; Smith and Smith Manufacturing may sometimes hereinafter be referred to collectively as "Smith Manufacturing/Smith".

JURISDICTION AND VENUE

8. This action is brought pursuant to, inter alia, the patent and unfair competition laws of the United States; in addition, the parties are completely diverse and over \$75,000 is in

controversy. Therefore, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338.

9. This Court has supplemental jurisdiction over all state claims brought herein. See 28 U.S.C. § 1367.

10. Defendants do sufficient business in North Carolina to allow this Court to assert personal jurisdiction over Defendants.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391, 1400(b).

FACTUAL BACKGROUND

12. Ranjo's and Smith Manufacturing are competitors in the design, manufacture, and marketing of machinery used to remove markings from and/or resurface pavement such as that found on streets, highways, and airport runways and tarmacs. On information and belief, Ranjo's and Smith Manufacturing are the only two companies in the United States that design, manufacture, and market drums configured with individually removable teeth for use in the removal of pavement markings.

13. Sawtelle is a co-inventor listed on, and is the sole owner of, the '781 patent; Ranjo's is licensed to practice the inventions covered by the '781 patent.

14. On or about February 18, 2001, at the American Traffic Safety Services Association ("ATSSA") trade show in Fort Lauderdale, Florida, Sawtelle observed that Smith Manufacturing/Smith was selling and offering for sale a pavement marking removal drum, the "Smith Removal Drum," that is covered by at least one of the claims of the '781 patent.

15. On February 18 and February 19, 2001, respectively, Ranjo's/Sawtelle and its patent counsel delivered written notices to Smith Manufacturing/Smith, asserting that the Smith Removal Drum infringes the '781 patent, and demanding that Smith Manufacturing/Smith

immediately cease and desist all sales and offers for sale of the Smith Removal Drum. See February 19, 2001 letter from David M. Carter, patent counsel for Ranjo's/Sawtelle, to Smith Manufacturing/Smith, attached hereto as Exhibit 2.

16. When Sawtelle attempted to hand-deliver the written notice of infringement to Smith at the ATSSA trade show, Smith deliberately evaded Sawtelle and only accepted hand delivery of the notice after Sawtelle threatened legal action.

17. Just after the close of the ATSSA trade show, on or about February 20, 2001, Smith approached Sawtelle, indicating Smith's opinion that the Smith Removal Drum does not infringe the '781 patent. In response, Sawtelle briefly reiterated the infringement position to Smith and indicated that Sawtelle was willing to discuss the matter further with Smith in an effort to reach resolution. Sawtelle provided Smith with Sawtelle's cellular telephone number and Smith indicated that he would be calling Sawtelle to discuss the issue. Smith never called Sawtelle.

18. In a letter to Ranjo's/Sawtelle dated March 5, 2001, Smith again denied infringement.

19. Smith Manufacturing/Smith failed and continues to fail to adhere to the demands of the written infringement notices from Ranjo's/Sawtelle and its patent counsel, choosing instead to deliberately continue selling and offering for sale the Smith Removal Drum.

20. The continued sales and offers for sale of the infringing Smith Removal Drum by Smith Manufacturing/Smith have injured Ranjo's/Sawtelle, causing Ranjo's to lose profits.

21. In the course of marketing the infringing Smith Removal Drum, Smith Manufacturing/Smith has deliberately undercut Ranjo's prices, forcing Ranjo's to grant deep discounts on prices for products duly licensed under the '781 patent.

22. Smith Manufacturing/Smith has further unlawfully damaged and competed with Ranjo's by deliberately and falsely representing to customers that Ranjo's ceased to market its patented pavement marking removal drum either by merely getting out of the industry or by assigning the '781 patent to a third company that manufactures similar or related machinery.

23. On information and belief, Smith Manufacturing/Smith continues to deliberately and willfully infringe the '781 patent and to deliberately make false representations to customers regarding Ranjo's position in the industry, all in furtherance of a calculated campaign to enhance sales of the infringing Smith Removal Drum while preventing Ranjo's from selling its patented pavement marking removal drum.

FIRST CLAIM FOR RELIEF
WILLFUL PATENT INFRINGEMENT

24. Paragraphs 1-23 of this Complaint are incorporated herein by reference.

25. Smith Manufacturing/Smith has, and continues to, make, use, sell, offer for sale, and/or import products and/or methods, including but not limited to the Smith Removal Drum, that are covered by at least one claim of the '781 patent. All such conduct infringes the '781 patent. See 35 U.S.C. § 271.

26. Smith Manufacturing/Smith's above-described acts of patent infringement are, and have been, willful.

27. Ranjo's has suffered significant injury as a result of Smith Manufacturing/Smith's willful infringement of the '781 patent, including but not limited to lost profits and discounts.

SECOND CLAIM FOR RELIEF
FEDERAL UNFAIR COMPETITION

28. Paragraphs 1-27 of this Complaint are incorporated herein by reference.

29. Smith Manufacturing/Smith has, on or in connection with, for instance, the Smith Removal Drum, used in commerce words, terms, names, symbols, or devices, or a combination thereof, or false designations of origin, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Smith Manufacturing/Smith with Ranjo's, or as to the origin, sponsorship, or approval of Smith Manufacturing/Smith's goods, services or commercial activities by Ranjo's.

30. Smith Manufacturing/Smith has, on or in connection with, for instance, the Smith Removal Drum and/or the Ranjo's patent pavement marking removal drum, used in commerce false or misleading descriptions of fact, or false or misleading representations of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of Smith Manufacturing/Smith's or Ranjo's goods, services, or commercial activities.

31. Ranjo's has been, and is likely to continue to be, damaged by the above-described conduct of Smith Manufacturing/Smith. Therefore, such conduct is in violation of federal law. See 15 U.S.C. § 1125(a).

THIRD CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES

32. Paragraphs 1-31 of this Complaint are incorporated herein by reference.

33. Smith Manufacturing/Smith's above-described false representations to customers regarding the business of Ranjo's constitute unfair and/or deceptive trade practices in commerce that have proximately caused damage to Ranjo's. Therefore, Smith Manufacturing/Smith has

violated the North Carolina statutory prohibition of unfair and deceptive trade practices. See N.C. GEN. STAT. § 75-1.1.

FOURTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

34. Paragraphs 1-33 of this Complaint are incorporated herein by reference.

35. Smith Manufacturing/Smith's above-described false representations to customers regarding the business of Ranjo's were made with malice and without reasonable relation to the protection of a legitimate business interest of Smith Manufacturing/Smith. Therefore, Smith Manufacturing/Smith has violated the common law prohibition of tortious interference with business relations.

FIFTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE

36. Paragraphs 1-35 of this Complaint are incorporated herein by reference.

37. Smith Manufacturing/Smith's above-described false representations to customers regarding the business of Ranjo's induced customers to refrain from entering into contracts with Ranjo's without justification. Such contracts would have ensued but for Smith Manufacturing/Smith's conduct, which was designed to injure Ranjo's. Therefore, Smith Manufacturing/Smith has violated the common law prohibition of tortious interference with prospective advantage.

SIXTH CLAIM FOR RELIEF
COMMON LAW UNFAIR COMPETITION

38. Paragraphs 1-37 of this Complaint are incorporated herein by reference.

39. Smith Manufacturing/Smith's above-described false representations to customers regarding the business of Ranjo's are unfair and have damaged the legitimate business of

Ranjo's. Therefore, Smith Manufacturing/Smith has violated the common law prohibition of unfair competition.

PRAYER FOR RELIEF

Therefore, Plaintiffs pray the Court as follows:

- A. That Defendants be preliminarily and permanently enjoined from making, using, selling, offering for sale, and importing the Smith Removal Drum and all other products and methods that infringe the '781 patent;
- B. That Defendants pay Ranjo's all lost profits suffered by Ranjo's as a result of Defendants' infringement of the '781 patent;
- C. That Defendants pay Ranjo's all discounts granted by Ranjo's as a result of Defendants' infringing presence in the marketplace;
- D. That Defendants infringement of the '781 patent be declared willful;
- E. That, without limitation, Defendants pay all damages sustained by Plaintiffs as a result of Defendants' unlawful conduct, and that all such damages be trebled pursuant to 35 U.S.C. § 284, 17 U.S.C. § 1117, and/or N.C. GEN. STAT. § 75-16;
- F. That this action be declared an exceptional case pursuant to 35 U.S.C. § 285 and/or 17 U.S.C. § 1117;
- G. That Defendants pay all attorney fees incurred by Plaintiffs in furtherance of this action, such relief awarded pursuant to 35 U.S.C. § 285, 17 U.S.C. § 1117, and/or N.C. GEN. STAT. § 75-16.1;
- H. That Defendants pay all costs incurred by Plaintiffs in furtherance of this action;

I. That Defendants disseminate letters of retraction and apology, drafted by Plaintiffs, to all parties to whom Defendants have communicated deliberate false representations regarding Plaintiffs and/or Plaintiffs' business;

J. That Plaintiffs be awarded any other and further relief deemed just and proper by the Court; and

K. That all issues so triable be tried by jury.

DATE: MAY, 14, 2001

Respectfully submitted,

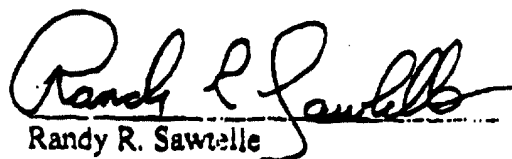


David M. Carter (N.C. Bar No. 8,605)
J. Derel Monteith, Jr. (N.C. Bar No. 25,397)
CARTER & SCHNEDLER, P.A.
56 Central Avenue, Suite 101
P.O. Box 2985
Asheville, NC 28802
ph (828) 252-6225
fax (828) 252-6316
ATTORNEYS FOR PLAINTIFFS

VERIFICATION

I, Randy R. Sawtelle, both in an individual capacity and as Vice President and Secretary of Ranjo's Incorporated, hereby verify that the facts asserted in the attached Complaint are true to the best of my knowledge except for those asserted on information and belief, which I believe to be true.

DATE: 5-14-01, 2001


Randy R. Sawtelle

NOTE:

**THIS IS A PARTIALLY
SCANNED DOCUMENT.**

**PLEASE SEE THE CASE
FILE FOR
ATTACHMENTS,
EXHIBITS, AFFIDAVITS
OR OTHER MATERIAL
WHICH HAS NOT BEEN
SCANNED.**