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PATENT, TRADEMARK, AND COPYRIGHT LAW

VIA ELECTRONIC MAIL

June 15, 2004

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

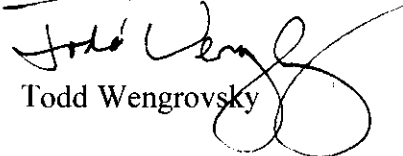
Re: Spiel Associates, Inc. v. Gateway Bookbinding Systems, Ltd.
CV 03-4696 (FB, RLM)

Clerk of Court:

Attached for filing in the above-referenced matter, please find Plaintiff's Amended Verified Complaint. A courtesy hard copy is also being forwarded to the attention of Judge Frederic Block via First Class Mail.

Should you have any questions or require any further information, please do not hesitate to call me at (631) 727-3400.

Sincerely,


Todd Wengrovsky

cc: Michael S. Nesutel, Esq.

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

-----X
SPIEL ASSOCIATES, INC.,

Plaintiff,

**PLAINTIFF'S
AMENDED VERIFIED
COMPLAINT**

-against-

GATEWAY BOOKBINDING SYSTEMS, LTD.,

Index No. 03 CV 4696
(FB, RLM)

Defendant.
-----X

Plaintiff, by attorney, Todd Wengrovsky, respectfully sets forth and alleges:

I.

Jurisdiction

This action arises under the patent laws of the United States, Title 35 of the United States Code. Jurisdiction is founded on 28 USCS 1331 and 1338(a). The Court further has jurisdiction under 15 USCS 1125(a), which creates a Federal cause of action for common law unfair competition, as well as for false designation of origin, and misappropriation.

II.

Venue

Venue is vested in this Court pursuant to 28 USCS 1391(b) and (c), as well as 28 USCS 1400(b), as the claims asserted herein arose within this district, and Defendant regularly conducts business within this district.

III.

The Parties

Plaintiff SPIEL ASSOCIATES, INC. is a corporation organized and existing under the laws of the State of New York, and having as its principal place of business the premises at 45-01 Northern Boulevard, Long Island City, New York, 11101.

Defendant GATEWAY BOOKBINDING SYSTEMS, LTD. is, upon information and belief, a foreign corporation organized and existing under the laws of the nation of CANADA, and having as its principal place of business the premises at 11 Durand Road, Winnipeg, MB R2J 3T1, CANADA.

IV.

Background and Facts

1. Plaintiff SPIEL ASSOCIATES, INC. (hereinafter "Spiel") is a manufacturer, distributor and seller of machinery in the bookbinding industry, specifically machinery that uses plastic spiral coils for binding books.

2. It is well known in the bookbinding industry to use machines that form plastic spiral coils (known as "formers" or "forming machines") and to use separate machines (known as "inserters" or "binding machines") to insert the formed spiral coils in previously-punched holes in paper, for binding the books.

3. Specifically, one would typically form plastic coils of many sizes and colors and store the coils for later usage. A user would then select the appropriate plastic coils for binding particular books, and would insert those coils into the binding machine to complete the process.

4. Spiel identified several deficiencies with this method. The separate forming and binding machines required multiple operators, rendering the method expensive and inefficient. This also led to the waste of materials. Because the coils were not made to the spine length of each book being bound, excess coil was cut and discarded. Many plastic coils also remained unused. In addition, valuable storage space was lost due to the need to maintain coils of all colors and sizes. Furthermore, stored coil usually becomes tangled and distorted in storage, making it harder to bind into books.

5. Therefore, Spiel developed a means to integrate the process of forming plastic coils at the same site as the binding of those coils into the books. Specifically, Spiel developed a means to form and bind in a continuous automated process (or “inline system”), by using a conveyor to link the two machines. The conveyor functions to transfer the plastic coils from the forming machine to the binding machine while they cool, where the coils are inserted into holes of the books. This provided many advantages over the prior method. A single operator could now perform the function of multiple operators; no space was needed to store formed plastic coils for future usage; significant time was saved as there was no need to unload, sort, count, or retrieve the coils; and fewer coils were wasted. The inline system also allows one to make coil to the spine length of the book being bound, as opposed to wasting materials by using standard length coil that must be cut to size.

6. One prior art patent tried unsuccessfully to heat and rapidly cool the plastic to bind books with one continuous strand of plastic. Specifically, U.S. Patent 4,249,278 to Pfaffle describes a combination forming and binding machine that was integral, as opposed to being a modular system of linked machines that could be used separately or “offline” like Spiel’s. Importantly, this prior art device features a refrigeration-type unit to cool the coils. In particular,

the Pfaffle patent describes an artificial air-cooling unit that blasts cold air on the plastic coils, cooling the coils far more rapidly than Spiel's device. As described in the Spiel patent, however, Pfaffle's "Vortex" cooling unit cools the coil *too* rapidly, often causing the coil to become brittle and ineffective for binding. This is because rapid, artificial cooling in air often causes embrittlement, as cold air causes voids or hollowing in the interior of the plastic coil. Importantly, contrary to Pfaffle's blast of cold air, Spiel's patented inline system utilizes time and ambient air to effectively cool the coil for proper binding. Spiel's teaching of a linkage conveyor that allows for slow cooling time in ambient air was a novel and important advancement in the art – one that the bookbinding industry failed to conceive of for decades.

7. Spiel applied for a patent entitled "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine" on October 2, 2000, application Serial Number 09/677,489. In all instances, Spiel disclosed all relevant material to the United States Patent and Trademark Office, and distinguished the invention from the prior art in detail. United States Patent 6,547,502 (hereinafter "the '502 patent") was granted to Spiel on April 15, 2003.

8. The '502 patent is a continuation-in-part of application Ser. No. 09/460,887 filed Dec. 14, 1999, which application is a continuation-in-part of Ser. No. 09/100,724, filed Jun. 19, 1998, now U.S. Pat. No. 6,000,896 dated Dec. 14, 1999, which application was a continuation-in-part of application Ser. No. 08/843,754 filed Apr. 21, 1997, now U.S. Pat. No. 5,890,862 dated Apr. 6, 1999.

9. Claim 1 of the '502 patent appears as follows:

"1. A combination plastic spiral coil forming and binding machine comprising: a coil forming machine forming hot binding coils at a first higher temperature; a binding machine for binding said cooled coils into holes of a book being bound; and a conveyor for carrying said binding coils from said coil forming machine to said binding machine under ambient air conditions, the length of said conveyor being selected to provide enough slow cooling time to bring the temperature of said binding coils down to close to room temperature and a solid, non-brittle state." (emphasis added)

10. Moreover, the specification section of the '502 patent states that:

"While other methods of cooling may be applied to the hot, formed plastic coils, the coils may be cooled by being advanced on the conveyor at a speed sufficient for the temperature of the plastic coil to lower." (emphasis added)

11. The specification section of the '502 patent further states that:

"It is also known that other modifications may be made to the present invention, without departing from the score of the invention, as noted in the appended claims."

12. Spiel applied for a second patent entitled "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine" on August 10, 2002, application Serial Number 10/215656, a continuation of the '502 patent. United States Patent 6,726,426 (hereinafter "the '426 patent") was granted to Spiel on April 27, 2004.

13. Claim 1 of the '426 patent appears as follows:

"1. A combination in line plastic spiral coil forming and binding machine comprising: a coil forming machine for heating, forming and cutting discrete segments of hot binding coils at a first higher temperature, said discrete segments being of a length required for a particular book being bound; a binding machine for binding said discrete segments into holes of the book being bound; and means for carrying said segments of hot binding coils from said coil forming machine to said binding machine under conditions in ambient air, said carrying means providing sufficient duration of travel time to provide enough slow cooling time in said ambient air to bring the temperature of said binding coils down to close to room temperature and a solid, non-brittle state."

14. Spiel also filed a Request for Reexamination of the '426 patent with the United States Patent and Trademark Office on June 15, 2004. An application corresponding to the '426 patent had been filed by Spiel in Canada (Canadian Application No. 2,321,937) and is currently undergoing prosecution before the Canadian Patent Office. In that application, Defendant Gateway's attorneys filed a Protest on January 19, 2004, alleging, among other things, that the claims in the Canadian application are unpatentable over previously-uncited prior art patents and publications. Although the claims in the Canadian application are not identical to the claims in the '426 patent, several claims share common features or elements. Therefore, the purpose of filing the Request for Reexamination was to determine whether the newly-cited prior art raises any substantial new questions of patentability as to the claims of the '426 patent and if so, whether the claims are nevertheless patentable over the newly-cited prior art. Spiel's position is that the newly-cited prior art references are merely cumulative to the references already of record in the '426 patent. As a result, these references are not material to patentability by definition, and thus need not even be cited. However, Spiel filed the Request for Reexamination in the interest of making certain that the references and assertions made by Defendant Gateway are fully considered in the '426 patent.

15. Regarding commercial activity of Spiel's patented invention, Spiel first displayed a combination or "inline" system at the "Graph Expo" industry trade show in Chicago, October 17-20, 1999 – a trade show that was attended by Defendant GATEWAY BOOKBINDING SYSTEMS, LTD. (hereinafter "Gateway").

16. At Spiel's direction, PVC Spiral Supply of Boise, Idaho then completed development of a particular plastic coil forming machine with an exit conveyor of suitable length for usage in the inline system. The function of the forming machine's exit conveyor, in combination with the

binding machine's infeed conveyor, is to transfer the spiral coils from the forming machine to the binding machine and to allow the coils to cool in ambient air in the process. The coil binding machine manufactured by PVC Spiral Supply at Spiel's direction is known as the "Marlon 700," which Spiel linked inline to Spiel's previously-existing coil binding machine, the "Coilmaster." The combination of the "Marlon 700" plastic coil forming machine and "Coilmaster" plastic coil binding machine is known as Spiel's "Coilmaster II."

17. Spiel's complete "Coilmaster II" Inline system was then displayed at the "Graphics of the Americas" trade show in Miami, Florida in January, 2000. This trade show was also attended by Defendant Gateway, in their normal course of business.

18. From 1999 to the present, Spiel has promoted the "Coilmaster II" at all major industry trade shows, including, but not limited to the "Graph Expo" trade show in Chicago, "Graphics of the Americas" trade show in Miami, and "On Demand Print Show" in New York. Defendant Gateway regularly exhibits at such trade shows.

19. Spiel and Gateway also have a history of visiting each other's trade show booths, inspecting each other's products, and speaking with each other about the products, including asking the designers of the machines detailed questions regarding the operation and capabilities of same.

20. Spiel has also consistently advertised the "Coilmaster II" in print publications, including "Binding, Finishing & Distribution" and "Printing Impressions" – two of many major publications in the printing industry in which Gateway routinely advertises. The "Coilmaster II" has also been featured in a variety of company profiles, Internet websites, and other promotional materials to which Gateway routinely had access.

21. At all times during Spiel's promotion and sale of the "Coilmaster II," patent markings and notices appeared on the product, serving as notice to the public that the invention was proprietary and protected by the patent laws.

22. After two years of widespread promotion and sale of the "Coilmaster II," Spiel representatives attended the "Print '01" trade show in Chicago in September, 2001, and saw that Defendant Gateway was promoting an inline coil forming and coil binding system that looked strikingly similar to Spiel's patented system.

23. The product is known as Gateway's "PLASTIKOIL® Concept III Interline System." Gateway's promotional materials state that the "PLASTIKOIL® Concept III Interline System" is based upon linking of Gateway's previously-existing "New Concept Former" forming machine with Gateway's previously-existing "PBS 3000 Auto Inserter" binding machine via a conveyor. It became clear that Gateway had inspected Spiel's patented product and intentionally copied the then patent pending design.

24. Through inspection and examination of the product itself, Spiel representatives found that the Gateway product comprised the same components as Spiel's, including a plastic coil forming machine and book binding machine, with plastic spiral coil formed at a raised temperature and cooled while being conveyed to a book binding machine, for binding a book with the cooled plastic coil. Importantly, the Gateway device uses ambient air to cool the coil.

25. Referring to independent Claim 1 of Plaintiff's '502 patent (included in paragraph "9" herein), Defendant Gateway's product clearly and literally satisfies every limitation of the claim.

26. Consistent with the first element of independent Claim 1, the Gateway product comprises a coil forming machine forming hot binding coils at a first higher temperature.

27. Consistent with the second element of independent Claim 1, the Gateway product comprises a binding machine for binding said cooled coils into holes of a book being bound.

28. Consistent with the third element of independent Claim 1, the Gateway product comprises a conveyor for carrying said binding coils from said coil forming machine to said binding machine under ambient air conditions.

29. Finally, consistent with the fourth element of independent Claim 1, the length of Gateway's conveyor provides enough slow cooling time to bring the temperature of said binding coils down to close to room temperature and a solid, non-brittle state.

30. Therefore, Defendant's product contains every limitation of Claim 1 of the '502 patent and thus infringes the patent literally. Even if there were no literal infringement, Defendant's product still infringes the '502 patent under the doctrine of equivalents.

31. In addition, Defendant's product also contains every limitation of Claim 1 of the '426 patent and thus infringes the '426 patent literally. Even if there were no literal infringement, Defendant's product still infringes the '426 patent under the doctrine of equivalents.

32. In summation, the gist of the Spiel invention is a combination plastic coil forming machine and book binding machine, whereby a plastic spiral coil is formed at a first raised temperature, cooled, and then conveyed to a book binding machine, for binding a book with plastic coil of a lowered, cooled temperature. Defendant's product utilizes Plaintiff's concept, including the forming machine, binding machine, and conveyor using ambient air to cool the spiral coil.

33. After the Spiel '502 patent issued on April 15, 2003, Spiel retained present counsel to put Gateway on notice of patent infringement and to pursue a license agreement with Gateway. Specifically, present counsel served Gateway with a demand letter dated April 21, 2003, which

outlined the infringement claim element by element and included a copy of the '502 patent. Present counsel then corresponded with Gateway's representatives in writing several times in an attempt to resolve the present conflict. Gateway refused to negotiate.

34. Representatives of Spiel also contacted Gateway via telephone in June, 2003, and spoke with Gateway's Matthew DesJarlais. Spiel explained its position to Mr. DesJarlais and discussed the patent and Gateway's product in detail. Spiel attempted to resolve the conflict with Gateway by again offering a license, but Gateway again refused to even negotiate.

35. Defendant Gateway continues to promote and sell the infringing system after receiving direct notice of the '502 patent.

36. Gateway displayed the infringing system at the "Gutenberg '03" trade show in Long Beach, California in June, 2003, and exhibited the infringing product at the "Chicago Expo" show in September, 2003. Moreover, Gateway appears to be increasing its promotion of the "PLASTIKOIL® Concept III Interline System," such as by prominently featuring same on Gateway's Internet site. Upon information and belief, Gateway has also formed a strategic relationship with "James Burn International" of 211 Cottage Street, Poughkeepsie, NY 12601 - a prominent manufacturer in the bookbinding industry - for the purpose of increasing promotion and sale of the infringing system.

37. Plaintiff has been damaged by Defendant's acts in a variety of ways, including lost sales, lost opportunity to license the patented product, and being deprived of the attribution that should have been enjoyed by virtue of having received the United States Patents.

38. Plaintiff has incurred significant expenses in preparing and obtaining its United States Patents, and has expended great time and labor in creating and promoting products protected

thereby. Currently, Plaintiff can not receive the profits or royalties one would ordinarily expect due to Gateway's infringement.

39. Allowing Defendant to continue to promote the infringing system will cause significant damage to Plaintiff, and defy the very purpose of the patent system.

40. Accordingly, Plaintiff seeks damages of an amount no less than a reasonable royalty, pursuant to the provisions of 35 USC 284.

41. In addition, Plaintiff seeks increased damages and attorneys fees based upon willful infringement. This is due to Defendant's knowledge of Plaintiff's patented system and their intentional promotion and sale of infringing products thereafter.

42. In addition to the above-outlined patent infringement claim, Gateway has also engaged in unfair competition, specifically false designations and misappropriation of the patented product.

43. First, Gateway has falsely designated itself as the inventor and/or owner of Spiel's patented inline system, in violation of Section 43(a) of the Lanham Act. Specifically, on the "Company Profile" section of their Internet site, Gateway is misrepresenting itself as the innovator of the patented inline system, intentionally taking credit where none is due. The "Innovations" section of the "Company Profile" states: "We took it a step further with the PLASTIKOIL® Concept III Interline System — offering coil manufacturing interlined with automatic coil insertion. Once again, leading the way for the plastic spiral industry." Thus, Gateway is leading the consumer and the industry to believe that the inline system is an innovation of Gateway. This overreaching representation is a deceptive trade practice that deprives Spiel of the credit and attribution that one would ordinarily receive from being recognized as the true inventor of the product.

44. The identical representation appears in Gateway's catalog, which is sent to prospective customers who are in the market for expensive, specialized bookbinding machinery. Gateway's claim to be the innovator of the inline system may influence consumers' purchasing decisions, as prospective customers would likely value the experience and expertise associated with such "innovation." The inaccurate representation may deter consumers from looking elsewhere for the products, as the consumers will likely assume that the price, value, warranty, and/or service from the "innovator" would be the best available.

45. Next, Gateway has engaged in misappropriation of Spiel's patented product in violation of New York common law, by inspecting Spiel's product and then copying its principal features.

46. Spiel has invested considerable labor, skill, and expenditure in the development of its patented inline system, from the design and engineering of a system with the ability to bind books up to 30 mm in thickness, through the prosecution and grant of its United States Patents. As a result, the patents have enhanced Spiel's name in the industry, and bolstered Spiel's reputation as an innovator of important industry products.

47. Gateway has used Spiel's skill, expenditures, and labor and misappropriated information regarding Spiel's patented system, for the purpose of commercial gain, in violation of New York law. Specifically, Gateway has used information gained from inspecting Spiel's patent-pending product at the "Graph Expo" trade show in Chicago, as outlined above. Gateway subsequently incorporated that information into their design, and produced an inline system utilizing the identical concepts. As such, Gateway is unjustly benefiting from Spiel's skill, expenditures, and labor, free-riding on Spiel's efforts. This constitutes misappropriation of information in violation of New York law.

48. In summation, Gateway has "reaped where it has not sewn," enjoying marketplace success with the "Plastikoil® ConceptIII Interline System" absent the creativity, expense, and effort associated with designing and patenting the product. This is fundamentally unfair to Spiel, and contrary to the basic principles of patent and unfair competition law, which dictate that innovation and novelty are to be justly rewarded.

AS AND FOR A FIRST CAUSE OF ACTION

49. Plaintiff SPIEL ASSOCIATES, INC. is the original inventor of the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine." The invention is a system that forms plastic spiral coil and inserts the coil in previously-punched holes in paper for binding the book. The system forms and binds in a continuous automated process (or "inline system"), by using a conveyor to link the forming and binding machines. The conveyor functions to transfer the plastic coils from the forming machine to the binding machine while they cool in ambient air.

50. On April 15, 2003, United States Letters Patent Number 6,547,502 was duly and legally issued to Plaintiff for such invention, and since then Plaintiff has been, and still is, the sole owner of the invention and all rights, title, and interest related thereto.

51. Pursuant to 35 USCS 282, the patent is entitled to a presumption of validity.

52. Defendant has commercially exploited Plaintiff's invention by manufacturing, producing, distributing and selling products described in Plaintiff's patent.

53. Plaintiff has notified Defendant of Plaintiff's patent and of the Defendant's infringement of the patent (a) by giving notice of the patent to the public, including Defendant, by manufacturing and selling to the public products containing the inventions of the patent and by

marking all products in accordance with the statutes of the United States; and (b) by giving Defendant verbal and written notice of the patent and Plaintiff's rights under the patent, stating the number and day and year of issuance of the patent and requesting Defendant to desist from infringement, but in spite of the statutory and written notice, Defendant continued and are continuing infringement.

54. Defendant has violated the terms of 35 USCS 101, et.seq. and derived unlawful gains and profits from the infringement.

55. Plaintiff has made a substantial investment of time, money, skill, and effort to create and patent the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine."

56. Plaintiff has suffered and will continue to suffer considerable economic losses due to Defendant's infringement upon the Plaintiff's patented product in violation of 35 USCS 101, et.seq.

57. Plaintiff's damages include, but are not limited to the lost opportunity to license the patented product, lost sales, being deprived of attribution as the true inventor of the product, and irreparable injury to Plaintiff's image, goodwill, and business reputation.

58. Plaintiff is unable to ascertain the amount of their actual damages at this time.

AS AND FOR A SECOND CAUSE OF ACTION

59. Plaintiff repeats and reiterates each and every allegation of paragraphs 1 through 58 set out supra, with the same force and effect as if fully set forth therein.

60. Plaintiff SPIEL ASSOCIATES, INC. is the original inventor of the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine." The invention is

a system that forms plastic spiral coil and inserts the coil in previously-punched holes in paper for binding the book. The system forms and binds in a continuous automated process (or “inline system”), by using a conveyor to link the forming and binding machines. The conveyor functions to transfer the plastic coils from the forming machine to the binding machine while they cool in ambient air.

61. On April 27, 2004, United States Letters Patent Number 6,726,426 was duly and legally issued to Plaintiff for such invention, and since then Plaintiff has been, and still is, the sole owner of the invention and all rights, title, and interest related thereto.

62. Pursuant to 35 USCS 282, the patent is entitled to a presumption of validity.

63. Defendant has commercially exploited Plaintiff’s invention by manufacturing, producing, distributing and selling products described in Plaintiff’s patent.

64. Plaintiff has notified Defendant of Plaintiff’s patent and of the Defendant’s infringement of the patent (a) by giving notice of the patent to the public, including Defendant, by manufacturing and selling to the public products containing the inventions of the patent and by marking all products in accordance with the statutes of the United States; and (b) by giving Defendant verbal notice of the patent and Plaintiff’s rights under the patent, and requesting Defendant to desist from infringement, but in spite of the notice, Defendant continued and are continuing infringement.

65. Defendant has violated the terms of 35 USCS 101, et.seq. and derived unlawful gains and profits from the infringement.

66. Plaintiff has made a substantial investment of time, money, skill, and effort to create and patent the “Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine.”

67. Plaintiff has suffered and will continue to suffer considerable economic losses due to Defendant's infringement upon the Plaintiff's patented product in violation of 35 USCS 101, et.seq.

68. Plaintiff's damages include, but are not limited to the lost opportunity to license the patented product, lost sales, being deprived of attribution as the true inventor of the product, and irreparable injury to Plaintiff's image, goodwill, and business reputation.

69. Plaintiff is unable to ascertain the amount of their actual damages at this time.

AS AND FOR A THIRD CAUSE OF ACTION

70. Plaintiff repeats and reiterates each and every allegation of paragraphs 1 through 69 set out supra, with the same force and effect as if fully set forth therein.

71. Plaintiff SPIEL ASSOCIATES, INC. is the original inventor of the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine." The invention is a system that forms plastic spiral coil and inserts the coil in previously-punched holes in paper for binding the book. The system forms and binds in a continuous automated process (or "inline system"), by using a conveyor to link the forming and binding machines. The conveyor functions to transfer the plastic coils from the forming machine to the binding machine while they cool in ambient air.

72. On April 15, 2003, United States Letters Patent Number 6,547,502 was duly and legally issued to Plaintiff for such invention, and since then Plaintiff has been, and still is, the sole owner of the invention and all rights, title, and interest related thereto.

73. Defendant has commercially exploited the Plaintiff's invention by manufacturing, producing, distributing and selling products described in Plaintiff's patent.

74. Plaintiff has notified Defendant of Plaintiff's patent and of the Defendant's infringement of the patent (a) by giving notice of the patent to the public, including Defendant, by manufacturing and selling to the public products containing the inventions of the patent and by marking all products in accordance with the statutes of the United States; and (b) by giving Defendant verbal and written notice of the patent and Plaintiff's rights under the patent, stating the number and day and year of issuance of the patent and requesting the Defendant to desist from infringement, but in spite of the statutory and written notice, Defendant continued and are continuing infringement.

75. Defendant has violated the terms of 35 USCS 101, et.seq. and derived unlawful gains and profits from the infringement.

76. Defendant made false designations of origin, false misleading descriptions of fact, or false misleading representations of fact which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services or commercial activities by another person.

77. Defendant has violated the terms of Lanham Act Section 43 (a), codified at 15 USCS 1125(a).

78. Plaintiff has suffered and will continue to suffer considerable long term economic losses due to the unfair trade practices of Defendant in violation of 15 USCS 1125(a).

79. Plaintiff's damages include, but are not limited to the lost opportunity to license the patented product, lost sales, being deprived of attribution as the true inventor of the product, and irreparable injury to Plaintiff's image, goodwill, and business reputation.

80. Plaintiff is unable to ascertain the amount of its actual damages at this time.

AS AND FOR A FOURTH CAUSE OF ACTION

81. Plaintiff repeats and reiterates each and every allegation of paragraphs 1 through 80 set out supra, with the same force and effect as if fully set forth therein.

82. Plaintiff SPIEL ASSOCIATES, INC. is the original inventor of the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine." The invention is a system that forms plastic spiral coil and inserts the coil in previously-punched holes in paper for binding the book. The system forms and binds in a continuous automated process (or "inline system"), by using a conveyor to link the forming and binding machines. The conveyor functions to transfer the plastic coils from the forming machine to the binding machine while they cool in ambient air.

83. Plaintiff has made a substantial investment of time, money, skill, and effort to create and patent the "Combination Plastic Spiral Forming Machine And Semi-Automatic Plastic Spiral Binding Machine" and on April 15, 2003, United States Letters Patent Number 6,547,502 was duly and legally issued to Plaintiff for such invention.

84. Defendant has commercially exploited the Plaintiff's invention by importing, manufacturing, producing, distributing and selling products described in Plaintiff's patent.

85. Defendant has appropriated the Plaintiff's product by widely advertising such product as that of Defendant's own, and derived unlawful gains and profits from such appropriation.

86. Defendant's activities constitute misappropriation pursuant to New York common law.

87. Plaintiff has suffered and will continue to suffer considerable economic losses due to misappropriation on the part of Defendant.

88. Plaintiff has been injured by such misappropriation on the part of Defendant, and Plaintiff's damages include, but are not limited to the lost opportunity to license the patented product, lost sales, being deprived of attribution as the true inventor of the product, and irreparable injury to Plaintiff's image, goodwill, and business reputation.

89. Plaintiff is unable to ascertain the amount of its actual damages at this time.

WHEREFORE, Plaintiff requests that:

A. It be adjudged that Plaintiff's patents have been infringed by Defendant;

B. Defendant and their officers, directors, agents, representatives, attorneys and all persons acting and claiming to act on their behalf or under their direction or authority, and all persons acting in concert or participation with them, and each of them, be permanently enjoined from importing, making, using and selling Defendant's infringing products in the United States, and from importing, making, using or selling any such product in the United States that is covered by one or more claims of Plaintiff's '502 patent;

C. Defendant and their officers, directors, agents, representatives, attorneys and all persons acting and claiming to act on their behalf or under their direction or authority, and all persons acting in concert or participation with them, and each of them, be permanently enjoined from importing, making, using and selling Defendant's infringing products in the United States, and from importing, making, using or selling any such product in the United States that is covered by one or more claims of Plaintiff's '426 patent;

D. Defendant be required to account for their profits from infringement of Plaintiff's '502 patent;

E. Defendant be required to account for their profits from infringement of Plaintiff's '426 patent;

F. That the Court award Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff for infringement of the '502 patent and not less than a reasonable royalty for the use made of Plaintiff's invention by Defendant, together with interests and costs as fixed by the Court, as provided in 35 USCS 284;

G. That the Court award Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff for infringement of the '426 patent and not less than a reasonable royalty for the use made of Plaintiff's invention by Defendant, together with interests and costs as fixed by the Court, as provided in 35 USCS 284;

H. That the Court award Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff on their third cause of action;

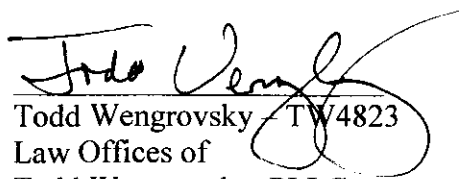
I. That the Court award Plaintiff damages against Defendant in an amount adequate to compensate Plaintiff on their fourth cause of action;

J. That the Court increase the amount of damages found or assessed for Defendant's patent infringement by three times on account of the willful, intentional, and deliberate character of Defendant's infringing acts, as provided by 35 USCS 284;

K. That the Court award Plaintiff costs and disbursements of this action including reasonable attorneys fees as provided by 35 USCS 285; and

L. That the Court award Plaintiff such other and further relief as the Court deems just, proper and equitable.

Dated: Calverton, New York.
June 15, 2004


Todd Wengrovsky - TW4823
Law Offices of
Todd Wengrovsky, PLLC.
285 Southfield Road, Box 585
Calverton, NY 11933
Tel (631) 727-3400
Attorney for Plaintiff

To: Michael S. Neustel, Esq.
Neustel Law Offices
2534 S. University Drive, Suite No. 4
Fargo, ND 58103
Attorney for Defendant

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF QUEENS)

SAUL SPIEL, being duly sworn, deposes and says:

That I am an officer of Plaintiff SPIEL ASSOCIATES, INC., and have read the foregoing Amended Verified Complaint and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.


SAUL SPIEL

Sworn to before me

this 15th day of June, 2004

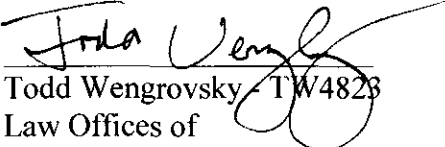

NOTARY PUBLIC

EDWARD D. TORRADO
Notary Public, State of New York
No. 01T06082561
Qualified in Queens County
Term Expires August 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2004, a copy of the foregoing Plaintiff's Amended Verified Complaint was filed with the Clerk of Court and served, in accordance with the Federal Rules of Civil Procedure and the Eastern District's Rules on Electronic Service, upon the following parties via electronic mail to the address listed below, which is designated by the addressee for that purpose:

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