

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

SPARTANBURG DIVISION

CIVIL ACTION NO.:

CAMO-CAMOLEAF, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	<u>COMPLAINT</u>
vs.	)	
	)	
MILLIKEN & COMPANY, SAMUEL	)	
WHITT JR., BENNIE REYNOLDS,	)	
ROBERT KERR, & AMY BOWLIN,	)	
	)	
Defendants.)	)	
_____	)	

JURISDICTION AND VENUE

1. This is a civil action for patent infringement, injunctive relief, and damages arising under the United States Patent Act, 35 U.S.C. §§1, *et. seq.* Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§1331 and 1338 (a). Upon information and belief, defendant is a Delaware corporation doing business in South Carolina and in this judicial district. The plaintiff also asserts state law causes of action.

2. Venue lies in this district pursuant to 28 U.S.C. §§1391(b) and (c), and 1400(b).

PARTIES

3. Camo-Camoleaf, Inc. is a corporation organized and existing under the laws of the State of North Carolina.

4. Milliken and Company is a corporation organized under the laws of the State of Delaware with its headquarters in Spartanburg, South Carolina and whose registered agent is C. T. Corporate Systems of Greenville, South Carolina. Upon information and belief, the plaintiff would show that Whitt, Reynolds, Kerr and Bowlin are residents and citizens of the United States of America and the State of South Carolina.

### **FACTUAL ALLEGATIONS**

5. Plaintiff Barry G. Freeman obtained U. S. Patent No. 5,677,017 for natural tree camouflage material on October 14, 1997.

6. Thereafter, on the 14<sup>th</sup> day of November, 1997, Freeman assigned to his business partner a one-half interest in said patent, and on the same date Freeman and the partner assigned all their right, title, and interest in said patent to Camo-Camoleaf, Inc.

7. Upon the assignment of the patent to Camo-Camoleaf, Inc., the company and its stockholders and officers set out to have manufactured tree bark material derived from their patent and to market the tree bark material to various business entities around the country, including but not limited to Busch Gardens, WDW-Imagineering, WDW-Scenic Shop of MGM Studios, Benelli Arms of Italy and others.

8. In order for the plaintiff to market its tree bark material, it was necessary to perfect and produce the material through a manufacturing process. Accordingly, on the 28<sup>th</sup> of October, 1997, Camo-Camoleaf, Inc. paid to the defendant the sum of \$8,200.00 for the tooling and fabrication of forms and

molds necessary for the defendants to produce the plaintiff's product, i.e., a three dimensional camouflage material for use in making hunters' garments or hunting blinds or other products wherein a flexible, camouflage material was needed. Freeman, the inventor, and his business associates, including the corporation, intended and anticipated that there would be multiple uses of the end product.

9. The defendants accepted the sum of \$8,200.00 and agreed in exchange for such consideration to manufacture and supply to the plaintiff the product intended which the defendants claimed would "meet and/or exceed the ....specifications or characteristics as tested by Milliken."

10. Pursuant to the agreement and contract between the parties, the defendants did produce and manufacture the product requested by the plaintiff.

11. Without notification to the plaintiff, the defendants and their agents - namely Bennie H. Reynolds, Samuel Whitt, Jr., Robert Kerr, and Amy Bowlin - took information gleaned from the plaintiff's patent and used the information to apply for and receive a patent virtually identical to the patent obtained by Freeman and assigned to Camo-Camoleaf, Inc. Reynolds, Whitt, Kerr, and Bowlin were all involved in the process of producing the products for the plaintiff and became aware of the patent-in-suit and its marketing potential only as a result of their work on behalf of the plaintiff.

12. Thereafter, upon information and belief, the defendants and their agents began to manufacture and sell products resulting from the infringed patent to various entities throughout the country in direct competition with the plaintiff and utilizing the infringing patent.

13. Upon information and belief, defendants have engaged in the manufacture, use, distribution, and offer for sale of products embodying the inventions of the patent-in-suit in this judicial district and throughout the United States. This information only became known to the plaintiff in the latter part of 2004.

14. Upon information and belief, defendants have ongoing and systematic contacts with this judicial district and the United States. Defendants have placed products infringing the patent-in-suit in the stream of commerce, knowing and expecting that such products would end up in this judicial district and throughout the country.

#### **CLAIM FOR PATENT INFRINGEMENT**

15. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 14 as if fully stated herein verbatim.

16. By virtue of its exclusive license to the patent in issue, Camo-Camoleaf, Inc. has acquired and continues to maintain the right to sue thereon and the right to recover for infringement thereof.

17. Upon information and belief, Milliken and Company has infringed, induced infringement of, and contributorily infringed the patent-in-suit, and is still doing so by making, selling, offering for sale, and using processes and products embodying the patented invention of the patent-in-suit, and will continue to do so unless enjoined by this court.

18. Upon information and belief, defendants' infringement is willful and deliberate.

19. Plaintiff has placed the required statutory notice on all its products manufactured and sold by them under the patent-in-suit.

**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

20. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 19 as if fully stated herein verbatim.

21. When Camo-Camoleaf, Inc. paid Milliken and Company \$8,200.00 to produce a product based on the patent-in-suit, a contract was created. The contract was supported by good and sufficient consideration. Imposed on this contract was a duty of good faith and fair dealing. Upon information and belief, plaintiff would show that the defendants and their agents violated this covenant of good faith and fair dealing by utilizing the information conveyed to it by the plaintiff to infringe the patent-in-suit or to otherwise use this derivative information to obtain its own patent to produce the same or similar product and sell and distribute the products in direct competition with the plaintiff.

22. The defendants had significantly greater financial, manufacturing, distribution, and marketing resources than the plaintiff and, realizing this, converted the information conveyed to it by the plaintiff to its own use to compete with the plaintiff.

23. Plaintiff is informed and believes that this conduct by the defendants was a willful violation of its covenant of good faith and fair dealing and that as a proximate result of this conduct Camo-Camoleaf, Inc. has been rendered dormant and was unable to financially succeed.

**CIVIL CONSPIRACY**

24. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 23 as if fully stated herein verbatim.

25. The plaintiff is informed and believes that Milliken and the individual defendants combined and acted together and conspired for the purpose of injuring the plaintiff and caused the plaintiff special damage in securing and obtaining the plaintiff's patent information in order to convert it to their own use and for their own benefit and profit.

**BREACH OF FIDUCIARY DUTY**

26. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 26 as if fully stated herein verbatim.

27. The plaintiff, moreover, is informed and believes that there existed between it and Milliken a special or fiduciary relationship in that Milliken was and continues to be an international corporation with tremendous wealth and power while the plaintiff was a small meagerly capitalized company who relied upon Milliken to review its patent and perfect plaintiff's product. Rather than refrain from a conflict of interest and rather than acting affirmatively for the protection of the plaintiff's patent and development of the plaintiff's product Milliken used the confidences and information and knowledge it gleaned from its relationship with the plaintiff to copy the plaintiff's patent and produce the product the plaintiff had hired it to produce for the plaintiff.

**CONVERSION**

28. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 27 as if fully stated herein verbatim.

29. The plaintiff is informed and believes that the defendants converted plaintiff's patent to the defendants' own use and illegally and wrongly assumed and exercised the right of ownership or control over the plaintiff's patent and converted the patent and the benefits from the sale of the product based on the plaintiff's patent to the defendants own use.

**FRAUD**

30. The plaintiff reiterates and reaffirms the allegations contained in paragraphs 1 through 29 as if fully stated herein verbatim.

31. The plaintiff is informed and believes that the defendants represented that if the plaintiff paid Milliken the sum aforesaid hereinabove that the defendants would utilize the plaintiff's patent and faithfully produce a prototype product for the plaintiff to use in furthering its business by selling such product for a profit. This representation was false, and it was material to the relationship between the parties inasmuch as the development of a prototype product was critical to the success of the plaintiff's business, and the defendants knew that the representation was false or recklessly disregarded the truth or falsity for the intent of the representation being acted upon by the plaintiff, and plaintiff was ignorant of the falsity of the representation, the plaintiff relied on the representation to further its business and paid money to the defendants in reliance of the representation as truth, the plaintiff had the right to rely on the

representation, and as a result of relying on the false representation made by the defendants, the plaintiff's business was harmed and actually destroyed.

**BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT**

32. The plaintiff hereby reiterates and reaffirms the foregoing paragraphs as if fully set forth verbatim.

33. When the defendant Milliken took the plaintiff's \$8,200 in exchange for developing and producing a prototype product for the plaintiff, a contract was created, and the contract was supported by good and sufficient consideration. In utilizing the information gleaned from that contract and in using the plaintiff's money to further its own patent and selling the product it was obligated to develop for the plaintiff, Milliken breached the aforesaid contract with a fraudulent intention and accompanied by a fraudulent act. Milliken took the plaintiff's money knowing it would use the money, the contractual relationship and the information gleaned from the contract to further its own interest – all to the great detriment and damage to the plaintiff.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for judgment against the defendants as follows and for the following relief:

- 1) That defendant Milliken and Company be held to have infringed the plaintiff's patent;
- 2) That Milliken and Company, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them or any of them be



temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing, contributing to the infringement of, and inducing infringement of the patent-in-suit, and specifically from directly or indirectly making, using, selling, or offering for sale, any product or services embodying the inventions of the patent-in-suit during the life of the claims of the patent-in-suit, without the express written authority of plaintiffs;

3) That Milliken and Company be directed to fully compensate plaintiffs for all damages attributable to its infringement of the patent-in-suit in an amount according to proof at trial;

4) That this case be deemed exceptional;

5) That all damages awarded be trebled;

6) That Milliken and Company be ordered to deliver to plaintiff, for destruction at plaintiff's option, all products that infringed the patent-in-suit;

7) That defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from its violation of law;

8) That plaintiff be awarded reasonable attorney's fees;

9) That plaintiff be awarded the costs of suit, and an assessment of interest;

10) That the defendants be required to pay to the plaintiff all compensatory and punitive damages derived from its violation of the covenant of good faith and fair dealing, for conspiring against the plaintiff and causing it special harm, for breaching the special and fiduciary duty it owed to the plaintiff, for converting the plaintiff's property to their own uses and purposes, for

fraudulently misrepresenting a statement of material fact to the plaintiff, and for breaching its contract with a fraudulent intention and accompanied by a fraudulent act.

**BOLT LAW FIRM**

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**Columbia, South Carolina**

**July 13, 2007.**