

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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AIR VENT, INC. ,	:
	:
Plaintiff,	:
	:
- against -	:
	:
SHANDEX INDUSTRIAL, INC.	:
	:
Defendant.	:
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Case No. 08-5375-SRC

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff Air Vent, Inc. ("Plaintiff), by its attorneys, Meredith & Keyhani, PLLC and Lippes Mathias Wexler Friedman LLP, for its complaint against Shandex Industrial, Inc. ("Defendant" or "Shandex"), alleges as follows:

I. THE PARTIES

1. Plaintiff is a Delaware corporation, having a principal place of business at 4117 Pinnacle Point Drive, Suite 400, Dallas, Texas 75211.

2. Plaintiff is the owner by assignment of United States patents No. 6,149,517, entitled "End-Ventilating Adjustable Pitch Roof Ventilator," issued November 21, 2000 ("the '517 Patent"), and No. 6,793,574 ("the '574 Patent), entitled "Vent With Presecured Mechanical Fasteners," issued September 21, 2004.

3. Plaintiff is in the business, *inter alia*, of manufacturing and selling building construction products, including, without limitation, roof ridge ventilators ("ridge vents"), certain of which are sold under the name and trademark "ShingleVent® II," which product is covered by and marked with the number of the '517 Patent.

4. Upon information and belief, Shandex is a New Jersey corporation, having a

principal place of business at 2125 Center Avenue, Suite 206, Fort Lee, NJ 07024. Upon information and belief, Shandex is a corporate affiliate of Shandex Industrial, Inc., located in China ("Shandex China").

5. Shandex is an importer, distributor and seller of building construction products, including, without limitation, ridge vents, which, upon information and belief, are made by Shandex China and exported to the United States. Upon information and belief, Shandex transacts business throughout the United States and within this judicial district.

II. JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States, Title 35 U.S.C. §§ 1 *et seq.* the common law of unfair competition and unjust enrichment.

7. This Court has jurisdiction of the subject matter of the patent claims herein pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over the common law claims of unfair competition and unjust enrichment pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this district court pursuant to 28 U.S.C. §§ 1391 (c) and 1400(b).

III. FACTUAL BACKGROUND

9. Upon information and belief, Shandex imports ridge vents into the United States from its corporate affiliate Shandex China, which it distributes and sells to customers in the building construction trades, including the Vent Right Corporation ("Vent Right"), an Ohio corporation with a principal place of business located at 1338 East 289th Street, Wickliffe, Ohio 44092. Vent Right, in turn, is a distributor of Shandex and distributes and sells the ridge vents that it buys from Shandex under the name "Breasevent."

10. Upon information and belief, the Breasevent product imported by Shandex from

Shandex China is offered for sale, distributed and sold by Vent Right throughout the United States.

11. Upon information and belief, Shandex China obtained from persons unknown to Plaintiff a sample or samples of Plaintiff's ShingleVent® II product and produced a mold or molds therefrom from which it manufactures identical knock-off copies of that product, which it exports to the United States.

12. Shandex sells knock-off copies of the ShingleVent® II product throughout the United States to companies in the building construction trades, including Vent Right, which distributes and sells it as its Breasevent product.

13. The knock-off copies of Plaintiffs ShingleVent® II product are imported into the United States by Shandex and sold to its customers in the building construction trades, including Vent Right, infringe one or more claims of the '517 and '574 Patents.

IV. RELATED LITIGATION

14. On January 31, 2008, Plaintiff brought a separate action against Vent Right in the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:05-mc-02025 ("the Pennsylvania Action"), claiming infringement of a number of Air Vent patents, including the '517 Patent in suit here.

15. In the course of the Pennsylvania Action, Plaintiff first learned of the activities of Shandex in importing the infringing Breasevent product into the United States and of Shandex China's involvement in the manufacture of knock-off copies of the ShingleVent® II product.

16. Plaintiff is informed and believes that Shandex China is in the possession of molds or other tooling from which it manufactures the knock-off copies of Plaintiffs patented ShingleVent® II product. Upon information and belief substantial amounts of said knock-off

copies of Plaintiffs ShingleVent® II product are either in the possession of Shandex China and awaiting shipment to the United States, en route to the United States, or already in the possession of Shandex and ready for distribution, sale and delivery throughout the United States.

V. COUNT 1: PATENT INFRINGEMENT ('517 PATENT)

17. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. Shandex's aforesaid activities constitute infringement, inducement of infringement and/or contributory infringement of claims 1-3 of the '517 Patent, and said infringement is willful.

19. Upon information and belief, Shandex will continue to infringe the '517 Patent unless enjoined by this Court.

20. As a result of Shandex's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Shandex is enjoined by this Court from committing further acts of infringement

21. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Shandex's willful infringement, which damages should be increased up to three times the amount found or assessed.

VI. COUNT 2: PATENT INFRINGEMENT ('574 PATENT)

22. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1-21 as if fully set forth herein.

23. Defendant's aforesaid activities constitute infringement, inducement of infringement and/or contributory infringement of claims 1-3, 13, 18 and 20 of the '574 Patent.

Upon information and belief, Defendant will continue to infringe the '574 Patent unless enjoined by this Court.

24. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

25. Plaintiff is entitled to recover damages in an amount that adequately compensates it for defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

VII. UNFAIR COMPETITION AND UNJUST ENRICHMENT

26. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 25 as if fully set forth herein.

27. Shandex's aforesaid activities in creating molds of Plaintiff's ShingleVent® II product and producing a knock-off product such as the Breasevent product, evidenced bad faith misappropriation of the labors and expenditures of another, is likely to cause confusion or to deceive purchasers as to the origin of the goods, and constitutes unfair competition under the common law of New York.

28. As an intended, direct, foreseeable and proximate cause of Shandex's wrongful and unjustified conduct, Plaintiff is suffering and will continue to suffer injury as set forth herein, including damages in the form of lost business opportunities and lost profits from the sale of its ShingleVent® II product.

29. Plaintiff is entitled to the return, by way of disgorgement, restitution, divestiture, and/or other equitable remedy, of such product molds and monies, and is entitled to an order

enjoining Shandex from engaging in future unjustified conduct that is similar to the conduct complained of herein.

30. In partial or full alternative to the preceding claims for relief, Plaintiff has no adequate remedy at law for the injunctive relief sought herein and seeks such relief to remedy otherwise immediate and irreparable harm.

WHEREFORE, Plaintiff prays for a judgment against Defendant Shandex Industrial, Inc. as follows:

(a) That Defendant be declared to have infringed, induced others to infringe, and/or committed acts of contributory infringement with respect to the claims of U.S. patents No. 6,149,517 and No. 6,793,574 by importing into the United States and distributing and selling therein knock-off copies of Plaintiffs ShingleVent® II product, and that said infringement be declared willful;

(b) That Defendant, its officers, agents, servants, employees, parents, subsidiaries, divisions, affiliates, successors, and all others in active concert or participation with it or acting on its behalf, be preliminarily and permanently enjoined from further infringement of said '517 and '574 patents;

(c) That Defendant be ordered to account for and pay to Plaintiff all damages caused to said Plaintiff by reason of Defendant's Infringement of said '517 and '574 Patents pursuant to 35 U.S.C. § 284, including enhanced damages for willful infringement;

(d) That Plaintiff be granted prejudgment interest on the damages caused to them by reason of Defendant's infringement of said '517 and '574 Patents;

(e) Determining that this is an exceptional case, pursuant to 35 U.S.C. § 285 and awarding Plaintiff its attorney fees;

(f) Determining that Defendant has competed unfairly with Plaintiff under the common law of New Jersey as evidenced by Defendant's bad faith misappropriation of the labors and expenditures of Plaintiff in creating its ShingleVent® II product, and that such unlawful activity is likely to cause confusion or to deceive purchasers as to the origin of the goods.

(g) Awarding Plaintiff damages to compensate for Defendant's unfair competition;

(h) Preliminarily and permanently enjoining Defendant, its parents, subsidiaries, affiliates, officers, agents and employees from unfairly competing further with Plaintiff,

(i) Determining that Defendant has been unjustly enriched as a result of its unlawful and unjust activities in respect of Plaintiff and awarding Plaintiff its damages as a result; and

(j) Granting plaintiff such other and further relief as the Court may find just and equitable to remedy such unfair competition and unjust enrichment.

VII. DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff demands a jury trial for all issues triable of right by a jury in this case.

Dated: January 20, 2009

Respectfully submitted,

s/ Dariush Keyhani
Dariush Keyhani, Esq. (DK9673)
Sidney R. Bresnick, Esq. (admitted *pro hac*
vice)
Meredith & Keyhani, PLLC
5 Independence Way
Suite 300
Princeton, New Jersey 08540
(609) 945-7406

Dariush Keyhani, Esq.
Lippes Mathias Wexler Friedman LLP
665 Main Street
Suite 300
Buffalo, New York 14203