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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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LAURENCE J. BUS
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DOUGLAS M. JENNINGS
Plaintiff,

v.

AUTO METER PRODUCTS, INC.,
Defendant

)
)
) CIVIL ACTION NO.

1 : 07-cv- 1123 -JDT -TAB

)
)
) DEMAND FOR JURY TRIAL

COMPLAINT

Nature of Action

1. This is an action by Douglas M. Jennings, Plaintiff, for patent infringement against Auto Meter Products, Inc. ("Auto Meter") arising under the patent laws of the United States, Title 35 of the United States Code and for damages caused by tortious acts of Auto Meter arising under Indiana Crime Victim Statute laws.

Jurisdiction

2. This Court has subject matter jurisdiction over this case founded on the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284, and 285, under 28 U.S.C. §§ 1331 and 1338.

3. The Court has subject matter jurisdiction over the Indiana tort claims pursuant to 28 U.S.C. § 1367.

4. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 as the plaintiff is a citizen of Indiana and the defendant is a citizen of a

state other than Indiana, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

5. Venue lies in the judicial district by virtue of 28 U.S.C. §§ 1391 and 1400.

Identify of the Parties

6. The Plaintiff, Douglas M. Jennings (hereinafter “Mr. Jennings”) is a resident of Indiana and resides at 10780 Affirmed Drive, Indianapolis, Indiana 46234. Mr. Jennings is the sole inventor of the subject matter that is both disclosed and claimed in U.S. Patent Number 7,264,074 (“ ‘074 Patent”), which was duly issued by the United States Patent and Trademark Office (“PTO”) on September 4, 2007. Mr. Jennings is the sole owner of the ‘074 Patent and still owns the patent. A copy of the ‘074 Patent is attached hereto as Exhibit A.

7. The ‘074 Patent issued from U.S. Patent Application Serial No. 09/696,458 that was filed on October 25, 2000 and is entitled Aftermarket Dashboard Bezel For An Automobile Having A Number Of Instrument Holders and Associated Method (hereinafter “the Bezel Patent Application”).

8. The claims of the ‘074 Patent are directed to an aftermarket replacement instrument cluster bezel that provides holders for add-on automotive instruments. This bezel enables a user to replace an existing instrument cluster bezel that does not have holders for additional automotive instruments with one that does have add-on instrument holders.

9. On information and belief, Defendant Auto Meter is a corporation organized and existing under the laws of the State of Illinois with a place of business at 413 West Elm Street, Sycamore, IL 60178. Upon information and belief, AutoMeter sells and offers for sale, in Indiana and in this judicial district, products that infringe one or more claims of the '074 Patent. By virtue of these activities, venue is proper in this district.

First Cause of Action – Patent Infringement

10. On information and belief, Auto Meter sells and offers for sale dual instrument cluster bezels for domestic and import vehicles that replace original equipment instrument cluster bezels. The dual instrument cluster bezels sold by Auto Meter provide holders for add-on automotive instruments. These products include parts numbers 10003, 10005, 20010, 20011, 20012, and 20015 (“Auto Meter Bezels”). Pages 122 and 123 of the 2007 Auto Meter catalog displaying order information for the Auto Meter Bezels are attached hereto as Exhibit B.

11. One or more claims of the '074 Patent read on the Auto Meter Bezels.

12. On information and belief, Auto Meter also sells and offers for sale race panels under the part numbers 105-10008, 105-10009, and 105-10010 (“Auto Meter Race Panels”). A print out of a web site page depicting the Auto Meter Race Panels is attached hereto as Exhibit C. The Auto Meter Bezels and Auto Meter Race Panels are collectively called the Auto Meter Products hereinafter.

13. One or more claims of the '074 Patent read on the Auto Meter Race Panels.

14. The '074 Patent includes claims directed to one or more methods of removing an instrument cluster bezel and installing an instrument cluster bezel with the add-on instrument holders. On information and belief, Auto Meter's activities relating to the sale, offer for sale, and marketing of the Auto Meter Products constitute contributory infringement and/or inducement of infringement of the method claims in the '074 Patent.

15. Mr. Jennings filed a Request for Voluntary Publication of the Bezel Patent Application along with the required fee in the PTO in order to obtain provisional rights in his Bezel Patent Application under 35 U.S.C. § 154(d). On December 17, 2003, the PTO issued its acceptance of the Request for Voluntary Publication. On March 25, 2004, the Bezel Patent Application was published by the PTO. The claims published in the Bezel Patent Application are the same claims in the issued '074 Patent. A copy of the published Bezel Patent Application is attached hereto as Exhibit D.

16. Jennings gave actual notice of his published Bezel Patent Application to Auto Meter by sending a letter with a copy of the published application on March 25, 2004 by certified mail. Upon information and belief, the letter and published Bezel Patent Application was received by Auto Meter on or about March 29, 2004.

17. Upon information and belief, Auto Meter is liable to Mr. Jennings for a reasonable royalty for sales of the Auto Meter products made from March 29, 2004 to September 4, 2007. Upon information and belief, a reasonable royalty on the sales of all models of the Auto Meter dashboard bezel between March 29, 2004 to September 4, 2007 would exceed \$75,000.

18. Upon information and belief, Defendant Auto Meter has been aware of the Bezel Patent Application as it has progressed through the PTO. Upon information and belief, Auto Meter knows it is now infringing one or more claims of the '074 Patent by selling and offering for sale the Auto Meter products. Consequently, Auto Meter's infringement after September 4, 2007 is willful and deliberate in view of the actual notice of the Bezel Patent Application publication and of this complaint that has been received by Auto Meter. Unless enjoined by this Court, Auto Meter will continue to infringe one or more claims of the '074 Patent.

19. Mr. Jennings entered into an exclusive license agreement with an automotive accessory manufacturer in 2007. Therefore, Auto Meter's infringement of the '074 Patent claims deprives Mr. Jennings of royalties for sales which his licensee would have made but for Auto Meter's infringement.

Second Cause of Action –Fraud

20. Plaintiff incorporates paragraphs 1-19 of this Complaint in his second cause of action.

21. On information and belief, Auto Meter became the exclusive distributor for automotive aftermarket instrument mounting pods and dashboard panels made by Gauge Works Company of Herndon, Virginia on August 9, 1999. On information and belief, Gauge Works Company (“Gauge Works”) is solely owned and operated by Greg Day.

22. On information and belief, Auto Meter has sole responsibility for all consumer and trade advertising of the automotive aftermarket products obtained from Gauge Works.

23. On information and belief, Greg Day distributed business cards with his name and the title of Director of R&D/Marketing for the Gauge Works Division of Auto Meter. On information and belief, Auto Meter has represented to retailers and others at trade shows that Gauge Works is a division of Auto Meter and that Greg Day is affiliated with Auto Meter.

24. On information and belief, Greg Day, on or before January 8, 2000, became aware of an aftermarket dashboard bezel having add-on instrument holders that is the subject matter disclosed and claimed in the ‘074 Patent and that was being sold by Mr. Jennings on a website at www.clubsi.com.

25. On information and belief, Greg Day, on January 8, 2000, placed a telephone call from his home telephone number to a toll-free telephone number advertised by Mr.

Jennings on the website www.clubsi.com as the number to contact for information about buying an aftermarket dashboard bezel having add-on instrument holders.

26. On information and belief, Greg Day, after seeing the aftermarket dashboard bezel having add-on instrument holders displayed on www.clubsi.com, decided to make an aftermarket dashboard bezel having add-on instrument holders that embodied the features depicted in the aftermarket dashboard bezel having add-on instrument holders that was displayed on the website www.clubsi.com.

27. On information and belief, Greg Day approached Capital Plastics, Inc., a Virginia corporation, in mid-February 2000 and asked Capital Plastics to make for Gauge Works a mold for manufacturing an aftermarket dashboard bezel having add-on instrument holders that embodied the features depicted in the aftermarket dashboard bezel having add-on instrument holders that was displayed on the website www.clubsi.com.

28. On information and belief, Capital Plastics made, by the end of March 2000, the mold for Gauge Works that Greg Day had ordered. On or about that same date, Capital Plastics made an aftermarket dashboard bezel having add-on instrument holders from the mold.

29. On information and belief, between January 8, 2000 and March 31, 2000, Auto Meter was informed by Greg Day and Gauge Works of the aftermarket dashboard bezel having add-on instrument holders that Greg Day was planning to manufacture with the mold made by Capital Plastics.

30. On information and belief, Auto Meter, Greg Day, and Gauge Works displayed at a trade show known as the SEMA International Auto Salon, which was held at Pomona, California between the dates of March 31, 2000 to April 2, 2000, the aftermarket dashboard bezel having add-on instrument holders that was made from the mold Greg Day obtained from Capital Plastics.

31. On information and belief, the display of the aftermarket dashboard bezel having add-on instrument holders by Auto Meter, Greg Day, and Gauge Works at the trade show known as the SEMA International Auto Salon held in Pomona, California between the dates of March 31, 2000 to April 2, 2000 was the first time that Auto Meter, Gauge Works, or Greg Day had publicly displayed an aftermarket dashboard bezel having add-on instrument holders.

32. On information and belief, on or before October 21, 2002, the Patent Examiner at the PTO having jurisdiction over Mr. Jennings' Bezel Patent Application contacted Auto Meter by telephone and requested evidence that the aftermarket dashboard bezel having add-on instrument holders was sold or made publicly available by Auto Meter before October 25, 2000.

33. Upon information and belief, Auto Meter, in response to the inquiry from the Examiner, referred the Examiner to Greg Day for the information being sought. Upon information and belief, Auto Meter represented to the Examiner of the Bezel Patent Application that Greg Day had invented the aftermarket dashboard bezel having add-on instrument holders that was being sold by Auto Meter.

34. On information and belief, Greg Day conferred with the Examiner by telephone on October 21, 2002, and confirmed that he had invented the aftermarket dashboard bezel having add-on instrument holders that was being sold by Auto Meter. Upon information and belief, Greg Day withheld information from the Examiner that Greg Day had developed the Auto Meter dashboard bezel after seeing the aftermarket dashboard bezel having instrument holders on the website www.clubsi.com.

35. On information and belief, Greg Day told Auto Meter that the Examiner sought documentary evidence that the aftermarket dashboard bezel having add-on instrument holders being sold by Auto Meter had been sold or made publicly available before October 25, 2000.

36. Upon information and belief, Auto Meter sent to the Examiner of the Bezel Patent Application, a 2000 Special Equipment Manufacturers Association ("SEMA") product flyer ("2000 SEMA product flyer") that displayed a date of October 24, 2000. A copy of the 2000 SEMA product flyer sent to the PTO is attached hereto as Exhibit E. Upon information and belief, Auto Meter transmitted on October 31, 2002 at 3:45 P.M.,

the 2000 SEMA product flyer by wire transmission from its telephone number 815-895-6786 to the PTO.

37. Upon information and belief, Ron Plasecki from the Marketing/Media Relations for Auto Meter ordered the 2000 SEMA product flyer from Barnaby, Inc. of Sycamore, Illinois, a commercial printer, on October 24, 2000. Upon information and belief, Auto Meter picked up the 2000 SEMA product flyers at Barnaby, Inc. on October 27, 2000. Auto Meter knew that the 2000 SEMA product flyer was not publicly available or distributed on or before October 24, 2000.

38. Upon information and belief, Auto Meter knew the Examiner would interpret the date on the 2000 SEMA product flyer as being the date of public dissemination of the 2000 SEMA product flyer.

39. The Examiner noted the telephone conversation of October 21, 2002 with Greg Day in the prosecution history of the '074 Patent. The wire transmission of October 31, 2002 from Auto Meter to the PTO is also an official record of the PTO in the prosecution history of the '074 Patent. On November 15, 2002, the Examiner issued an Office Action that rejected the claims in the Bezel Patent Application in view of the 2000 SEMA product flyer that had been transmitted to her by Auto Meter on October 31, 2002.

40. Upon information and belief, Greg Day contacted by telephone between October 21, 2002 and November 1, 2002, a patent attorney, Thomas F. Bergert, and led

Mr. Bergert to believe that Greg Day was the inventor of an ornamental design for an aftermarket dashboard having add-on instrument holders. Upon information and belief, Greg Day and Gauge Works filed a design patent application on the ornamental design of an aftermarket dashboard having add-on instrument holders on November 1, 2002 (hereinafter the "Day Design Patent Application").

41. Upon information and belief, Greg Day and Gauge Works fraudulently named Greg Day as an inventor of the claimed design of an aftermarket dashboard having add-on instrument holders in the Day Design Patent Application that was filed with the PTO on November 1, 2002.

42. Upon information and belief, Greg Day and Gauge Works knew that the aftermarket dashboard bezel with instrument holder seen by Greg Day on the website www.clubsi.com was prior art to the Day Design Patent Application.

43. Upon information and belief, Greg Day and Gauge Works knew that the dashboard bezel having add-on instrument holders made by Capital Plastics and displayed by Auto Meter at the SEMA International Auto Salon Show held in Pomona, California between March 31, 2000 and April 2, 2000 was prior art to the Day Design Patent Application.

44. As a named inventor on a patent application pending before the PTO, Greg Day owed a duty of disclosure under 37 C.F.R. § 1.56 to the PTO.

45. Upon information and belief, Greg Day and Gauge Works, as the sole assignee of the Day Design Patent Application, defrauded the PTO by failing to disclose the aftermarket dashboard bezel with instrument holders that Greg Day had seen on website www.clubsi.com in January 2000.

46. Upon information and belief, Greg Day and Gauge Works defrauded the PTO by failing to disclose the dashboard bezel having add-on instrument holders made by Capital Plastics and displayed by Auto Meter at the SEMA International Auto Salon Show held in Pomona, California between March 31, 2000 and April 2, 2000.

47. Upon information and belief, Auto Meter was aware that Greg Day had fraudulently represented to the PTO that he was the inventor of the aftermarket dashboard bezel with instrument holders in the Day Design Patent Application.

48. Upon information and belief, Auto Meter knew Greg Day and Gauge Works had withheld information about the aftermarket dashboard bezel with instrument holders that Greg Day had seen on website www.clubsi.com in January 2000.

49. Upon information and belief, Auto Meter knew Greg Day and Gauge Works had withheld information of the aftermarket dashboard bezel having add-on instrument holders made by Capital Plastics and displayed by Auto Meter at the SEMA International Auto Salon Show held in Pomona, California between March 31, 2000 and April 2, 2000.

50. Upon information and belief, the Day Design Patent Application issued as U.S. Design Patent No. D480,341 on October 7, 2003 without the PTO having before it information in Auto Meter's, Greg Day's and Gauge Works' possession that a reasonable examiner would consider material to the examination of the Day Design Patent Application.

51. Upon information and belief, Auto Meter has advertised the D480,341 Design Patent in association with Auto Meter product number 20015 with knowledge that Greg Day and Gauge Works committed fraud on the PTO to obtain the design patent.

52. Upon information and belief, the Examiner of the Bezel Patent Application contacted Auto Meter by telephone between April 15, 2003 and August 13, 2003 and requested additional documentary information demonstrating that one or more of the Auto Meter Products was on sale or publicly available before June 1999.

53. Upon information and belief, Auto Meter contacted Greg Day and Gauge Works by telephone between April 15, 2003 and August 13, 2003 and informed them that the Examiner was seeking additional documentary information demonstrating that the aftermarket dashboard bezel with add-on instrument holders sold by Auto Meter was on sale or publicly available before June 1999.

54. Upon information and belief, Auto Meter fabricated an Auto Meter dashboard bezel flyer (hereinafter “falsified product flyer”) in response to the Examiner’s request for additional documentary information. A copy of the falsified product flyer is attached hereto as Exhibit F. Upon information and belief, the falsified product flyer was fabricated for the purpose of misleading the Examiner into concluding that the falsified product flyer was publicly distributed before June 1999.

55. Upon information and belief, Auto Meter provided the falsified product flyer to the Examiner of the Bezel Patent Application at the PTO between April 15, 2003 and August 13, 2003.

56. The Examiner relied upon the falsified product flyer to issue an Office Action that was mailed on August 13, 2003. In that Office Action, the Examiner rejected the claims in the Bezel Patent Application in view of the falsified product flyer.

57. In continued reliance on the falsified product flyer, the Examiner issued a Final Office Action that was mailed on February 12, 2004. In that Office Action, the Examiner finally rejected the claims in the Bezel Patent Application in view of the falsified product flyer.

58. Mr. Jennings appealed the final rejection of the Examiner to the Board of Patent Appeals and Interferences (“the Board”) at the PTO. On March 9, 2007, the Board reversed the Examiner on the grounds that the Examiner had failed to prove the falsified

product flyer constituted a printed publication under 35 U.S.C. § 102(a). The Board, in its decision, noted that the Examiner stated that she had obtained the falsified product flyer from Auto Meter.

59. Under Indiana law, IC § 35-41-1-23, Mr. Jennings owned property in the Bezel Patent Application and the provisional rights obtained by the publication of the Bezel Patent Application and notice of the published Bezel Patent Application on Auto Meter. Mr. Jennings has a property interest in the '074 Patent.

60. In a letter to Mr. Jennings dated September 23, 2004, Gauge Works admitted that the phrase "Available in June" in the falsified product flyer did not mean that the flyer was publicly available in June 1999. Instead, Gauge Works, in the letter, admitted that the phrase "Available in June" in the flyer referred to June 2000.

61. Upon information and belief, the Examiner stated in the Final Office Action and her Answer brief for the appeal that the phrase "Available in June" in the falsified product flyer referred to June 1999. Upon information and belief, her statement was a direct consequence of the misrepresentations made by Auto Meter, Greg Day, and Gauge Works to the Examiner.

62. On October 20, 2004, Auto Meter advised Jennings by letter that, "after thorough investigation and careful review," it agreed with the representations made by Gauge Works about the falsified product flyer in Gauge Works' letter dated September

23, 2004. Upon information and belief, Auto Meter knew the falsified product flyer was never publicly distributed until Auto Meter made the falsified product flyer and sent it to the Examiner of the Bezel Patent Application.

63. Upon information and belief, the only cited references relied upon by the Examiner in rejecting the Bezel Patent Application since November 15, 2002 were the references knowingly falsified or misrepresented by Auto Meter. Upon information and belief, the Examiner of the Bezel Patent Application would have issued a Notice of Allowance on or about November 15, 2002, but for the fabrication and submission of documents by Auto Meter to the Examiner of the Bezel Patent Application. As a consequence, Mr. Jennings has lost term on his '074 Patent from about January 15, 2003 to September 4, 2007.

64. Upon information and belief, consumer response to the aftermarket dashboard bezel with the add-on instrument holders has been substantial and Auto Meter has greatly benefited from preventing Mr. Jennings from obtaining his '074 Patent before September 4, 2007. The period of January 15, 2003 to March 29, 2004 is not covered by Mr. Jennings' provisional rights. Therefore, Auto Meter has knowingly or intentionally exerted unauthorized control over Mr. Jennings' property in the Bezel Patent Application, his provisional rights in the Bezel Patent Application, and his patent rights in the subject matter covered by the '074 Patent. Auto Meter's unauthorized control over Mr. Jennings' property constitutes conversion under Indiana Code 35-43-4-3.

65. Jennings seeks relief for the conversion perpetrated by Auto Meter pursuant to Indiana Code 34-24-3-1.

Third Cause of Action

66. Plaintiff incorporates paragraphs 1-65 of this Complaint in his third cause of action.

67. Upon information and belief, Auto Meter has intentionally deprived Mr. Jennings of the term of his '074 Patent extending from about January 15, 2003 to September 4, 2007, and has diminished Mr. Jennings' provisional rights in his Bezel Patent Application and his rights in the '074 Patent. The unauthorized control, intentional deprivation, or diminishment of Mr. Jennings' property in the '074 Patent and Bezel Patent Application constitutes theft under Indiana Code 35-43-4-2.

68. Mr. Jennings seeks relief for the thefts committed by Auto Meter pursuant to Indiana Code 34-24-3-1.

Fourth Cause of Action

69. Plaintiff incorporates paragraphs 1-68 of this Complaint in his fourth cause of action.

70. Upon information and belief, Auto Meter has with intent to defraud, delayed the issuance of the '074 Patent from about January 15, 2003 to September 4, 2007. This

delay has damaged Mr. Jennings' property in the Bezel Patent Application, his provisional rights in the Bezel Patent Application, and his patent rights in the subject matter covered by the '074 Patent. The damage caused by the acts of Auto Meter constitutes fraud under Indiana Code 35-43-5-4(9).

71. Jennings seeks relief for the fraud committed by Auto Meter pursuant to Indiana Code 34-24-3-1.

WHEREFORE, Plaintiff seeks the following relief in this case:

- a. Issue a declaration adjudging that Auto Meter has infringed U.S. Patent No. 7,264,074, pursuant to 35 U.S.C. § 271;
- b. Permanently enjoin Auto Meter, as well as its officers, agents, servants, employees, and related companies thereof, from making, using, selling, and/or offering for sale products, systems, or devices, which infringe the '074 Patent;
- c. Award Mr. Jennings monetary damages adequate to compensate Mr. Jennings for infringement of his provisional rights consistent with 35 U.S.C. § 154;
- d. Award Mr. Jennings monetary damages adequate to compensate Mr. Jennings for any infringement of the '074 Patent from September 4, 2007 to the date of the judgment, up to and including treble the amount of actual damages assessed for Auto Meter's willful infringement, together with costs and prejudgment interest;

- e. Upon finding that this case is an exceptional case under 35 U.S.C § 285, award Mr. Jennings his reasonable attorneys' fees;
- f. Find Auto Meter liable for Mr. Jennings' costs of this action pursuant to Indiana Code 34-24-3-1;
- g. Find Auto Meter liable for a reasonable attorneys' fee pursuant to Indiana Code 34-24-3-1;
- h. Find Auto Meter liable for Mr. Jennings' actual travel expenses, compensation of his lost time, all direct and indirect expenses, and all other reasonable costs of collection pursuant to Indiana Code 34-24-3-1(4)-(7);
- i. Find Auto Meter liable for punitive damages pursuant to Indiana Code 34-24-3-3; and
- j. Grant Mr. Jennings such other and additional relief against Auto Meter as the Court deems just and proper.



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