

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

ONE UNLIMITED, INC. and  
JENNIFER ALLEN,

Plaintiffs,

-vs-

CASE NO. 8:02-cv-993-T-30TGW

KENT INTEGRATED SCIENTIFIC  
SYSTEMS, INC., KISS-COTE, INC.,  
C. RENEE KENT, and KEITH KENT,

Defendants.

**AMENDED COMPLAINT FOR MONEY DAMAGES  
AND EQUITABLE RELIEF**

Plaintiffs, ONE UNLIMITED, INC. and JENNIFER ALLEN, sue Defendants, KENT INTEGRATED SCIENTIFIC SYSTEMS, INC., KISS-COTE, INC., C. RENEE KENT, and KEITH KENT, and allege:

1. This is an action for the declaration of patent non-infringement brought under the provisions of 28 USC §§ 2201, 2202, and 1338. It also seeks supplemental relief for breach of contract – a distributorship and license agreement entered into by the parties in October of 1998.

2. Plaintiff, Jennifer Allen, is a citizen and resident of Tampa, Hillsborough County, Florida.

3. Plaintiff, One Unlimited, Inc., is a Florida corporation, having its principal place of business in Tampa, Hillsborough County, Florida.

4. Defendant, Kent Integrated Scientific Systems, Inc., is a Florida corporation, having its principal place of business in Tampa, Hillsborough County, Florida.

5. Defendant, Kiss-Cote, Inc., is a Florida corporation, having its principal place of business in Tampa, Hillsborough County, Florida.

6. Defendant, Keith Kent, is a citizen and resident of Tampa, Hillsborough County, Florida.

7. Actions taken by Defendants which are complained of in this Amended Complaint occurred in Tampa, Hillsborough County, Florida. The damages incurred by Plaintiffs as more fully set forth below, were incurred primarily in Tampa, Hillsborough County, Florida, but the activities of these Defendants have damages, and will continue to damage Plaintiffs throughout the United States and elsewhere.

8. As a result of the foregoing, the United States District Court has jurisdiction of this action, pursuant to the provisions of 28 USC §1338.

9. As a further result of the foregoing, the United States District Court for the Middle District of Florida is the appropriate venue for this case pursuant to the provisions of 28 USC §1400.

#### **PREDICATE FACTS**

10. On a date known to Defendants but unknown to Plaintiffs, Defendants allegedly created a secret process whereby they could manufacture a self-adhesive, drag-reducing, fouling-release polymeric coating ("Sticky Silicone") using a secret formula of secret ingredients. Defendants have, pursuant to two applications, been awarded patents #4,623,593 and #4,839,456. Upon information and belief, Defendants own both patents. Copies of the patents are attached to the initial Complaint as Exhibits "A" and "B" respectively.

11. During the years 1990 through 2002, Defendants have used their Sticky Silicone in dentistry and heavy industrial uses.

12. In October of 1998, Plaintiffs and Defendants entered into a certain distributorship and license agreement, a true and correct copy of which is attached to the initial Complaint as Exhibit "C" (the "License Agreement"). The License Agreement gave Plaintiffs a license to manufacture and sell self-adhesive, drag-reducing, fouling-release polymeric coatings under the trade name Kiss-Cote in the areas of beauty care, cosmetics and skin care.

13. Defendants had never manufactured or distributed beauty or cosmetic products prior to entering into the License Agreement.

14. In reliance upon the License Agreement, Plaintiffs expended many hours perfecting products that used Sticky Silicone in their beauty, cosmetic, and skin-care products. In addition, Plaintiffs spent substantial sums creating a distributorship network, marketing the new beauty, cosmetic, and skin-care products, and in general overhead expenses. These monies would not have been expended but for the terms and conditions of the License Agreement.

15. At all times between 1998 and 2002, Plaintiffs performed faithfully under the terms of the distributorship and license agreement. They paid their royalty and/or license fees directly to Defendants on a timely basis, carefully inscribed the Kiss-Cote trade name on all of their products, and otherwise acted in good faith. Defendants eagerly received and accepted the royalty and/or license payments made to them by Plaintiffs, and never declared any breach of the License Agreement for almost four years.

16. During the years 2000 and 2001, Plaintiffs were successful in creating a distributorship network whereby they could market their beauty, cosmetic, and skin-care products

throughout the country to premier skin-care markets, beauty salons, and medical outlets. The rate of sales of Plaintiffs' beauty, cosmetic, and skin-care products was estimated to exceed \$500,000 per year. Since Plaintiffs have always reported sales to Defendants under the distributorship and licensing agreement, Defendants have become aware of Plaintiffs' success in marketing their beauty, cosmetic, and skin-care products.

17. Plaintiffs have been required to retain counsel to represent their interests and are obligated to pay a reasonable fee for their services.

### **COUNT I**

#### ***(Non-Infringement Of Patents)***

18. Plaintiffs adopt and incorporate the contents of paragraphs 1 through 17 above.

19. Prior to filing the original Complaint, Defendants threatened Plaintiffs with a patent infringement suit for using Sticky Silicone. Indeed, Defendants have filed such a claim as a counterclaim.

20. Plaintiffs were free to use Sticky Silicone in the manufacturing of their own beauty, cosmetic, and skin-care product line, pursuant to the License Agreement.

21. Plaintiffs were directed to identify the patents on their labels.

22. Plaintiffs believe no infringement of the patents has occurred.

23. Since Plaintiffs have purchased products from Defendants, there is an implied license to use and sell the product free of any claim of patent infringement. Plaintiffs had a reasonable apprehension of an infringement suit. A case or controversy therefore exists which this Court has jurisdiction to resolve under 28 USC §§ 2201, 2202 and 1338.

**WHEREFORE**, Plaintiffs pray for the entry of an order declaring non-infringement of the patents for Sticky Silicone. Plaintiffs pray for an award of attorneys' fees, costs and such other relief as may be just and appropriate.

**COUNT II**

***(Breach Of Distribution And License Agreement)***

24. Plaintiffs adopt and incorporate the contents of paragraphs 1 through 17 above.

25. This is an action for damages brought against Defendant, Kiss-Kote, Inc., only as the contracting party with the Plaintiffs, One Unlimited, Inc. and Jennifer Allen.

26. Defendant, Kiss-Kote, Inc., breached its contract by terminating the License Agreement wrongfully.

27. Defendant, Kiss-Kote, Inc., further breached the contract by delivering contaminated product.

28. Defendant, Kiss-Kote, Inc., further breached its covenant of good faith and fair dealing which inheres in every contract by flatly refusing to deliver test results of the product, to test the product, to implement appropriate manufacturing safeguards to insure quality product.

29. Defendant, Kiss-Kote, Inc., attempted to limit the remedies available to the Plaintiffs or others by limiting language. Those limitations should be disregarded because Defendant, Kiss-Kote, Inc., never honored its warranty or intended to honor its warranty. In fact, when product was found to be defective, it refused to replace the product as it was required to do.

30. Defendant, Kiss-Kote, Inc., also attempted to impose requirements beyond the safeguards built into the contract and, consequently further breached the agreement.

31. Defendant, Kiss-Kote, Inc., and others then attempted to orchestrate a series of breaches that were non-existent or immaterial and terminated the License Agreement knowing full well that the Plaintiffs had substantial investments at stake. Any breaches which may have occurred were inadvertent or were waived prior to termination.

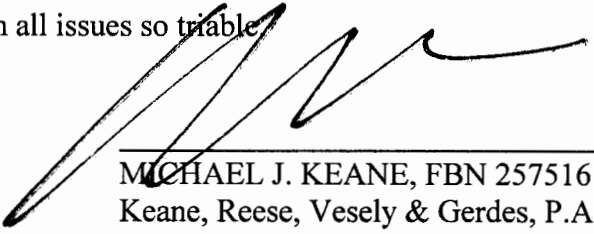
32. As a result of the actions of Defendant, Kiss-Kote, Inc., Plaintiffs have been damaged in that there has been substantial harm to the distribution network, the License Agreement was improperly terminated causing the need on the part of the Plaintiffs to find a substitute product, Plaintiffs have lost substantial business and relationships, including the loss of a valuable License Agreement. They have lost profits, the value of their existing investment, their investment in their products and product development all because of the wrongful termination of the License Agreement. They have lost the monies described in paragraph 14.

33. Plaintiffs are entitled to an award of attorneys' fees for prosecuting this action.

**WHEREFORE**, Plaintiffs pray for a judgment in their favor awarding damages, costs, interest, and attorneys' fees.

**DEMAND FOR JURY TRIAL**

The Plaintiffs demand a jury trial on all issues so triable.



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Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to DAVID L. PARTLOW, ESQ. and JOSIAH E. HUTTON, ESQ., of DAVID L. PARTLOW, P.A., 4100 W. Kennedy Boulevard, Suite 210, Tampa, Florida, 33609-2244, on June 16, 2004.

  
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MICHAEL J. KEANE