

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
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Indiana Mills & Manufacturing, Inc.)
an Indiana corporation,)
)
Plaintiff,)
)
v.)
)
O'Neill Mfg., Inc.,)
a Kansas corporation,)
)
Defendant.)

Case No.

1:02-CV-1616 LJM

COMPLAINT
AND
JURY DEMAND

COMPLAINT

Plaintiff, Indiana Mills & Manufacturing, Inc. (hereinafter "Plaintiff" and "Indiana Mills"), by its undersigned attorneys, complains of Defendant O'Neill Mfg., Inc. (hereinafter "Defendant") as follows:

THE PARTIES AND JURISDICTION

The Parties

1. Plaintiff Indiana Mills is an Indiana corporation organized and existing under the laws of the State of Indiana and has a principal business address of 18881 U. S. 31 North, P.O. Box 408, Westfield, Indiana 46074-0408

2. Upon information and belief, Defendant O'Neill Mfg., Inc. is a Kansas corporation organized and existing under the laws of the State of Kansas and has its principal place of business at 8905 Lenexa Drive, Shawnee Mission, Kansas 66214.

3. Upon information and belief, Defendant does business in the State of Indiana.

Jurisdiction and Venue

4. The Complaint arises under the patent laws of the United States, Title 35, United States Code, including, among others, Section 271 entitled “Infringement of Patent,” and 35 U.S.C. §§281-285.

5. This Court has jurisdiction over the subject matter of the patent infringement claims pursuant to Title 28, United States Code, Sections 1338(a) and (b).

6. Venue in this district is proper pursuant to the provisions of Title 28, United States Code, Sections 1391(b) and (c) and 1400(b).

7. This Court has personal jurisdiction over O’Neill because O’Neill does business in this judicial district and by its acts has caused and continues to cause Plaintiff injury in this judicial district, which acts include, on information and belief, selling the products at issue nationwide through one or more distributors.

COUNT I: PATENT INFRINGEMENT

8. On February 1, 1994, United States Letters Patent No. 5,282,706, entitled RETRACTABLE TIE-DOWN ASSEMBLY (hereinafter referenced to as “the ‘706 Patent”), was duly and legally issued to Indiana Mills for an inventive retractable tie-down assembly. Since that date, Indiana Mills has been and still is the owner of the ‘706 Patent. A copy of the ‘706 Patent is attached as Exhibit A.

9. Defendant has been and continues to infringe the ‘706 Patent by making, selling, and using a retractable tie-down assembly embodying the patented invention and will continue to

do so unless enjoined by this Court. (*See* Exhibit B, Photographs of Indiana Mills's patented assembly and Defendant's assembly).

10. Plaintiff has placed the required statutory notice on retractable tie-down assemblies manufactured and sold by Plaintiff under said '706 Patent.

11. Defendant's infringing acts have, on information and belief, been performed with full knowledge of Indiana Mills's patented product and of the '706 Patent and in willful disregard of Plaintiff's rights under the '706 Patent.

12. Defendant has made and will continue to make unlawful gains and profits from its infringement, and Plaintiff has been damaged and will be deprived of rights and remunerations that would come to Plaintiff but for Defendant's infringement.

WHEREFORE, Plaintiff prays that this Court enter a judgment and order that:

- (A) Defendant and its retractable tie-down assemblies infringe the '706 Patent directly, contributorily, and/or by inducement.
- (B) Said infringement is willful;
- (C) Defendant and its officers, agents, servants, representatives, employees and all others in concert or participation with them, directly, are permanently enjoined from infringing, inducing others to infringe, or contributing to the infringement of the '706 Patent pursuant to 35 U.S.C. §283;
- (D) Plaintiff be awarded damages to compensate for Defendant's infringement of the '706 Patent together with pre-judgment and post-judgment interest pursuant to 35 U.S.C. §284;
- (E) Said damages be trebled pursuant to 35 U.S.C. §284;

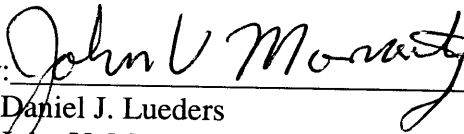
- (F) Plaintiff be awarded its costs and reasonable attorneys' fees and expenses in accordance with 35 U.S.C. §285; and
- (G) Plaintiff be awarded such other and further relief as the circumstances of this case may require and as this Court may deem just and proper.

JURY DEMAND

Pursuant to FED. R. CIV. P. 38(b) and the Seventh Amendment of the Constitution of the United States, Plaintiff respectfully demands a trial by jury for all issues so triable.

Dated this Monday, October 21, 2002.

Respectfully submitted,

By: 
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