

3. Gleason is the owner of U.S. Patent Number 6,078,255, duly granted June 20, 2000, and entitled "System For Logging Premises Hazard Inspections," a copy of which is attached as Exhibit A.

4. On information and belief, TRAX is an Arizona corporation having a principal place of business at 7077 E. Marilyn Road, Building One, Scottsdale, AZ 85254, and is engaged in the nationwide distribution and sale of software for retail business applications, including distribution of such software in the present jurisdiction.

5. On information and belief, TRAX has and is presently making, using and/or selling in the United States an aisle inspection system, shown in part by attached Exhibit B, in accordance with, and in violation of, the claims of U.S. Patent 6,078,255.

II. JURISDICTION AND VENUE

6. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 et seq., in which Gleason seeks a finding of patent infringement, compensatory and punitive damages, and temporary and permanent injunctions against TRAX for infringement of U.S. Patent Number 6,078,255 (Exhibit A), owned by Gleason.

7. This action includes claims of unfair competition under Lanham Act Section 43(a), 15 U.S.C. § 1125(a), by which Gleason seeks damages and injunctive relief restraining TRAX and any related entities, from statements in commerce, distributing advertising and other activities suggesting that products of TRAX are sponsored by or affiliated with Gleason.

8. This Court has subject matter jurisdiction based upon 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b). On information and belief, TRAX has active and established contacts and has committed acts of infringement in this jurisdiction.

III. BACKGROUND FACTS

10. On June 20, 2000, U.S. Patent Number 6,078,255 (hereinafter "the '255 patent") was issued to Gleason, as assignee of record of the inventors, on an application for patent filed June 23, 1998, an assignment from the inventors to Gleason having been recorded on June 23, 1998 at Reel 9288, Frame 0110 of the U.S. Patent Office records.

11. The '255 patent is duly subsisting and enforceable, and Gleason owns all right, title and interest in the '255 patent.

12. Gleason has previously successfully asserted the '255 patent against others.

13. Since approximately the date of issue of the '255 patent, Gleason has marketed products and services in accordance with the claims of the '255 patent, duly labeled and advertised with the patent number pursuant to 35 U.S.C. § 287.

14. TRAX has had actual knowledge of the '255 patent since at least as early as October 2003.

15. TRAX is infringing the '255 patent by making, using and/or selling the subject matter defined by at least one claim of the '255 patent and/or by inducing and/or contributing to such infringement by others.

16. Gleason has specifically advised TRAX that its activities constituted infringement, wherefore such infringement has been willful.

17. Gleason has a valuable, favorable reputation in the trade with respect to loss control, which is associated with its name.

18. Gleason has prepared or had prepared certain case studies for assessing the potential savings and/or loss avoidance associated with using a system according to the '255 patent that it actively markets.

19. TRAX has incorporated in its promotional materials information associated by consumers with Gleason, by including unauthorized references to "Gleason Case Studies."

20. References to "Gleason Case Studies" by TRAX constitutes a representation to consumers that TRAX products are sponsored by, affiliated with or related to Gleason, when in fact they are not sponsored by, affiliated with or related to Gleason.

21. Reference to "Gleason Case Studies" by TRAX is likely to mislead or confuse consumers, in part because there is no control or guarantee that products marketed by TRAX will comport with the bases of the Gleason Case Studies, and consumer disappointment may reflect adversely and wrongfully on Gleason.

IV. INFRINGEMENT OF THE '255 PATENT

22. Gleason hereby incorporates by reference the allegations set forth in Paragraphs 1 through 21 above.

23. The '255 patent is valid and subsisting, is owned of record by Gleason, and has been and continues to be infringed by TRAX.

24. Acts which constitute infringement of some or all of the claims of the '255 patent have been, and on information and belief continue to be, undertaken by TRAX, acting individually or in concert, or through its agents, or by persons induced to infringe, in the United States of America and in this judicial district.

25. The production, use and/or sale of products and methods that infringe the '255 patent, by TRAX, its agents and those it induces to infringe, has deprived Gleason of sales that it otherwise would have made, caused to be made, or sold, and has in other respects injured

Gleason, and will cause Gleason added injury and loss of profits in an amount that is difficult to ascertain, unless enjoined by this Court.

26. Gleason has placed the required statutory notice on products made and sold under the '255 patent in accordance with 35 U.S.C. § 287, and further, on information and belief, TRAX has had constructive and actual notice of the infringement and has continued to infringe.

27. Infringement of the '255 patent by TRAX has been willful and deliberate, warranting the assessment of treble damages and attorneys' fees pursuant to 35 U.S.C. § 284.

28. Gleason has been irreparably damaged by virtue of TRAX's infringement of the '255 Patent.

29. Gleason has no adequate remedy at law to address its damages caused by TRAX's infringement of the '255 patent.

30. TRAX's infringement of the '255 patent will continue unless enjoined by this Court.

V. UNFAIR COMPETITION UNDER LANHAM ACT SECTION 43(a)

31. Gleason hereby incorporates by reference the allegations set forth in Paragraphs 1 through 30 above.

32. Gleason is a well reputed insurance broker with particular expertise in the field of risks associated with supermarkets and similar operations.

33. Gleason is identified by a substantial segment of actual and prospective consumers of its services as "Gleason."

34. Gleason has marketed its Gleason ESP products and services for the monitoring of hazards in retail premises and the like, including by disseminating the results of studies

undertaken by or for Gleason that assess the extent to which losses from accidents and costs of dealing with such losses can be controlled.

35. TRAX has advertised and promoted its services, including by citation to "Gleason Case Studies," thereby suggesting affiliation or sponsorship by Gleason.

36. TRAX is not in fact affiliated with or sponsored by Gleason, and unfairly and wrongfully benefits from Gleason's reputation.

37. The system embodied in software supplied by TRAX generally is operated wholly by the customer and the collected data is controlled by the customer, wherefore, that system does not enjoy the protection against data tampering that is enjoyed by customers of Gleason. Insofar as studies have been reported by Gleason, such studies are based on the safeguards characterized by the configured Gleason products. TRAX has wrongfully asserted the benefit of such Gleason product safeguards as part of its software or products.

38. By virtue of the foregoing activities, TRAX has used in commerce a false or misleading description of fact or a false or misleading representation of facts, which is likely to cause confusion or mistake or to deceive as to the origin, sponsorship, or approval of its goods or services by another person, namely by Gleason.

39. By virtue of the foregoing activities, TRAX has in commercial advertising and/or promotions, misrepresented the nature, characteristics and/or qualities of its products.

40. Gleason is and has been, and is likely to be further damaged by said misrepresentations by TRAX.

41. The amount of the damages to Gleason are difficult or impossible to assess, such that Plaintiff's remedy against TRAX is inadequate at law.

WHEREFORE, Plaintiff The Gleason Agency, Inc. prays for judgment in its favor and against Defendant TRAX Retail Solutions, Inc., and requests that this Court:

- (1) find that U.S. Patent No. 6,078,255 is valid and enforceable;
- (2) find that Defendant has infringed U.S. Patent No. 6,078,255;
- (3) award to Gleason damages resulting from infringement of the '255 patent by TRAX, including, but not limited to, consequential and compensatory damages, Plaintiff's lost revenues and profits, profits wrongfully realized by Defendant and its customers as a result of their activities as herein alleged, in an amount adequate to compensate Gleason for the infringement but in no event less than a reasonable royalty for the use made of the invention by Defendant and its customers and related parties;
- (4) multiply such amount awarded by a factor of three, in view of the knowledgeable and willful nature of the infringement by TRAX, together with prejudgment and post-judgment interest and costs as fixed by the Court, and award such amount to Plaintiff under 35 U.S.C. § 284;
- (5) preliminarily and permanently enjoin TRAX, its respective officers, agents, and those in privity with it, against further and continued infringement of the '255 patent;
- (6) preliminarily and permanently enjoin TRAX, its respective officers, agents, and those in privity with it, against further and continued misstatements in interstate commerce and to prohibit any use or reference to Plaintiff's name or studies or to any aspect associated by consumers with Gleason;
- (7) grant to Gleason and against TRAX, damages sufficient to compensate Gleason for the damage to Plaintiff's reputation and future business prospects caused by unauthorized

reliance on the Gleason Case Studies by TRAX, including a sum directed to the costs of corrective advertising to ameliorate such damages in the future;

(8) declare that this case is exceptional and award Gleason reasonable attorney fees as the prevailing party; and,

(9) grant to Gleason such other and further relief as the Court may deem just and appropriate.

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