

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DON DE CRISTO CONCRETE ACCESSORIES, INC., a California corporation,)	
)	
Plaintiff,)	
)	
v.)	
DESLAURIERS, INC., an Illinois corporation,)	
)	
Defendant.)	

Case No. 1:07-cv-04892
 Judge Wayne R. Andersen
JURY DEMANDED

**AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Don De Cristo Concrete Accessories, Inc., (“De Cristo” or “plaintiff”) a California corporation, hereby states the following complaint for patent infringement and breach of contract by defendant Deslauriers, Inc., an Illinois corporation (“Deslauriers” or “defendant”).

PARTIES

1. Plaintiff De Cristo is a corporation incorporated under the laws of the State of California with its principal place of business at 15172 Goldenwest Circle, Westminster, California 92683.

2. Plaintiff is informed and believes and thereon alleges that Defendant Deslauriers is a corporation incorporated under the laws of the State of Illinois with its principal place of business at 3040 South 26th Avenue, Broadview, Illinois.

3. Plaintiff is informed and believes and thereon alleges that Deslauriers regularly and systematically sells and offers to sell products, including infringing products, from its place of business in Broadview, Illinois.

JURISDICTION AND VENUE

4. The action is for patent infringement under 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1338(a) (patent infringement), and 1367 (supplemental jurisdiction).

5. Deslauriers is subject to personal jurisdiction in this judicial district because Deslauriers is doing in business in the state of Illinois and in this district, and has committed one or more of the acts complained herein in this district.

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c).

DE CRISTO'S PATENTS IN SUIT

7. On March 24, 1998, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,729,941 entitled "Protective Cover For Concrete Reinforcing Bar" ("the '941 patent"). A true and correct copy of the '941 patent is attached hereto as Exhibit A.

8. On August 31, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,943,836 entitled "Protective Cover For Concrete Reinforcing Bar" ("the '836 patent"). A true and correct copy of the '836 patent is attached hereto as Exhibit B.

BACKGROUND FACTS

9. On or about July 1, 1997, De Cristo entered into a Settlement Agreement with Deslauriers (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit C.

10. Under the Settlement Agreement, De Cristo granted a nonexclusive royalty-bearing license to Deslauriers under U.S. Patent Nos. 5,568,708; 5,523,043; 5,381,636 and D363,657 ("the Licensed Patents"), and any patent issuing subsequent to the execution of the Settlement Agreement that is a direct continuation or division of Application No. 245,018 filed May 18, 1994, now U.S. Patent No. 5,381,636. The Deslauriers products covered under the license in the Settlement Agreement included

only the Deslauriers Safety Cap DISC System identified by catalog numbers DISC-10 and DISC-20 (the "Licensed Products").

11. The license granted under the Settlement Agreement by De Cristo granted to Deslauriers was a royalty-bearing nonexclusive license (without the right to sublicense third parties) under the Licensed Patents to import, make, have made, use, sell, offer for sale, lease or otherwise dispose of the Licensed Products throughout the United States of America and to practice any method or process involved in the manufacture, use or sale thereof.

12. The '941 patent is not a direct continuation or division of Application No. 245,018 filed May 18, 1994, now U.S. Patent No. 5,381,636.

13. The '836 patent is not a direct continuation or division of Application No. 245,018 filed May 18, 1994, now U.S. Patent No. 5,381,636.

14. Under the Settlement Agreement, Deslauriers was required to pay De Cristo a royalty of four and one-half percent (4.5%) for each Licensed Product imported, made, had made, used, sold, offered for sale, leased or otherwise disposed of by Deslauriers to which the rights and licenses had been granted pursuant to the Settlement Agreement.

15. The Settlement Agreement defined a royalty period as each semi-annual period ending on June 30 and December 31, respectively, after July 1, 1997.

16. Under the Settlement Agreement, within two (2) months after the end of each royalty period, Deslauriers was required to submit a written royalty report and full payment of royalties due to De Cristo.

17. Deslauriers has failed to submit a written royalty report and provide a royalty payment to De Cristo for the period of January 1, 2007 through June 30, 2007.

18. Although Deslauriers has made no royalty payment to De Cristo for the period after January 1, 2007, on information and belief, Deslauriers did import, make, have made, use, sell, offer for sale, lease or otherwise dispose of Licensed Products

during the period from January 1, 2007 through June 30, 2007, and continues to import, make, have made, use, sell, offer for sale, lease or otherwise dispose of Licensed Products.

19. De Cristo has substantially performed its obligations under the Settlement Agreement.

20. De Cristo has sustained damages as a result of Deslauriers' breach of the Settlement Agreement.

COUNT I

(INFRINGEMENT OF THE '941 PATENT)

21. De Cristo realleges and incorporates herein the allegations of paragraphs 1 through 20 as if fully set forth herein.

22. The '941 patent is valid and enforceable.

23. Upon information and belief, in violation of 35 U.S.C. § 271, defendant makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe the '941 patent.

24. Upon information and belief, in violation of 35 U.S.C. § 271, defendant also contributes to and/or induces infringement of the '941 patent.

25. Upon information and belief, defendant has willfully infringed the '941 patent.

26. Upon information and belief, defendant's acts of infringement of the '941 patent will continue after service of this complaint unless enjoined by the Court.

27. As a result of defendant's infringement, De Cristo has suffered and will suffer damages.

28. De Cristo is entitled to recover from defendant the damages sustained by De Cristo as a result of defendant's wrongful acts in an amount subject to proof at trial.

29. Unless defendant is enjoined by this Court from continuing its infringement of the '941 patent, De Cristo will suffer additional irreparable harm and

impairment of the value of its patent rights. Thus, De Cristo is entitled to an injunction against further infringement.

30. Plaintiff is entitled to enhanced damages, attorneys' fees, expert witness fees, and costs pursuant to 35 U.S.C. §§ 284 and 285.

COUNT II

(INFRINGEMENT OF THE '836 PATENT)

31. De Cristo realleges and incorporates herein the allegations of paragraphs 1 through 30 as if fully set forth herein.

32. The '836 patent is valid and enforceable.

33. Upon information and belief, in violation of 35 U.S.C. § 271, defendant makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe the '836 patent.

34. Upon information and belief, in violation of 35 U.S.C. § 271, defendant also contributes to and/or induces infringement of the '836 patent.

35. Upon information and belief, defendant has willfully infringed the '836 patent.

36. Upon information and belief, defendant's acts of infringement of the '836 patent will continue after service of this complaint unless enjoined by the Court.

37. As a result of defendant's infringement, De Cristo has suffered and will suffer damages.

38. De Cristo is entitled to recover from defendant the damages sustained by De Cristo as a result of defendant's wrongful acts in an amount subject to proof at trial.

39. Unless defendant is enjoined by this Court from continuing its infringement of the '836 patent, De Cristo will suffer additional irreparable harm and impairment of the value of its patent rights. Thus, De Cristo is entitled to an injunction against further infringement.

40. Plaintiff is entitled to enhanced damages, attorneys' fees, expert witness fees, and costs pursuant to 35 U.S.C. §§ 284 and 285.

COUNT III

(BREACH OF CONTRACT)

41. De Cristo realleges and incorporates herein the allegations of paragraphs 1 through 40 as if fully set forth herein.

42. The Settlement Agreement is valid and enforceable.

43. Upon information and belief, Deslauriers has breached the Settlement Agreement by: (a) failing to pay the agreed upon royalty to De Cristo for continued use of the Licensed Patents; and (b) continuing to import, make, have made, use, sell, offer for sale, lease or otherwise dispose of Licensed Products under the Licensed Patents covered by the Settlement Agreement.

44. As a result of Deslauriers' failure to honor the Settlement Agreement, De Cristo has suffered and will suffer damages.

45. De Cristo is entitled to recover from Deslauriers the damages sustained by De Cristo as a result of defendant's wrongful acts in an amount subject to proof at trial.

46. Unless defendant is enjoined by this Court from continuing its breach of the Settlement Agreement, De Cristo will suffer additional irreparable harm and impairment of the value of its patent rights. Thus, De Cristo is entitled to an injunction against further breach of contract.

PRAYER FOR RELIEF

WHEREFORE, De Cristo prays for entry of judgment as follows:

- A. Declaring that Deslauriers has been and still is infringing the '941 Patent.
- B. Declaring that Deslauriers has been and still is infringing the '836 Patent.
- C. Declaring that Deslauriers' infringement has been and still is in willful disregard for plaintiff's rights.

D. Permanently enjoining and restraining Deslauriers, its officers, managers, members, agents, parents, subsidiaries, principals, successors in interest, and those acting in concert with it from directly or indirectly infringing, inducing, or contributing to the infringement of the '941 and '836 Patents.

E. Requiring Deslauriers to account for all gains, profits, and advantages realized from its infringement and unlawful use of the '941 and '836 Patents.

F. Awarding plaintiff damages adequate to compensate for the infringement of Deslauriers, including its lost profits, but in no event less than a reasonable royalty under 35 U.S.C. § 284.

G. Awarding to plaintiff enhanced damages for the willful infringement of the '941 and '836 Patents, pursuant to 35 U.S.C. § 284.

H. Awarding to plaintiff its attorneys' fees, costs, expert witness fees, and expenses incurred by plaintiffs in connection with this action pursuant to 35 U.S.C. § 285.

I. Declaring that Deslauriers has breached and is still breaching the Settlement Agreement which it entered into with De Cristo.

J. Awarding De Cristo for damages sustained as a result of Deslauriers' breach of the Settlement Agreement.

K. Permanently enjoining and restraining Deslauriers, its officers, managers, members, agents, parents, subsidiaries, principals, successors in interest, and those acting in concert with it from breaching the Settlement Agreement.

L. Awarding to plaintiff prejudgment and post-judgment interest.

M. Awarding such other and further relief as the Court deems equitable and appropriate.

JURY DEMAND

Plaintiff hereby demands a jury trial of all issues triable of right by a jury.

Respectfully submitted,

Dated: December 6, 2007

DON DE CRISTO CONCRETE
ACCESSORIES, INC.

By:



One of its Attorneys

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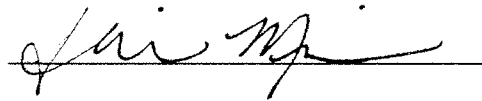
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached document has been served upon all counsel of record, as identified and indicated below, using the ECF system for filing and transmittal of Notice of Electronic Filing on December 6, 2007:

Dean A. Monco
Brad Richard Bertoglio
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and by regular U.S. mail to:

Bernard C. Barmann, Jr.
Ralph F. Hirschmann
Ralph F. Hirschmann Law Offices
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A handwritten signature in black ink, appearing to read "Brad Bertoglio", is written over a horizontal line.

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