

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
OCT 8 2003
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FIELDTURF INTERNATIONAL, INC., a)
Florida corporation; and FIELDTURF, INC.,)
a Canadian company,)

CIVIL ACTION NO. 03C 3512

Plaintiffs,)

Judge Andersen

v.)

Magistrate Judge Nolan

Triexe Management Group Inc.)
(d.b.a. Sportexe) a Canadian company;)
Sportexe Construction Services, Inc. (d/b/a)
Sportexe) a Georgia Corporation; and)
Sportexe International, Inc. (d/b/a Sportexe) a)
Florida corporation.)

DOCKETED

OCT 10 2003

Defendants.)

DEMAND FOR JURY TRIAL

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT,
INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE,
CONVERSION, INJUNCTIVE RELIEF, DAMAGES AND OTHER RELIEF**

Plaintiffs FieldTurf International, Inc. and FieldTurf, Inc. for their complaint against
Defendants Triexe Management Group Inc. (d/b/a Sportexe) and Sportexe Construction Services,
Inc., states as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. sections 1331
(federal question), 1332 (a)(3) in that Plaintiff FieldTurf, Inc. and Defendants are citizens of a
foreign state, and, 1338(a) (arising under the patent laws of the United States (35 U.S.C. §§101
et seq.)). This Court has jurisdiction over the state law claims of intentional interference with

prospective economic advantage and conversion under 28 U.S.C. section 1367 (supplemental jurisdiction over state claims arising from the same acts upon which the federal claims are based).

VENUE

2. Venue is proper in this Court under 28 U.S.C. sections 1400(b) and 1391(b) and/or (d) because Defendants have committed acts of patent infringement and are a foreign entity and subject to personal jurisdiction here.

PARTIES

3. Plaintiff FieldTurf International, Inc. is a Florida corporation, with its principal place of business in Dalton, Georgia. FieldTurf International, Inc. manufactures, sells and installs synthetic turf products throughout the United States.

4. Plaintiff FieldTurf, Inc. is a Canadian company with its principal place of business in Montreal, Quebec, Canada. FieldTurf, Inc. designs synthetic turf products and distributes these products worldwide. FieldTurf International, Inc. and FieldTurf, Inc. are collectively referred to as "FieldTurf."

5. Defendant Triexe Management Group ("Defendant Triexe") is a Canadian company and, on information and belief, is doing business as "Sportexe." Defendant has its principal place of business in Fonthill Ontario, Canada. FieldTurf is informed and believes, and based thereon, alleges, that Defendant Triexe, through Sportexe, makes, sells, offers to sell and/or installs synthetic turf products, as well as numerous other products in the United States, and, more particularly, in the State of Illinois.

6. Defendant Sportexe Construction Services, Inc. is a Canadian company and, on information and belief, is also doing business as "Sportexe." Defendant has its principal place of business in Fonthill Ontario, Canada.

7. Defendant Sportexe International, Inc. is a Canadian company and, on information and belief, is also doing business as "Sportexe." Defendant has its principal place of business in Fonthill Ontario, Canada. Since each of the Defendants have held themselves out as "Sportexe," and since each have a principal place of business at the same location and appear to rely upon the same website and do not appear to distinguish themselves relative to the infringing product at issue, they will collectively be referred to as Sportexe or Defendants.

8. FieldTurf, Inc. is the owner by assignment of all right, title, and interest in and to U.S. patent no. 6,338,885 B1 entitled "Synthetic Turf," issued on January 15, 2002 ("the '885 patent"). A true and correct copy of the '885 patent is attached hereto as Exhibit "A."

9. FieldTurf, Inc. is the owner by assignment of all right, title, and interest in and to U.S. patent no. 6,551,689 B1 entitled "Synthetic Grass with Resilient Granular Top Surface Layer," issued on April 22, 2003 ("the '689 patent"). A true and correct copy of the '689 patent is attached hereto as Exhibit "D."

10. FieldTurf International, Inc. is the exclusive licensee from FieldTurf Inc. under the '885 and '689 patent for the right to manufacture, sell, offer to sell and install synthetic turf products in the United States.

HISTORY OF SYNTHETIC GRASS

11. Synthetic grass surfaces, also known generically as "artificial turf," are widely utilized on playing fields for a variety of sporting activities, including soccer and football. Synthetic grass surfaces are designed to duplicate and improve upon the properties of natural

grass surfaces while providing better durability, reducing the maintenance costs, and allowing for more intensive use of the playing field.

12. The first synthetic grass surfaces were installed in university and professional stadiums in 1966. Since these early installations, it has become clear that some types of synthetic surfaces may result in injuries to players. These surfaces can be so hard that they do not provide enough shock absorbency; over time the weave of the fibers may cause a player's cleats to lock in the synthetic surface and cause a severe knee or ankle injury; and, abrasiveness of the fibers may cause skin burns. Because of these problems, owners and operators of sports fields have sought safer synthetic grass surfaces. In response, the industry has focused on developing synthetic surfaces that are more like natural grass in that the blades are longer and are held up by an infill material that includes resilient granules.

FIELDTURF'S SYNTHETIC GRASS

13. After extensive research and development, FieldTurf's predecessor-in-interest began offering a synthetic grass surface in 1993. The current FieldTurf product provides a resilient and forgiving playing surface due to its many innovations, including its ribbon row design and three-layer sand and rubber infill system ("the FieldTurf product"). Many of these innovations are covered by patents. The artificial blades of grass are attached to a woven backing layer and protrude upward. The blades are supported by a three-layer infill system consisting of a bottom layer and, a second layer of mixed sand and rubber particles, and a top layer of rubber particles. The FieldTurf product is safer than the earlier types of synthetic surfaces, reacts more like natural grass, and is playable even in extremely wet conditions. The FieldTurf product has been very successful in the marketplace. Once players, owners, and others experience playing on the FieldTurf product, they believe that it is superior to other synthetic turf

products. Major customers of the FieldTurf product include National Football League teams, such as the Oakland Raiders, Pittsburgh Steelers, and New York Jets, and colleges, such as the University of Washington, University of Nebraska, San Diego State University, and this year, the University of Michigan, to name a few.

**DEFENDANTS OFFER TO SELL TURF WHICH
INFRINGES FIELDTURF'S PATENTS**

14. On or about March 7, 2003, the University of Wisconsin sent out a Request for Proposal ("RFP") to FieldTurf and, on information and belief, at least one of Defendants, amongst others, for purposes of bidding on turf replacement at the University's Camp Randall Stadium and McClain Indoor Practice Field.

15. On information and belief, on or about April 10, 2003, at least one of Defendants submitted a bid proposal in response to the University of Wisconsin's RFP. On information and belief, the Defendant's bid proposal offered to sell synthetic turf products which specifically utilize, amongst other components, a three-layer sand and rubber infill and the use of cryogenic rubber.

16. FieldTurf's '858 patent includes claims covering specific structural components identified in Sportex's bid proposal, including, but not limited to, an infill of sand and cryogenic rubber.

17. On or about April 15, 2003, Sportex was tentatively awarded the Turf Replacement Contract by the University of Wisconsin. On information and belief, such an award was given based on Sportex's represented ability to provide a product substantially the same as FieldTurf's products (i.e., utilizing a cryogenic rubber and sand infill as well as its coating which allows for proper drainage) at a substantially lower price.

18. The University subsequently revoked its tentative decision to award Defendant Triexe the contract purportedly due to concerns relative to Sportexe's financial condition.

**DEFENDANTS PARLAY THEIR ILLICIT AND TEMPORARY SUCCESS
WITH AN OFER TO THE BALTIMORE RAVENS FOOTBALL ORGANIZATION**

19. On information and belief, prior to the University of Wisconsin's revocation of its contract award, at least one of the Defendants offered to sell and install a synthetic turf product to the Baltimore Ravens Football organization (a National Football League team located in Baltimore, Maryland) and the University of California at Berkeley. On such information and belief, the product offered to the Baltimore Ravens and the University of California included the same or similar structural specifications as those tendered to the University of Wisconsin, including, but not limited to, a product having an infill comprised of cryogenic rubber and sand.

20. Based upon such representations, which, in effect, purport to reflect that Sportexe had the right to offer such an infringing product for sale and installation, the Baltimore Ravens agreed to have Sportexe install their infringing product at its playing field in Baltimore, Maryland, and, the University of California has likewise agreed to have the infringing product installed at its campus.

21. On information and belief, a formal written contract and the ultimate installation of the infringing synthetic field by at least Defendant Sportexe Construction Services, Inc. was scheduled to commence June 9, 2003. A press release (attached hereto as Ex. B) specifically states that the Ravens are confident that its new synthetic turf field will be installed by Sportexe and ready for game use by no later than August 9, 2003.

22. A Sportexe field was ultimately installed and is currently in use by the Baltimore Ravens.

23. On or about September 7, 2003, Mr. John Gilman, CEO of FieldTurf, Inc. personally and physically observed the field installed by Defendants for the Baltimore Ravens. A copy of Mr. Gilman's Affidavit attesting to his observations is attached hereto as Exhibit "E."

24. Based upon Mr. Gilman's observations, the installed field specifically utilized, amongst other components, a layered infill, wherein the layers included a bottom course of intermixed hard and resilient granules and a top course substantially exclusively of resilient granules disposed upon the bottom course.

25. FieldTurf's '689 patent includes claims covering specific structural components of the field installed at the Baltimore Ravens' stadium, including, but not limited to a layered infill of a sand and rubber bottom course and a top course of rubber.

**DEFENDANTS ENGAGE IN CONTINUOUS AND WIDE SPREAD
INFRINGEMENT AND UNFAIR COMPETITION**

26. On information and belief, Defendants maintain a web site for its SPORTEXE division. The web site offers for sale, amongst other things, several products which infringe upon FieldTurf's '885 patent, including, but not limited to SPORTEXE's "MOMENTUM" Turf Systems.

27. In a section of the SPORTEXE web site associated with the MOMENTUM Turf System, information is provided relative to the "Turf Infill." In this section (a copy of which is attached as Ex. C) specific statements reference that the MOMENTUM system utilizes a sand/rubber mix infill, and, that the rubber is "cryogenically ground" rubber. The document represented by Exhibit C was displayed on the Sportexe website at least as early as May 9, 2003.

28. In addition, on information and belief, at least one of the Defendants is engaged in manufacturing artificial turf in Dalton, Georgia, which infringes FieldTurf's '885 patent. Also,

on information and belief, at least one of Defendants has shipped such infringing product to Ireland for a project believed to be named "Milebush," wherein Sportex is believed to have sent its own installers to Ireland for installation of the infringing product thereat.

COUNT I

Infringement of U.S. Patent No. 6,338,885

29. FieldTurf repeats and incorporates by reference the allegations of paragraphs 1 through 28 above as if fully set forth herein.

30. The Defendants have engaged in infringement of the '885 patent by offering to sell synthetic turf products to at least the University of Wisconsin, the University of California at Berkeley, the Baltimore Ravens, their manufacture of infringing product in Dalton, Georgia and sale of same to Ireland, as well as its ongoing offer to sell and install products, on their website, which are covered by the claims of the '885 patent. Such conduct constitutes infringement of the '885 patent in violation of 35 U.S.C. Section 271.

31. As a result of the Defendants' acts of infringement, FieldTurf has sustained and will continue to sustain economic damages. FieldTurf is entitled to recover its damages from the Defendants pursuant to 35 U.S.C. Section 284.

32. As a result of the Defendants' conduct, FieldTurf has suffered damages to its reputation and goodwill, which has caused FieldTurf irreparable harm and for which FieldTurf cannot be compensated by monetary relief. The Defendants will continue to infringe the '885 patent unless enjoined by this Court. Pursuant to 35 U.S.C. Section 283, FieldTurf is entitled to a permanent injunction to prevent the Defendants' further infringement.

33. The Defendants have knowledge of the '885 patent, and FieldTurf is informed and believes, and based thereon alleges, that the Defendants' infringement has been and is willful.

Because this is an exceptional case, pursuant to 35 U.S.C. Sections 284 and 285, FieldTurf is entitled to recover treble damages and attorneys' fees.

COUNT II

Infringement of U.S. Patent No. 6,551,689

34. FieldTurf repeats and incorporates by reference the allegations of paragraphs 1 through 33 above as if fully set forth herein.

35. The Defendants have engaged in infringement of the '689 patent by installing a synthetic turf product in at least the Baltimore Ravens' Stadium, which is covered by the claims of the '689 patent. Such conduct constitutes infringement of the '689 patent in violation of 35 U.S.C. Section 271.

36. As a result of the Defendants' acts of infringement, FieldTurf has sustained and will continue to sustain economic damages. FieldTurf is entitled to recover its damages from the Defendants pursuant to 35 U.S.C. Section 284.

37. The Defendants had knowledge of the '689 patent, and FieldTurf believes, and based thereon alleges, that the Defendants' infringement has been and is willful. Because this is an exceptional case, pursuant to 35 U.S.C. Sections 284 and 285, FieldTurf is entitled to recover treble damages and attorneys' fees.

COUNT III

Intentional Interference with Prospective Economic Advantage

38. FieldTurf repeats and incorporates by reference the allegations of paragraphs 1 through 37 above as if fully set forth herein.

39. At all relevant times, economic relationships existed between FieldTurf and prospective customers from which future economic benefits or advantages to FieldTurf were probable. The Defendants knew of these relationships. On information and belief, the Defendants intentionally interfered with these relationships by, among other things, committing the wrongful acts alleged above, and, more particularly, representing it had the right to sell and install products covered by FieldTurf's '885 patent, when it did not. Such disrupted FieldTurf's relationships and resulted in damage to FieldTurf.

40. As a result of the aforementioned acts by the Defendants, FieldTurf has sustained economic damage and damage to its reputation and goodwill.

41. FieldTurf is informed and believes, and based thereon alleges, that the Defendants did the acts alleged herein with an intent to cause injury to FieldTurf, that the acts constituted conduct carried on with a willful and conscious disregard of FieldTurf's rights and subjected FieldTurf to cruel and unjust hardship, and that the acts were done fraudulently, maliciously, and oppressively. As a result, FieldTurf is entitled to recover exemplary and punitive damages from the Defendants.

COUNT IV

COMMON LAW CONVERSION

42. FieldTurf repeats and incorporates by reference the allegations of paragraph 1 through 41 above as if fully set forth herein.

43. FieldTurf is and has been at all times relevant hereto, the true owner by assignment of its proprietary turf system as claimed and disclosed in its '885 and '689 patent.

44. Upon information and belief, the Defendants have unlawfully exercised dominion and control over FieldTurf's patents, at least as early as when it offered product for sale to the University of Wisconsin, its manufacture of infringing product in Dalton, Georgia and sale of

same to Ireland, and/or when offering its "Momentum" product on its website and its installation of the field at the Baltimore Ravens' Stadium -- all of which, in essence, resulted in the Defendants claiming the rights of FieldTurf's patents as its own. As a result of the Defendants' unlawful actions, the Defendants have converted at least a portion of FieldTurf's patent rights as its own.

45. The Defendants' actions over FieldTurf's patent rights has been to the exclusion of FieldTurf and in defiance of FieldTurf's rights as the owner of its patents. The Defendants' acts identified above were, have been and are without any authorization from FieldTurf and have and will cause injury to FieldTurf's property rights in its patents.

46. The Defendants are aware of FieldTurf's proprietary rights but have chosen to ignore them.

47. On information and belief, unless enjoined by this Court, the Defendants will cause further conversion by actually entering into formal contracts and installing products covered by Plaintiff FieldTurf's patents.

48. The Defendants' acts in exercising dominion and control over FieldTurf's patent rights are wrongful and constitute a conversion of FieldTurf's patent rights under the common law of Illinois.

49. Upon information and belief, unless the Defendants are enjoined from unlawfully exercising dominion and control over FieldTurf's patent rights, FieldTurf will suffer severe competition losses and will be irreparably harmed. FieldTurf having no adequate remedy at law for these injuries, is entitled to entry of an immediate and permanent injunction to cease Defendants actions.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Court enter a judgment in its favor and against Defendants providing the following relief:


- A. Order, adjudge and decree that Defendants have infringed the '689 and '885 patents;
- B. Order, adjudge and decree that Defendants have intentionally interfered with FieldTurf's prospective economic advantage;
- C. Order, adjudge and decree that Defendants have torturously converted FieldTurf's property, namely its patent rights in the '885 and '689 patents;
- D. Issue a preliminarily and permanent injunction prohibiting Defendants and all of their representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with them, from:
 - a. infringing the '885 and '689 patents;
 - b. engaging in the acts of intentional interference alleged above; and
 - c. engaging in the acts of conversion alleged above.
- E. For an award of damages for infringement of the '885 and '689 patents, and for trebling of those damages, pursuant to 35 U.S.C. Section 284;
- F. For attorneys' fees pursuant to 35 U.S.C. Section 285;
- G. For an award of compensatory and punitive damages;
- H. For restitution and disgorgement of all wrongfully acquired revenues;
- I. For costs for suit; and
- J. For such other or further relief as this Court may deem equitable and proper.

JURY DEMAND

Plaintiffs demand trial by jury of all issues triable to a jury.

Respectfully submitted,

Dated: October 8, 2003



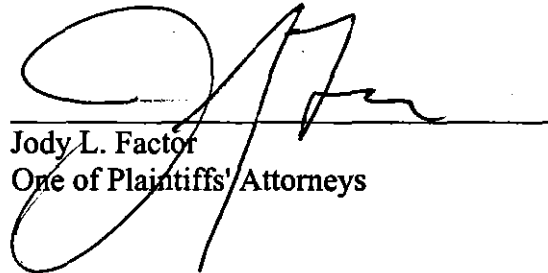
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT, INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, CONVERSION, INJUNCTIVE RELIEF, DAMAGES AND OTHER RELIEF** was served on the attorneys for Defendants via Federal Express, this 8th day of September, 2003 to:

Michael J. Berchou, Esq.
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Jody L. Factor
One of Plaintiffs' Attorneys

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