

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS, FLORIDA

**SOUTHERN MAG-CLIP CORP,**  
a Florida corporation,

: Plaintiff,

v.

2:04-cv-12-FTM-29 SPC

CIVIL ACTION NO. \_\_\_\_\_

**MAG-CLIP CORP** a Florida  
corporation, **HOWARD HUNLOCK,**  
an individual, **JAMES JOYCE,**  
an individual, and **VARIOUS**  
**JOHN DOES, JANE DOES** and **ABC**  
**COMPANIES,**

**JOHN E. STEELE**  
U.S. DISTRICT JUDGE

**SHERI POLSTER CHAPPELL**  
U.S. MAGISTRATE JUDGE

Defendants.

\_\_\_\_\_ /

COMPLAINT

INJUNCTIVE RELIEF SOUGHT

Plaintiff, **SOUTHERN MAG-CLIP CORP,** by and through the undersigned counsel, hereby files this Complaint against Defendants, **MAG-CLIP CORP, HOWARD HUNLOCK** and **JAMES JOYCE, VARIOUS JOHN DOES, JANE DOES** and **ABC COMPANIES,** (hereinafter collectively referred to as "Defendants"), for Patent Infringement and for breach under 35 U.S.C. §271, for Trademark Infringement and Unfair Competition under 15 U.S.C. §1125, and for declaratory and other relief, and alleges the following:

**JURISDICTION**

1. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §1 et seq., trademark infringement and unfair competition arising under the Lanham Act, 15 U.S.C. §1125 et seq., and state laws, and for declaratory and other relief.
2. This Court has original jurisdiction under 28 U.S.C. §§1331, 1338(a), 35 U.S.C. §271, and the principles of pendent jurisdiction.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum of One Million Dollars(\$1,000,000.00).
4. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391 and 1400(a).

**PARTIES**

5. Plaintiff, **SOUTHERN MAG-CLIP CORP** (hereinafter "Plaintiff" or "**SOUTHERN MAG-CLIP**") is a Florida corporation doing business throughout the state of Florida, the United States and North America.
6. Upon information and belief, Defendant **MAG-CLIP CORP** (hereinafter "Defendant" or "**MAG-CLIP**"), is a

company having its principal place of business in the state of Florida, and doing business in interstate commerce.

7. Defendants, **HOWARD HUNLOCK** and **JAMES JOYCE** (hereinafter "**HUNLOCK**" or "**JOYCE**", respectively), are, upon information and belief, individuals residing in the state of Florida.
8. Defendants **HUNLOCK** and **JOYCE** are, upon information and belief, principals of Defendant **MAG-CLIP** and during the acts herein alleged were conscious, active and dominant forces behind the unlawful acts of Defendant **MAG-CLIP**
9. Upon information and belief, Defendants, **VARIOUS JOHN DOES, JANE DOES** and **ABC COMPANIES**, are individuals and/or large national retail business entities who, along with Defendants **MAG-CLIP, HUNLOCK** and **JOYCE**, have engaged in the unauthorized use, offering for sale, sale, distribution and marketing of products infringing Plaintiff's U.S. Patent No. 5,743,394 (hereinafter the "Patent-in-suit") and Plaintiff's trademark rights in the marks **MAG CLIP** and **SOUTHERN MAG-CLIP**. The identities of these unnamed defendants presently are not and cannot be known to Plaintiff.

10. The actions and complicity of all or some of the Defendants are intentional, willful and deliberate and have caused continuing and permanent damage to Plaintiff.

**PLAINTIFF AND ITS RIGHTS**

11. Plaintiff **SOUTHERN MAG-CLIP** is a respected nationally recognized manufacturer and marketer of innovative magnetic socket holders which are designed to retain metal sockets of various sizes on a magnetic field and support surface.
12. Plaintiff is a leader and well-recognized name in the hardware and magnetic socket holder market and has enjoyed success in marketing its products throughout the United States.
13. Plaintiff is the owner of and enforces all right, title and interest in the Patent-in-suit.
14. Plaintiff is the owner of and enforces all right, title and interest in the federally protected trademarks **MAG-CLIP** and **SOUTHERN MAG-CLIP**, and has caused considerable success by virtue of use, sales and promotion of goods and services under Plaintiff's trademark rights.

15. Plaintiff's marks are well known to the public and are synonymous with high quality goods and services.
16. Plaintiff has achieved great success in designing, developing, promoting and marketing its goods and services under its trademarks and throughout the United States, resulting in widespread and favorable public acceptance by the relevant consuming public.
17. Plaintiff marks assets of substantial value as a symbol of Plaintiff, its products and goodwill.
18. Defendant, **MAG-CLIP**, was a licensee of Plaintiff pursuant to a written agreement (hereinafter the "License Agreement") dated July 16, 2001.
19. Defendant **MAG-CLIP** became incorporated under the name **MAG-CLIP CORP** and used the mark **MAG-CLIP** on the licensed goods only at the permission of Plaintiff who was at all time the senior and prior user of the marks **MAG-CLIP** and **SOUTHERN MAG-CLIP**.
20. As between Plaintiff and Defendant **MAG-CLIP CORP**, Plaintiff's use of the mark **SOUTHERN MAG-CLIP** is first.
21. As between Plaintiff and Defendant **MAG-CLIP CORP**, Plaintiff's use of the mark **MAG-CLIP** is first.

22. The Defendants' continue to use, misappropriate, and derive profit from Plaintiff's confidential and trade secret information, including "know how", "show how" and other confidential business information, to which the Defendants gained access, which information is protected by Florida Statutes §688.001 et seq., as well as federal law.
23. Defendants continue to use and misappropriate the Plaintiff protected confidential and trade secret information by improper means.
24. Defendant **MAG-CLIP CORP** purchased large quantities of the patented product under license from Plaintiff until on or about June 30, 2003.
25. On or about June 30, 2003, Defendants through a representative announced to Plaintiff that Defendant **MAG-CLIP CORP's** intended to stop paying royalties, to apply for a patent similar to the Patent-in-suit, and to continue to distribute product nonetheless.
26. During that meeting, Defendants through their representative, communicated to Plaintiff a clear and brazen depiction of Defendants' intention to circumvent their existing obligations under the License Agreement and to traffick in Plaintiff's intellectual property

under what the Defendants apparently believed would be a profitable scheme to increase their revenue by "discarding" their pre-existing written obligations to the Plaintiff.

27. Defendants have thus willfully violated the License Agreement and have indeed continued to transact business, and to traffick in goods, bearing the designation or source indicator "**MAG-CLIP**" and/or "**MAG-CLIP CORP**" (hereinafter also the "Accused Mark") which acts infringe the lawful granted, federally protected rights of Plaintiff.
28. Defendants are manufacturing, selling, offering for sale, and/or selling, goods in violation of the Patent-in-suit and in violation of Plaintiff's trademark rights.
29. Defendants' acts are being committed on a large scale, in interstate commerce throughout the United States, and without the permission of Plaintiff, resulting in monetary gain to Defendants, likelihood of confusion to consumers, and in continuing irreparable harm and damage to Plaintiff.
30. Plaintiff is entitled to an injunction restraining Defendants, their officers, agents, servants,

employees, and attorneys, and upon those persons in active concert or participation with them, from engaging in any further acts in violation of 35 U.S.C. §1 et seq. and of 15 U.S.C. §1125 et seq.

31. Plaintiff is further entitled to recover from Defendants the damages, including treble or exemplary damages, interest, and attorneys' fees and costs which it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants as a result of Defendants' acts as alleged herein. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

**COUNT I**  
**PATENT INFRINGEMENT**

32. Plaintiff restates the allegations contained in Paragraphs 1 through 31 above, as if fully set forth herein.
33. Defendants acts constitute patent infringement or contributory patent infringement in violation of 35 U.S.C. §271.
34. As a result of Defendants' acts, Plaintiff has suffered damages with interest.



35. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.

36. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands

judgment against Defendants as follows:

- a. that Defendants have infringed, induced others to infringe, and/or committed acts of contributory infringement with respect to the Patent-in-suit;
- b. that Defendants' infringements of the Patent-in-suit has been, and continues to be, willful and deliberate;
- c. that a preliminary and permanent injunction be entered enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from directly or indirectly manufacturing, making, producing, using, selling or distributing products or items in violation of the Patent-in-suit;
  - ii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

- d. that Defendants be ordered to pay Plaintiff's costs, expenses, and reasonable attorneys' fees pursuant to 35 U.S.C. §§284 and 285;
- e. that Defendants be ordered to account for and pay to Plaintiff all damages caused to Plaintiff by reason of Defendants' infringements pursuant to 35 U.S.C. §284, including enhanced damages under 35 U.S.C. §284;
- f. that Plaintiff be awarded pre-judgment and post-judgment interest on the damages caused to it by Defendants' infringement; and
- g. that the Court grant such other and further relief as this Court may deem just.

**COUNT II**  
**FEDERAL TRADEMARK INFRINGEMENT**

- 37. Plaintiff repeats and realleges Paragraphs 1 through 36 of this Complaint, as if fully set forth herein.
- 38. Defendants' acts as alleged herein constitute trademark infringement and are likely to cause confusion, mistake or deception in violation of 15 U.S.C. §1125(a).
- 39. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
- 40. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
- 41. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands judgment against Defendants including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
  - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;
  - iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
  - iv. from utilizing the Accused Mark in any shape or manner;
  - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;
  - vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in

Defendants' respective possession, custody or control and which bear the Accused Mark;

- vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
  - viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
  - c. all monetary damages suffered by Plaintiff.

**COUNT III**  
**FEDERAL UNFAIR COMPETITION**

- 42. Plaintiff repeats and realleges Paragraphs 1 through 41 of this Complaint, as if fully set forth herein.
- 43. Defendants' acts as alleged herein constitute unfair competition and are likely to cause confusion, mistake or deception in violation of 15 U.S.C. §1125(a).
- 44. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
- 45. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.

46. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands

judgment against Defendants including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
  - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;
  - iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
  - iv. from utilizing the Accused Mark in any shape or manner;
  - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Accused Mark;
  - vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
  - viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
  - c. all monetary damages suffered by Plaintiff.

**COUNT IV**

**FEDERAL FALSE DESIGNATION OF ORIGIN AND FALSE DESCRIPTION**

- 47. Plaintiff repeats and realleges Paragraphs 1 through 46 of this Complaint as if fully set forth herein.
- 48. Defendants' acts, as alleged herein, constitute false designation of origin, false and misleading description of fact, or false or misleading representation of fact which is likely to cause confusion, or which, in

commercial advertising or promotion, misrepresents the origin, source or sponsorship of the goods in question, in violation of 15 U.S.C. §1125(a)(1)(a) and/or 15 U.S.C. §1125(a)(1)(b).

49. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
50. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
51. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands judgment against Defendants including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
  - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;

- iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
  - iv. from utilizing the Accused Mark in any shape or manner;
  - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;
  - vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Accused Mark;
  - vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
  - viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
  - c. all monetary damages suffered by Plaintiff;



- d. an award of attorneys fees and costs pursuant to 15 U.S.C. §1117; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT V**  
**PASSING OFF**

- 52. Plaintiff repeats and realleges Paragraphs 1 through 51 of this Complaint as if fully set forth herein.
- 53. Defendants' acts, as alleged herein, constitute passing off in violation of 15 U.S.C. §1125.
- 54. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
- 55. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
- 56. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands judgment against Defendants including:

- a. preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's

trademark, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;

- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;
- iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Accused Mark in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Accused Mark;
- vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of

perjury, that each and every injunctive provision has been fully and completely complied with;

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. §1117; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT VI**  
**FLORIDA UNFAIR COMPETITION**

- 57. Plaintiff repeats and realleges Paragraphs 1 through 56 of this Complaint as if fully set forth herein.
- 58. Defendants' acts, as alleged herein, constitute an infringement of Plaintiff's rights in and to its trade name and trademark rights as defined in Florida Statutes §495.151 et seq.
- 59. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
- 60. As a result, Plaintiff has suffered damages with interest.
- 61. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands

judgment against Defendants for:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
  - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;
  - iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
  - iv. from utilizing the Accused Mark in any shape or manner;
  - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Accused Mark;
  - vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
  - viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
  - c. all monetary damages suffered by Plaintiff;
  - d. an award of attorneys fees and costs; and
  - e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT VII**

**FLORIDA INJURY TO BUSINESS REPUTATION AND DILUTION**

**(Florida Statutes §495.151 et seq.)**

- 62. Plaintiff repeats and realleges Paragraphs 1 through 61 of this Complaint as if fully set forth herein.
- 63. Defendants' acts, as alleged herein, have caused and are likely to cause damage to Plaintiff by tarnishing

Plaintiff's valuable reputation and by diluting the distinctiveness of Plaintiff's trademark in violation of Florida Statutes §495.151 et seq.

64. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
65. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
66. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff **SOUTHERN MAG-CLIP** demands judgment against Defendants for:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
  - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;

- iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
  - iv. from utilizing the Accused Mark in any shape or manner;
  - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;
  - vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Infringing Mark;
  - vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;
  - viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
  - c. all monetary damages suffered by Plaintiff;
  - d. an award of attorneys fees and costs; and

- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT VIII**  
**FLORIDA UNFAIR COMPETITION,**  
**MISAPPROPRIATION, FALSE DESIGNATION OF**  
**ORIGIN, FALSE DESCRIPTION AND UNJUST ENRICHMENT**

- 67. Plaintiff repeats and realleges Paragraphs 1 through 66 of this Complaint as if fully set forth herein.
- 68. Defendants' acts, as alleged herein, constitute unfair competition, misappropriation, a false designation or origin, a false and misleading description of fact or a false or misleading representation of fact, unjust enrichment and passing off which is likely to cause confusion, mistake, damage or deception in violation of Florida law.
- 69. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
- 70. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
- 71. Plaintiff has no adequate complete remedy at law.

**WHEREFORE,** Plaintiff, **SOUTHERN MAG-CLIP,** demands judgment against Defendants including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all



those persons in active concert or participation therewith who received actual notice of this Court's orders:

- i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's trademark, or as to the origin, sponsorship, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Plaintiff's trademark or Plaintiff's forms of advertisement;
- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with or originating from Plaintiff;
- iii. from directly or indirectly using the Accused Mark which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Accused Mark in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Accused Mark, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in or come to be in Defendants' respective possession, custody or control and which bear the Accused Mark;
- vii. to notify their direct customers, agents, and representatives that the Accused Mark is not connected with the Plaintiff;

- viii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with.
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein.
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT IX**  
**MISAPPROPRIATION OF TRADE SECRETS**

72. Plaintiff repeats and realleges Paragraphs 1 through 71 of this Complaint as if fully set forth herein.
73. Defendants' acts as alleged herein constitute misappropriation of trade secrets in violation of the Florida Uniform Trade Secrets Act, §688.001 et seq.
74. As a result of Defendants' acts, Plaintiff has suffered damages with interest.
75. As a result of the Defendants' acts, Plaintiff has and will suffer irreparable harm.
76. Plaintiff has no adequate complete remedy at law.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands

judgment against Defendants including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
  - i. from using, misappropriating, benefitting from, or profiting from, Plaintiff's protected confidential and trade secret information.
  - ii. to immediately institute full compliance with any order entered by this Court and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with.
- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein.
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT X**  
**BREACH OF LICENSE AGREEMENT**

77. Plaintiff restates and realleges the allegations contained in Paragraphs 1 through 76 above as if fully set forth herein.
78. Defendants acts constitute breach of contract in violation of Florida law.
79. Upon information and belief, Defendants have breached the fiduciary duty to Plaintiff imposed upon them by the License Agreement and by operation of law and equity.
80. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff.
81. As a result, Plaintiff has suffered damages with interest.
82. Plaintiff has no adequate complete remedy at law.
83. As a result of the Defendants' acts described herein, Plaintiff is owed monies due, including but not limited to damages, royalties, attorney fees and costs, for violation of the License Agreement and for other breaches and violations referred to herein.

**WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, demands judgment against Defendants as follows:

- a. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein.
- b. all monetary damages suffered by Plaintiff;
- c. an award of attorneys' fees and costs;
- d. an award of punitive, exemplary, or extraordinary damages as may be allowable under law; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

**COUNT XI**

**DECLARATORY RELIEF FOR TRADEMARK CANCELLATION**

84. Plaintiff restates and realleges the allegations contained in Paragraphs 1 through 83 above as if fully set forth herein.
85. Plaintiff, **SOUTHERN MAG-CLIP**, states that Defendant, **MAG-CLIP CORP**, has engaged in fraud and misrepresentation in the application for a U.S. trademark registration which bears Serial No. 76460562 for the trademark **MAG-CLIP**, that Defendant, **MAG-CLIP CORP** has falsely represented that its first use in commerce was February 29, 1996, a date on which the Defendant corporation did not exist, and has otherwise failed to disclose its status as not being the true owner of the applied for mark, which is owned by

Plaintiff, **SOUTHERN MAG-CLIP**, and Defendants have also failed to disclose actual prior knowledge that Plaintiff was and is the senior user.

86. The trademark **MAG CLIP** sought for registration is not entitled to registration according to Section 2 of the Lanham Act, because it was applied for fraudulently, and because it was, and is, likely to cause confusion, mistake or deception.

87. The application for the Accused Mark is therefore subject being enjoined from registration, or if registering during the pendency of this action, is subject to cancellation by order of this Court.

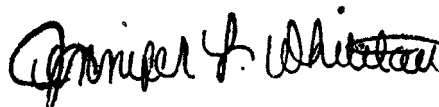
88. **WHEREFORE**, Plaintiff, **SOUTHERN MAG-CLIP**, prays:

That this Court issue a declaration that:

- a) the Assistant Commissioner of Patents and Trademarks shall effect the abandonment of United States Trademark Application Serial No. 76460562;
- b) the Assistant Commissioner of Patents and Trademarks shall effect the cancellation of any registration arising from United States Trademark Application Serial No. 76460562;
- c) Plaintiff shall be awarded its attorney fees, costs and expenses in this action; and

d) grants such other and further relief as this Court  
may deem just.

Respectfully submitted,



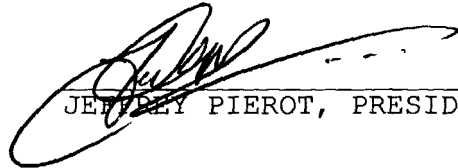
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**VERIFICATION**

**I DECLARE**, under penalty of perjury that I have read the foregoing Complaint and that the same is true and correct.

Executed this 19<sup>th</sup> day of DECEMBER, 2003.

  
\_\_\_\_\_  
JEFFREY PIEROT, PRESIDENT