

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CHOMARAT NORTH AMERICA, LLC,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.:
v.)	
)	
HUESKER SYNTHETIC GMBH & CO.,)	
)	Jury Trial Demanded
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Chomarat North America, LLC, by and through its counsel, for its Complaint against Defendant Huesker Synthetic GmbH & Co., alleges on personal knowledge as to its actions, and upon information and belief as to the actions of others, as follows:

1. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.
2. Plaintiff Chomarat North America, LLC (hereinafter “Chomarat” or “Plaintiff”) is a limited liability company organized and existing under the laws of the State of South Carolina, having a principal place of business at 2901 New Pond Road, Anderson, South Carolina 29624.
3. Upon information and belief, Defendant Huesker Synthetic GmbH & Co. (hereinafter “Huesker”) is a German company with a principal place of business at Fabrikstraße 13-15, 48712 Gescher, Germany. On information and belief, Huesker’s North American headquarters are located in Charlotte, North Carolina at the offices of Huesker, Inc., Huesker’s North American subsidiary. Huesker, either by itself or through its North American subsidiary, is in the business of manufacturing and selling woven and nonwoven geotextiles and geogrids for

civil engineering, agriculture and industrial applications, including in and/or through North Carolina and this District.

4. Defendant Huesker has alleged that Plaintiff has violated the federal patent laws, and Defendant has threatened to enforce its alleged rights against Plaintiff Chomarat.

5. This Court has jurisdiction over the subject matter of this action on the following grounds:

- (a) 28 U.S.C. §§ 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce; and
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent and trademark rights; and
- (d) 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Rule 57, Fed.R.Civ.P., because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiff and Defendant.

7. On information and belief, this Court has personal jurisdiction over Defendant Huesker consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4 because, among other things, Defendant is engaged in substantial activity within North

Carolina and this District, and injury caused to Plaintiff occurred in the State of North Carolina as a result of Huesker's actions within the State of North Carolina and this District.

8. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and/or 1400 because, among other things, Defendant resides in this District and/or has a regular and established place of business in this District, and Defendant is subject to personal jurisdiction in this District.

9. On or about July 22, 2008, counsel for Defendant sent a letter to a customer of Chomarat, alleging that a product sold by such customer infringes U.S. Patent No. 6,780,798 (hereinafter "the '798 patent").

10. After Chomarat identified itself to Defendant's counsel as the manufacturer of the allegedly infringing product, counsel for Defendant sent a letter to counsel for Plaintiff, on or about August 27, 2008, alleging infringement of the '798 patent by Chomarat. Defendant's letter further threatened that "Chomarat's continued manufacture[] of the Infringing Product [is considered] to be willful infringement under the patent laws" and such "situation cannot continue." A copy of the August 27, 2008 letter is attached hereto as Exhibit 1.

11. Defendant has alleged that Huesker is the owner of whatever rights, if any, that exist in the '798 patent, which is entitled "Textile Lattice For Reinforcing Bitumen-Bonded Layers."

12. On information and belief, Plaintiff Chomarat has no liability for infringement of the '798 patent because, *inter alia*, Plaintiff Chomarat has not infringed and does not infringe any valid and enforceable claim of the '798 patent.

13. As a result of Huesker's allegations and general course of conduct against Plaintiff Chomarat, Plaintiff has a reasonable apprehension that Defendant will imminently file a complaint against Chomarat for alleged patent infringement.

14. There is an actual and substantial controversy between Plaintiff Chomarat and Defendant of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Plaintiff is entitled to a judgment declaring the parties' rights as requested herein.

COUNT I

DECLARATORY JUDGMENT REGARDING ALLEGATIONS OF PATENT INFRINGEMENT

15. Plaintiff incorporates by reference paragraphs 1 through 14 above as if set forth fully herein.

16. There is an actual, substantial, and justiciable controversy between Plaintiff and Defendant concerning Defendant's allegations that Plaintiff is infringing the '798 patent.

17. Defendant's allegations of infringement against Plaintiff Chomarat place a cloud over Plaintiff's business activities and likely will cause uncertainty among customers, prospective customers, and others in the marketplace, leading Plaintiff to lose revenues and/or business opportunities.

18. On information and belief, Plaintiff Chomarat has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '798 patent, as alleged by Defendant.

19. Plaintiff is entitled to a judgment declaring that its products are and have been lawful, and otherwise declaring that Plaintiff has not infringed and does not infringe any valid and enforceable rights, if any, that Defendant may hold in the '798 patent.

20. As a direct and proximate result of Defendant's allegations of infringement of the '798 patent, Plaintiff is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

COUNT II

DECLARATORY JUDGMENT REGARDING PATENT INVALIDITY

21. Plaintiff incorporates by reference paragraphs 1 through 20 above as if set forth fully herein.

22. There is an actual, substantial, and justiciable controversy between Plaintiff and Defendant concerning Defendant's allegations that Plaintiff is infringing the '798 patent.

23. Defendant's allegations of infringement against Plaintiff Chomarat place a cloud over Plaintiff's business activities and likely will cause uncertainty among customers, prospective customers, and others in the marketplace, leading Plaintiff to lose revenues and/or business opportunities.

24. Upon information and belief, Defendant's broad assertion, construction, and/or interpretation of the '798 patent renders it invalid in view of the prior art and/or for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

25. As a direct and proximate result of Defendant's allegations of infringement of the '798 patent, Plaintiff is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

WHEREFORE, Plaintiff Chomarat prays for judgment:

- A. That the Court declare that Plaintiff, and including specifically the accused products made, used, imported, sold and/or offered for sale by Plaintiff, has not infringed any purported patent rights of Defendant in the '798 patent, or otherwise violated the patent laws of the United States;
- B. That the Court declare that the '798 patent is invalid pursuant to the patent laws of the United States;
- C. That the Court permanently enjoin Defendant, its successors, assigns, and others from asserting the '798 patent against Plaintiff and its customers with respect to the accused products made, used, imported, sold and/or offered for sale by Plaintiff;
- D. That the Court find in favor of Plaintiff and declare this case as exceptional pursuant to 35 U.S.C. § 285;
- E. That the Court declare that this case is exceptional pursuant to 15 U.S.C. § 1117(a) and award attorneys' fees to Plaintiff;
- F. That the Court award Plaintiff its attorneys' fees and other costs and expenses;
- G. That the Court award interest to the extent permitted by law; and
- H. That the Court award such further relief as it deems just and proper.

Plaintiff hereby demands a trial by jury on all issues so triable.

This 29th day of August, 2008.

s/ Miranda M. Olvera

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