

07 CV 2276

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
POWERS FASTENERS, INC.,
Plaintiff,
v.
METALLICS, INC., and
AVANTI SCREW INC.,
Defendants.
-----X

Civ. Action No.

JURY TRIAL DEMANDED

07 CV 2276 (CM)

ECF CASE

COMPLAINT

The Parties

1. Plaintiff Powers Fasteners, Inc. ("Powers") is a New York corporation with its principal offices at 2 Powers Lane, Brewster, New York 10509.
2. Defendant Metallica, Inc. ("Metallica") is a Connecticut corporation with its principal offices at 229 Cross Street, Bristol, Connecticut 06010.
3. Defendant Avanti Screw Inc. ("Avanti") is a Connecticut corporation with its principal offices at 231 Cross Street, Bristol, Connecticut 06010.
4. Upon information and belief, defendants Metallica and Avanti are affiliated entities having common executive(s) and officer(s).

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under Title 35 of the United States Code § 271 et seq., and this Court has subject matter jurisdiction over Powers's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over defendant Metallica because it has transacted business within the District, both generally and specifically regarding the allegations in this Complaint, and because Metallica has committed tortious acts within this District.

7. This Court has personal jurisdiction over defendant Avanti because it has directly, or indirectly through its affiliate Metallica: transacted business within the District, both generally and specifically regarding the allegations in this Complaint; contracted to supply goods or services in the District; and committed tortious acts within and without the state causing injury to property within the District. Furthermore, Avanti expects or should reasonably expect its acts to have consequences within the District; derives substantial revenue from interstate or international commerce; derives substantial revenue from goods used or consumed or services rendered in the District; and regularly does or solicits business in the District.

8. Venue properly lies within this District under 28 U.S.C. §§ 1391(b), (c) and 1400(b) because Metallica and Avanti are subject to personal jurisdiction and have committed acts of patent infringement in this District.

**METALLICS AND AVANTI INFRINGE
POWERS'S U.S. PATENT NO. 7,040,850**

9. On May 9, 2006, United States Letters Patent No. 7,040,850 (the “ ’850 Patent”) was duly and legally issued for the invention entitled “Fastener For Use With Frangible Material” to inventor Paul Gaudron. A copy of the ’850 Patent is attached hereto as Exhibit A. The ’850 Patent is duly and legally assigned to Powers, and Powers is the sole owner of the ’850 Patent.

10. Powers is a global company specializing in the manufacture and marketing of anchoring and fastening products for concrete, masonry, and steel.

11. Defendant Metallica is a competitor of Powers engaged in the business of distributing, designing and manufacturing fasteners, including metal fasteners for sheetrock, wallboard, plywood, plaster, concrete, and concrete products.

12. Defendant Avanti is a competitor of Powers engaged in the business of manufacturing, designing, and selling bolts, screws and rivets, including metal fasteners for sheetrock, wallboard, plywood, plaster, concrete, and concrete products.

13. The claims of the '850 Patent are directed to a novel fastener comprising a metal shank having a tip and an approximately constant diameter except at its tip, a first helical thread formed on the shank and having a first diameter, wherein the ratio of the first diameter to the shank diameter is at least 1.5:1, a second helical thread formed on the shank and having a second diameter that is substantially less than the first diameter, and a helical, roughened surface formed on the entire shank, such that it is particularly effective at being secured into frangible material such as drywall or masonry.

14. Metallica manufactures or causes Avanti to manufacture, and sells, fasteners within the scope of one or more of the claims of the '850 Patent, including those marketed under the tradename The Silver Claw.

15. Avanti manufactures and sells fasteners within the scope of one or more of the claims of the '850 Patent, including those marketed by its affiliates Metallica, Inc. and Metallica West, Inc. under the tradename The Silver Claw.

COUNT I

Metallica Infringes U.S. Patent No. 7,040,850 Pursuant to 35 U.S.C. § 271(a)-(c)

16. Powers repeats and realleges paragraphs 1 through 15 of its Complaint as if set forth fully herein.

17. Powers owns all rights, title and interest to the '850 Patent.

18. By manufacturing, having manufactured, selling and/or offering to sell fasteners, meeting the elements of at least claims 1-4 and 8-9 of the '850 Patent, particularly including The Silver Claw fasteners, and by actively encouraging others to use such fasteners, defendant Metallica has infringed the '850 Patent directly, contributorily and/or through inducement, pursuant to 35 U.S.C. § 271(a)-(c).

19. Defendant Metallica has engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Powers and during the term of the '850 Patent.

20. On information and belief, defendant Metallica will not stop making, having made, using, selling and/or offering for sale in the United States and/or importing into the United States the inventions of the '850 Patent to avoid infringing the Patent, unless enjoined by this Court.

21. On information and belief, defendant Metallica's infringement has been and is deliberate, willful and wanton, and with knowledge of the '850 Patent.

22. Defendant Metallica's conduct has caused Powers to suffer, and, unless enjoined, will cause Powers to continue to suffer damages to its operations, reputation, and goodwill.

23. Powers has no adequate remedy at law. Defendant Metallica's conduct has caused, and, if not enjoined, will continue to cause irreparable damage to Powers. As a result of defendant Metallica's wrongful conduct, Powers is entitled to immediate and permanent injunctive relief.

COUNT II

Avanti Infringes U.S. Patent No. 7,040,850 Pursuant to 35 U.S.C. § 271(a)-(c)

24. Powers repeats and realleges paragraphs 1 through 23 of its Complaint as if set forth fully herein.

25. Powers owns all rights, title and interest to the '850 Patent.

26. By manufacturing, having manufactured, selling and/or offering to sell fasteners, meeting the elements of at least claims 1-4 and 8-9 of the '850 Patent, particularly including The Silver Claw fasteners, and by actively encouraging others to use such fasteners, defendant Avanti has infringed the '850 Patent directly, contributorily and/or through inducement, pursuant to 35 U.S.C. § 271(a)-(c).

27. Defendant Avanti has engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Powers and during the term of the '850 Patent.

28. On information and belief, defendant Avanti will not stop making, using, selling and/or offering for sale in the United States and/or importing into the United States the inventions of the '850 Patent to avoid infringing the Patent, unless enjoined by this Court.

29. On information and belief, defendant Avanti's infringement has been and is deliberate, willful and wanton, and with knowledge of the '850 Patent.

30. Defendant Avanti's conduct has caused Powers to suffer, and, unless enjoined, will cause Powers to continue to suffer damages to its operations, reputation, and goodwill.

31. Powers has no adequate remedy at law. Defendant Avanti's conduct has caused, and, if not enjoined, will continue to cause irreparable damage to Powers. As a result of

defendant Avanti's wrongful conduct, Powers is entitled to immediate and permanent injunctive relief.

RELIEF REQUESTED

WHEREFORE, Powers requests that the Court enter a judgment in Powers's favor and against defendants Metallica and Avanti and provide Powers the following relief:

- A. Order, adjudge and decree that Metallica and Avanti have infringed at least claims 1-4 and 8-9 of the '850 Patent in violation of 35 U.S.C. § 271;
- B. Order, adjudge and decree that Metallica and Avanti willfully and knowingly infringed the '850 Patent;
- C. Order, adjudge and decree that Metallica's and Avanti's infringement of the '850 Patent are exceptional under 35 U.S.C. § 285;
- D. Issue preliminary and permanent injunctions prohibiting Metallica, Avanti, and their respective parents, subsidiaries, principals, officers, directors, agents, affiliates, attorneys, employees, and all others in privity with Metallica and/or Avanti from infringing the claims of the '850 Patent;
- E. Award Powers damages for patent infringement including prejudgment interest and costs against Metallica and Avanti under 28 U.S.C. § 284;
- F. Award Powers three times its damages to compensate Powers under 35 U.S.C. § 284;
- G. Award Powers its reasonable attorneys' fees under 35 U.S.C. § 285; and
- H. Award such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Powers demands a trial by jury on all issues so triable.

Dated: March 16, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip L. Hirschhorn", written over a horizontal line.

Brian P. Murphy (BM 5162)
Philip L. Hirschhorn (PH 3861)
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