

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FIELDTURF USA, INC., a Florida corporation; FIELDTURF TARKETT, INC., a Canadian corporation,

Plaintiffs,

v.

ASTROTURF, LLC., a Michigan limited liability company,

Defendant.

Civil Action No. 2:10-cv-12492-SJM-MJH

Hon. Stephen J. Murphy, III.

Magistrate Judge Michael J. Hluchaniuk

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT, UNFAIR
COMPETITION AND VIOLATIONS OF THE LANHAM ACT**

The Plaintiffs, FieldTurf USA, Inc. and FieldTurf Tarkett, Inc. (collectively “FieldTurf”), for their Second Amended Complaint against the Defendant AstroTurf, LLC (“Defendant” or “AstroTurf”), state as follows:

PARTIES AND NATURE OF ACTION

1. Plaintiff FieldTurf USA, Inc. is a corporation organized and existing under the laws of the State of Florida, with a principal place of business in Montreal, Quebec, Canada. FieldTurf USA, Inc. manufactures, sells and installs synthetic turf products throughout the United States, including throughout the State of Michigan.

2. Plaintiff FieldTurf Tarkett, Inc. is a corporation organized and existing under the laws of Canada, with its principal place of business in Montreal, Quebec, Canada.

3. FieldTurf Tarkett Inc. is the owner by assignment of all right, title, and interest in U.S. Patent No. 6,723,412 (“the ’412 patent”), entitled “Synthetic Turf” issued on April 20, 2004 by the U.S. Patent and Trademark Office (“USPTO”). A true and correct copy of the ’412 patent

is attached hereto as Exhibit 1.

4. Shortly after its issuance, the '412 patent was "reexamined" by the USPTO at the request of a third party. After a lengthy reexamination procedure, wherein numerous U.S. and foreign prior art references were cited and analyzed, the USPTO confirmed the patentability of all of the claims of the '412 patent exactly as originally issued. A true and accurate copy of Reexamination Certificate No. 6,723,412 C1 is attached hereto as Exhibit 2 (inasmuch as the Reexamination Certificate reflects that the reexamined claims are identical to those of the original '412 patent, only reference to the '412 patent will be necessary for purposes of the present Complaint).

5. FieldTurf USA, Inc. is the exclusive licensee from FieldTurf Tarkett, Inc. under the '412 patent for the right to sell, make, use, offer to sell, and install synthetic turf products in the United States. This exclusive right includes the right to sub-license others, and to initiate legal action against infringers of the '412 patent.

6. Defendant AstroTurf, upon information and belief, is a Michigan limited liability company, with a principal place of business in Rochester, Michigan, and was previously operating under the name General Sports Venue, LLC (*see* Exhibit 3). In addition, upon information and belief, Defendant AstroTurf maintains a regional office in Detroit, Michigan (*see* Exhibit 4). Defendant AstroTurf sells and installs synthetic turf surfaces -- usually in response to solicitations for bids for same.

7. The basis of this Complaint arises out of Defendant AstroTurf's unlawful and infringing offers to sell, actual sales, and installations of synthetic turf surfaces that infringe one or more claims of the '412 patent. In addition, this Complaint addresses false and misleading statements made by AstroTurf that have caused, are causing and will cause damage to FieldTurf

in violation of the Lanham Act and Michigan's unfair competition laws.

JURISDICTION

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal question), 28 U.S.C. § 1332 (diversity of citizenship with amount in controversy exceeding \$75,000), 28 U.S.C. § 1338(a) (arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*), 28 U.S.C. § 1338(b) (unfair competition claim when joined with a substantial and related claim under the copyright, patent or trademark laws) and 28 U.S.C. § 1367 (supplemental jurisdiction).

9. This Court has personal jurisdiction over Defendant AstroTurf at least because, upon information and belief, Defendant AstroTurf transacts business in this district, at least some of the acts complained of herein occurred in this district, and Defendant AstroTurf maintains an office in Dearborn, Michigan.

VENUE

10. Venue is proper in this Court under one or more of 28 U.S.C. §1391(b), 28 U.S.C. §1391(c), and 28 U.S.C. §1400(b).

HISTORY OF SYNTHETIC TURF GRASS

11. Synthetic grass surfaces, also known as "artificial turf" or "synthetic turf," are widely used 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, and more particularly FieldTurf, has focused on developing synthetic surfaces that are more like natural grass in that the blades are longer, softer and are held up by an infill material that includes a combination of hard and 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 unique particulate infill system ("the FieldTurf product"). Many of these innovations are covered by patents, including the '412 patent. Indeed, among other unique and proprietary attributes, the artificial blades ("ribbons") of grass are attached to a woven backing layer. The ribbons are typically supported by a layered infill system consisting of, for example, a bottom layer of sand, a middle layer of mixed sand and rubber particles, and a top layer of rubber particles. The sand and rubber used in the infill system are premium materials, including rounded silica sand and cryogenically ground rubber. In addition, and as claimed by the '412 patent, the FieldTurf product incorporates a dimensional relationship between the height/length of the ribbons, the spacing ("gauge") between rows of ribbons, and the depth of the infill relative to the height/length of the particular ribbons. By using these materials and formulations,

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.

14. 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. Indeed, the FieldTurf product has been installed at numerous high profile facilities including National Football League stadiums, for, among others, the Detroit Lions, Indianapolis Colts, Cincinnati Bengals and the New York Giants, as well as at numerous NCAA Division 1 stadiums for such Universities, including, but not limited to the University of Michigan, and many, many others.

DEFENDANT'S INFRINGING ACTIVITIES

15. After issuance of the '412 patent, Defendant AstroTurf offered for sale, sold and installed synthetic turf products, marketed under several different designations, including, but not limited to GameDay Grass, GameDay Grass 3D, GameDay Grass MT and GameDay Grass XPe. All of the GameDay products offered for sale, sold and/or installed comprise a substantially similar structural make-up, including the use of parallel rows of synthetic ribbons attached to a backing material, wherein the height/length of the synthetic ribbons are at least two times the distance between adjacent rows of the synthetic ribbons, and, wherein many of such products utilized and/or were offered for sale with a particulate infill material filled between the synthetic ribbons to a depth of approximately $\frac{2}{3}$ the length of the ribbons.

16. All of the GameDay products offered for sale, sold and/or installed with an infill depth of substantially $\frac{2}{3}$ the length (height) of the fibers infringe at least independent Claim 12 of the '412 patent.

17. In view of such infringements, AstroTurf was first put on notice of its infringement

of the '412 patent by FieldTurf since at least as early as 2004.

18. Shortly after AstroTurf was put on notice of its infringing activity, the '412 patent was subjected to a reexamination procedure at the USPTO. The reexamination lasted nearly five years. During that time, the numerous prior art references from all over the world were analyzed relative to a determination as to the validity of the '412 patent. Eventually, on or about April 20, 2010, the USPTO ruled that the '412 patent was valid and issued a formal reexamination certificate. A copy of the reexamination certificate is attached hereto as Exhibit 2.

19. The reexamination certificate identifies that the '412 patent was successfully reexamined without any changes whatsoever to the claims of the '412 patent as originally issued in 2004. As a result, FieldTurf is now entitled to assert infringement against any infringing acts that occurred since the original issue date of the '412 patent.

20. While the '412 patent was under reexamination, AstroTurf continued to offer to sell, sell, make and/or use synthetic turf products covered by one or more claims of the '412 patent. On information and belief, some of such infringing acts include, but are by no means limited to an offer to sell infringing synthetic turf products to Oregon State University, and actual installations at Plainwell High School and Troy Athens High School, both in Michigan, George Fox University, and Stanford University in California, amongst others.

21. With respect to Oregon State University, Defendant AstroTurf submitted a formal bid to install a synthetic turf field in response to a request for proposal from Oregon State University. A true and accurate copy of Defendant AstroTurf's bid submittal is attached hereto as Exhibit 5.

22. Defendant AstroTurf's bid submittal included an offer to sell Oregon State University three different synthetic turf products, namely, its GameDay Grass MT, XPe and 3D

systems -- each for a price certain. In addition Defendant AstroTurf provided product specifications for each of the offered products. Oregon State University accepted those product specifications as part of the contract. The product specifications associated with all three of the offered synthetic turf products each identify a synthetic turf product covered by one or more of the claims of the '412 patent.

23. Each and every one of the three synthetic turf products offered for sale to Oregon State University by Defendant AstroTurf comprise an infringing offer to sell under the '412 patent.

24. In view of the infringing offer to sell a synthetic turf product to Oregon State University, FieldTurf filed a Motion for a Temporary Restraining Order in an attempt to restrain, and eventually enjoin the sale of an infringing product to Oregon State University. Notwithstanding the clear infringing language in the bid submittal, the Court denied FieldTurf's Motion based upon the representations of counsel and supporting Declaration that AstroTurf never has sold a product that includes, amongst other things, an infill height of substantially $\frac{2}{3}$ the length of the ribbons. Such representations are believed to be false.

25. Upon information and belief, and according to its website, in 2007 AstroTurf sold and installed one of its GameDay Grass products to Plainwell High School, in Michigan. The infill installed in the Plainwell High School synthetic turf field has a height of substantially $\frac{2}{3}$ the length of the ribbons.

26. Upon information and belief, and according to its website, in 2010 AstroTurf sold and installed one of its GameDay Grass products to Troy Athens High School, in Michigan. The infill installed in the Troy Athens High School synthetic turf field has a height of substantially $\frac{2}{3}$ the length of the ribbons.

27. Upon information and belief, and according to its website, in 2010 AstroTurf sold and installed one of its GameDay Grass products to Stanford University, in California. The infill installed in the Stanford University synthetic turf field has a height of substantially 2/3 the length of the ribbons.

28. Upon information and belief, and after a reasonable time for discovery, FieldTurf believes that many more infringing products and offers to sell infringing products by Defendant AstroTurf will be uncovered. Accordingly, the specific acts identified herein are not to be deemed an exclusive list of infringing acts by Defendant AstroTurf.

DEFENDANT'S BUSINESS MISCONDUCT

29. AstroTurf markets and sells its products, including but not limited to the GameDay Grass products described above, to customers and potential customers through the use of promotional and informational materials including, but not limited to, brochures, presentations direct letter and other types of communications.

30. AstroTurf also developed and has maintained for many years a publicly accessible website, www.astroturfusa.com, which AstroTurf uses to market and advertise its products.

31. AstroTurf and FieldTurf are direct competitors in the synthetic turf industry.

FIFA Certification

32. In its marketing efforts throughout the United States to customers and potential customers, AstroTurf has stated that its GameDay Grass MT synthetic turf product is "FIFA Certified, which makes it ideal for Soccer" (*see* Exhibit 6).

33. The AstroTurf statement of Paragraph 32 is false and misleading, as AstroTurf's GameDay Grass MT synthetic turf product is not "FIFA Certified."

Warranty

34. In its marketing efforts throughout the United States to customers and potential customers, AstroTurf has stated that “[a]ll AstroTurf products carry the most comprehensive third-party warranty available in the industry” (*see* Exhibit 7).

35. The statement that “[a]ll AstroTurf products carry the most comprehensive third-party warranty available in the industry” is false and misleading.

36. As only one example, AstroTurf’s warranty totals approximately \$15 million in coverage (*see* Exhibit 8). FieldTurf’s warranty totals over \$30 million in coverage. AstroTurf therefore does not carry the most comprehensive third-party warranty available in the industry. AstroTurf’s warranty is inferior to that of FieldTurf, and therefore AstroTurf’s statements discussed in Paragraph 34 are false and/or misleading.

John Gilman

37. In its marketing efforts throughout the United States to customers and potential customers, AstroTurf has stated that “AstroTurf GT is the unique fully engineered system developed under John Gilman, the late Founder and President of FieldTurf and now made even better by his son Kenny Gilman, Special Advisor for AstroTurf” (*see* Exhibit 9).

38. John Gilman was never involved in any way with the development of AstroTurf’s products.

39. John Gilman’s son, Kenneth Gilman, never had any role in the development of FieldTurf’s products.

40. John Gilman’s name is recognized and revered in the synthetic turf industry because of his work at FieldTurf. The association of the name John Gilman with products in the synthetic turf industry conveys significant value to customers and potential customers.

41. AstroTurf's false statements concerning John Gilman are an attempt to misappropriate the John Gilman name by fabricating a relationship between John Gilman and AstroTurf, through the use of Kenneth Gilman, when in fact no such relationship exists. Therefore, AstroTurf's statement of Paragraph 37 is false and misleading.

Buffalo Bills' Ralph Wilson Stadium

42. Near the bottom of AstroTurf's website homepage, there are a series of team logos running horizontally across the screen (*see* Exhibit 10). Each of these logos is meant to represent some of AstroTurf's installations. Among those team logos is the Buffalo Bills' Ralph Wilson Stadium, of the National Football League. Scrolling over the Buffalo Bills logo reveals additional text, which states that the field installed was AstroTurf GameDay Grass.

43. Also on the AstroTurf website (*see* <http://www.astroturfusa.com/Football.aspx>), AstroTurf states that the Buffalo Bills' Ralph Wilson Stadium is "AstroTurf GameDay Grass (formerly Astroplay)" (*see* Exhibit 11).

44. Upon information and belief, the Buffalo Bills' Ralph Wilson Stadium was actually installed by a company called SRI Sports, and the synthetic turf field that was installed there was not a GameDay Grass installation.

45. On information and belief, including representations at AstroTurf's website (*see* <http://www.astroturfusa.com/Football.aspx>), this field was installed in 2002, before AstroTurf even began marketing the GameDay Grass line of synthetic turf products.

46. AstroTurf's parent company, UTT, purchased the assets of SRI Sports after the installation of the field.

47. Neither AstroTurf, nor any company that was affiliated with AstroTurf at the time of installation in 2002 of Ralph Wilson Stadium field, installed or participated in the installation

of that field, nor was the turf installed a GameDay product.

48. On information and belief, the installed field is not GameDay Grass brand.

49. There are substantial differences between the design and manufacture of Astroplay as opposed to AstroTurf's GameDay Grass products. As a result, the statements of Paragraphs 43 and 44 are false and/or misleading.

TurfAide

50. AstroTurf offers a product known as TurfAide to its customers. The intended purpose of TurfAide as expressed by AstroTurf is to eliminate or significantly reduce the amount of live bacteria, mold, fungi and algae present on AstroTurf's synthetic turf products.

51. In its marketing efforts throughout the United States to customers and potential customers, AstroTurf has stated that "TurfAide is standard on every AstroTurf product it manufactures" (*see* Exhibit 12).

52. AstroTurf has submitted proposals to customers which include an additional pricing option for TurfAide. The fact that TurfAide is an additional discrete item in these proposals indicates that it is not standard.

53. Thus, TurfAide is not "standard" on each manufactured AstroTurf product. Therefore, AstroTurf's statement of Paragraph 51 is false and misleading.

Astroflect and Bonar Coolgrass

54. AstroTurf offers Astroflect Technology ("Astroflect" or "Astroflect product") to its customers. The intended purpose of Astroflect is to significantly reduce the surface temperature of a synthetic turf field when compared to a typical synthetic turf field.

55. AstroTurf's Astroflect product now features, or at some point since May 19, 2009 featured, a product called Bonar Coolgrass.

56. On its website (*see* www.astroturfusa.com/astroflect.aspx), AstroTurf has stated that its Astroflect product "significantly reduces surface temperature." (*see* Exhibit 13).

57. In its bid to Ohio State University, AstroTurf claimed that Astroflect "will reduce the heat on field by approximately 15% at present" (*see* Exhibit 5, at 14).

58. The actual decrease in field temperature is attainable with Astroflect technology is no greater than 4%. AstroTurf's statements of Paragraphs 56 and 57 are therefore false and misleading.

Statements Concerning FieldTurf by Matt Olds

59. In its sales and marketing efforts to customers and potential customers, AstroTurf has made false and misleading statements to customers and potential customers about the features of FieldTurf synthetic turf products in an effort to dissuade customers and potential customers from using FieldTurf synthetic turf and from using FieldTurf synthetic turf as the "basis of design" in stated specifications. These false and misleading statements include, but are not limited to, the following.

60. AstroTurf employee Matt Olds stated in an October 26, 2010 letter to Becica Associates concerning turf upgrades at Jim Hurshey Memorial Stadium, that tufted rows of fiber spaced 3/4" apart are a portion of a specification that can only be offered by FieldTurf.

61. Matt Olds also stated on that same date that all non-perforated backed carpet is a patented feature that only FieldTurf can offer.

62. Matt Olds stated on that same date that the specified infill was patented and that, as a result, only one vendor—FieldTurf—could possibly build the specified field with the

specified layering of infill.

63. Matt Olds also stated on July 7, 2010, in a letter to Environetics Group Architects concerning a specification for synthetic turf to be installed at Paramus High School, that the specification was proprietary to FieldTurf, and that no other vendor can offer an “or equal” due to the patented nature of the specifications for that project.

64. Matt Olds on the same date stated that due to the patented and proprietary nature of the specifications listed for Paramus High School, the customer will more than likely pay more for the specified product as no one can offer another vendor’s patented features and products.

65. Matt Olds also stated in August 2009, in a letter to Cubellis Architects concerning specifications for synthetic turf renovation at Morristown High School, that the layered infill system specified for that project is patented and therefore exclusive to one vendor.

66. Matt Olds also stated in November 2010, in a letter to FKA Architects concerning specifications for athletic field refurbishments at Westwood Regional Junior/Senior High School, that the layered infill system specified for that project is patented and therefore exclusive to one vendor.

67. The above statements are false and misleading.

General Allegations

68. On a consistent and continuous basis, AstroTurf, its agents and representatives knowingly have repeated, republished and disseminated the above-mentioned false and misleading statements of fact in interstate and foreign commerce, constituting advertising, promotion and marketing.

69. AstroTurf, its agents and representatives knew that the false statements and

misrepresentations described above were material to the purchasing decisions of the customer or potential customer who was purchasing or had the intention of purchasing a synthetic turf field.

70. As a result of these false and misleading statements, customers or potential customers were induced and misled by AstroTurf to the detriment of FieldTurf, which was and continues to be a direct competitor of AstroTurf.

71. AstroTurf intended to induce reliance on the false statements and misrepresentations when a customer awarded a contract to AstroTurf.

72. Customers or potential customers have been confused and/or misled, and have relied on the false statements and misrepresentations of AstroTurf.

COUNT I — PATENT INFRINGEMENT

73. FieldTurf repeats and incorporates by reference all of the allegations from Paragraphs 1 through 72 above, as if fully set forth herein.

74. Based upon the acts complained of herein, Defendant AstroTurf has directly infringed the '412 patent by offering to sell infringing products to at least Oregon State University in violation of 35 U.S.C. § 271(a).

75. Based upon the acts complained of herein, Defendant AstroTurf has directly infringed the '412 patent by offering to sell, selling, and/or making infringing artificial turf products for at least Troy Athens High School, Plainview High School and Stanford University in violation of 35 U.S.C. § 271(a).

76. Based upon the acts complained of herein, Defendant AstroTurf, in violation of 35 U.S.C. § 271(b), has induced at least Troy Athens High School, Plainview High School and Stanford University to infringe the '412 patent by providing an infringing product for Troy Athens High School's, Plainview High School's and Stanford University's respective use.

77. As a result of Defendant AstroTurf's infringement, FieldTurf is entitled to at least a reasonable royalty under 35 U.S.C. § 284, adequate to compensate for the infringing products already installed.

78. As a result of Defendant AstroTurf's infringing offer to sell, FieldTurf is entitled to temporary and permanent injunctive relief under 35 U.S.C. § 283, to ensure that Defendant AstroTurf ceases offering to sell, selling, and making infringing products.

79. Defendant AstroTurf has actual knowledge of the '412 patent, and has elected to disregard FieldTurf's patent rights by offering to sell an infringing product, selling an infringing product, and making an infringing product. Such infringement is willful, entitling FieldTurf to recover treble damages and attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT II – VIOLATIONS OF THE LANHAM ACT
PURSUANT TO 15 U.S.C. § 1125, ET SEQ.

80. FieldTurf repeats and incorporates by reference all of the allegations from Paragraphs 1 through 79 above, as if fully set forth herein.

81. The Lanham Act provides, in part, as follows:

(a)(1) Any person who . . . uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which – (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

82. For any violation, the Lanham Act authorizes the court to award up to treble damages or the profits derived from violation of the act, together with the costs of the action. In exceptional cases, the court may award reasonable attorneys' fees.

83. The aforementioned statements of AstroTurf constitute false or misleading representations of fact in a commercial advertisement concerning their own goods, services and

commercial activities, and those of FieldTurf, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

84. AstroTurf's aforementioned statements were and continue to be literally false.

85. AstroTurf's statements actually deceived or have the tendency to deceive a substantial segment of its audience, including customers and potential customers.

86. AstroTurf's deception is material, in that it is likely to influence the purchasing decisions of customers and potential customers.

87. FieldTurf has been, and will in the future continue to be, damaged by these false representations of fact by AstroTurf.

88. AstroTurf's misrepresentations have resulted, and will continue to result, in actual or probable injury to FieldTurf in terms of loss of sales, loss of goodwill and damages to FieldTurf's reputation within the industry and among its customers and potential customers.

89. AstroTurf's misconduct has caused, and if not enjoined from further actions will in the future cause, FieldTurf to suffer additional damages.

90. Under the Lanham Act, the Court has the power to grant a judgment for damages, and to grant injunctive relief to prevent AstroTurf's intentional violation of FieldTurf's rights which are protected by the Lanham Act.

COUNT III – UNFAIR COMPETITION UNDER MICHIGAN COMMON LAW

91. FieldTurf repeats and incorporates by reference all of the allegations from Paragraphs 1 through 90 above, as if fully set forth herein.

92. "Michigan's common law of unfair competition prohibits unfair and unethical trade practices that are harmful to one's competitors or to the general public." *Atco Indus., Inc. v. Sentek Corp.*, No. 232055, 2003 WL 21582962, at *3 (Mich. App. 2003) (citing *Clairol, Inc.*

v. Boston Discount Center of Berkley, Inc., 608 F.2d 1114, 118 (6th Cir. 1979) (applying Michigan law)). Each unfair competition case “is determined upon its own facts and relief is based upon the principles of common business integrity.” *Id.* at *3 (citing *Good Housekeeping Shop v. Smitter*, 254 Mich. 592, 596 (1931)). The term unfair competition may encompass any conduct that is fraudulent or deceptive and tends to mislead the public. *Id.* at *3.

93. By virtue of its conduct, as set forth above, AstroTurf has intentionally engaged in unfair methods of competition with FieldTurf, by making false and/or misleading statements of fact concerning its own and FieldTurf’s products.

94. The statements made by AstroTurf were literally false.

95. The misrepresentations actually deceive or are likely to deceive a substantial segment of the intended audience.

96. The deception is material in that it is likely to influence the purchasing decisions of the target audience, and has influenced such decisions.

97. The misrepresentations have resulted and will continue to result in actual or probable injury to FieldTurf in terms of loss of sales, loss of goodwill and damage to FieldTurf’s reputation within the industry and among its customers and potential customers.

98. By engaging in this scheme to utilize unfair trade practices, AstroTurf has caused, and will in the future cause, FieldTurf to sustain immediate and irreparable harm, including, but not limited to, the loss of goodwill and injury to business reputation.

99. AstroTurf’s illegal conduct and unlawful acts were undertaken intentionally, willfully, maliciously and in bad faith, and for the sole purposes of injuring FieldTurf and its business and to give AstroTurf an unfair marketing advantage.

100. These misrepresentations and deceptive marketing and selling practices have

caused, and will continue to cause, FieldTurf damages; and, unless restrained and enjoined, will cause FieldTurf immediate and irreparable future harm.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs, FieldTurf USA, Inc. and FieldTurf Tarkett, Inc., request a judgment in their favor and against the Defendant, AstroTurf, and request that this Court:

- A. Order, adjudge and decree that Defendant AstroTurf has infringed the '412 patent;
- B. Issue a preliminary and permanent injunction prohibiting Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with it, from infringing any claim of the '412 patent, including, but not limited to, further infringements by offering to sell, selling, installing, and/or directing the installation of any synthetic turf product that infringes any claim of the '412 patent;
- C. Issue a preliminary and permanent injunction prohibiting Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with it, from modifying or in any way tampering with any existing synthetic turf fields installed by or on behalf of AstroTurf (or any of its predecessors-in-interest) since April 20, 2004, by, in any way modifying fiber/ribbon height, spacing between rows of ribbons and/or depth of infill material -- so as to avoid tampering with potential evidence of additional infringements of the '412 patent not yet specifically identified in the present action.
- D. Award damages for all infringements by it of the '412 patent;
- E. Enjoin and restrain AstroTurf from directly or indirectly disclosing, imparting, and/or furnishing to anyone or using for their own benefit or the benefit of anyone else, false or misleading statements; or from engaging in any type of marketing, advertising, or promotion

(oral or written) that contains the false and misleading statements;

F. Order that AstroTurf issue to all recipients of the false and misleading statements a retraction and correction of the misrepresentations in the form proposed by FieldTurf and/or the Court.

G. Order that AstroTurf place such retraction and correction on the main home page of AstroTurf's internet website;

H. Order that AstroTurf disgorge all revenues from any sales in connection (directly or indirectly) with the false and misleading statements;

I. Order that AstroTurf pay to FieldTurf compensatory damages and interest thereon, exemplary damages, punitive damages, attorneys' fees and costs of the suit, past and future expenses and costs for a corrective public information, advertising and marketing campaign;

J. Declare this case as exceptional within the meaning of 35 U.S.C. § 285 and award FieldTurf its attorneys' fees, costs, and expenses that it incurs in prosecuting this action; and

K. Provide any further relief as this Court may deem equitable and proper.

JURY DEMAND

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

Dated: December 13, 2010

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/ Derek J. Sarafa

Derek J. Sarafa (P-57088)
Winston & Strawn LLP
35 W. Wacker Dr.
Chicago, Illinois 60601
Phone: 312-558-5600
Fax: 312-558-5700
E-mail: dsarafa@winston.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2010, I caused to be electronically filed the Second Amended Complaint for Patent Infringement, Unfair Competition and Violations of the Lanham Act, and this Certificate of Service with the Clerk of the Court using the ECF System, which will send notification of such filing to the following:

Thomas E. Bejin (P56854)
Kristin L. Murphy (P57284)
RADER, FISHMAN & GRAUER, PLLC
39533 Woodward Avenue
Bloomfield Hills, MI 48304
Phone: 248-594-0600
Fax: 248-594-0620
E-mail: teb@raderfishman.com
E-mail: klm@raderfishman.com

By: /s/ Derek J. Sarafa
Derek J. Sarafa (P-57088)
Winston & Strawn LLP
35 W. Wacker Dr.
Chicago, Illinois 60601
Phone: 312-558-5600
Fax: 312-558-5700
E-mail: dsarafa@winston.com

Attorney for Plaintiffs