

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                              |   |                  |
|------------------------------|---|------------------|
| SOFF-CUT INTERNATIONAL INC., | ) |                  |
|                              | ) |                  |
| Plaintiff,                   | ) |                  |
|                              | ) | CIVIL ACTION NO. |
| v.                           | ) |                  |
|                              | ) | _____            |
| SWIFT INDUSTRIES, INC. d/b/a | ) |                  |
| CARDINAL SAWS & BLADES,      | ) |                  |
|                              | ) |                  |
| Defendant.                   | ) |                  |

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Soff-Cut International Inc. (“Soff-Cut”) files its complaint and jury demand against Defendant Swift Industries, Inc. d/b/a Cardinal Saws & Blades (“Swift”) and states as follows:

**NATURE OF ACTION AND PARTIES**

1. This is a complaint for damages and equitable relief arising from Swift’s intentional acts of patent infringement, copyright infringement, trademark infringement, unfair competition, and unjust enrichment in violation of Soff-Cut’s rights.
2. Soff-Cut is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1112 Olympic Drive, Corona, California.

3. On information and belief, Swift is a company organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 100 Barren Hill Road, Conshohocken, Pennsylvania.

### **JURIDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a), the patent laws of the United States, 38 U.S.C. § 1, *et seq.*, the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*, and the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*

5. This Court has personal jurisdiction over Swift because Swift resides within this judicial district and because it has, either directly or through agents located in this judicial district, engaged in conduct that violates the United States patent laws, the United States copyright laws, and the United States trademark laws.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400 because Swift resides in this judicial district within the meaning of such provisions and because Swift has transacted business and committed acts of patent infringement, copyright infringement, and trademark infringement, in this judicial district.

## UNDERLYING FACTS

### **A. Soff-Cut's Patents.**

7. On September 6, 1988, the United States Patent and Trademark Office duly and legally issued United States Patent No. 4,769,201 entitled "Method of Cutting Grooves in Concrete with a Soft Concrete Saw" ("the '201 patent") and named Edward Chiuminatta and Alan R. Chiuminatta as inventors. The inventors have assigned the '201 patent to Soff-Cut. A true and correct copy of the '201 patent is attached as Exhibit A.

8. On July 4, 1995, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,429,109 entitled "Method and Apparatus for Cutting Wet Concrete" ("the '109 patent") and named Edward Chiuminatta and Alan R. Chiuminatta as inventors. The inventors have assigned the '109 patent to Soff-Cut. A true and correct copy of the '109 patent is attached as Exhibit B.

9. On December 10, 1996, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,582,899 entitled "Concrete Surface with Early Cut Grooves" ("the '899 patent") and named Edward Chiuminatta and Alan R. Chiuminatta as inventors. The inventors have assigned the '899 patent to Soff-Cut. A true and correct copy of the '899 patent is attached as Exhibit C.

10. On September 16, 1997, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,666,939 entitled “Soft Concrete Saw” (“the ‘939 patent”) and named Edward Chiuminatta and Alan R. Chiuminatta as inventors. The inventors have assigned the ‘939 patent to Soff-Cut. A true and correct copy of the ‘939 patent is attached as Exhibit D.

11. On May 17, 2005, the United States Patent and Trademark Office duly and legally issued United States Patent No. 6,892,719 entitled “Blade for Cutting Concrete” (“the ‘719 patent”) and named Sam F. Briganti, George A. Shields and Roger D. Lagow, as inventors. The inventors have assigned the ‘719 patent to Soff-Cut. A true and correct copy of the ‘719 patent is attached as Exhibit E.

12. On January 16, 2007, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,163,010 entitled “Skid Plate for Concrete Saw” (“the ‘010 patent”) and named Charles E. Markley and Deo M. Magakat as inventors. The inventors have assigned the ‘010 patent to Soff-Cut. A true and correct copy of the ‘010 patent is attached as Exhibit F.

**B. Soff-Cut’s Copyrights.**

13. Soff-Cut manufactures and sells a concrete cutting saw named the “Model X-150.”



14. Soff-Cut is the author, as a work made for hire, of an operating manual for the X-150 titled "Model X-150 Operating Guide" (the "Soff-Cut Guide").

15. The Soff-Cut Guide was created in 2002 and first published in September 2002. A true and correct copy of the 2002 edition of the Soff-Cut Guide is attached hereto as Exhibit G.

16. A second edition of the Soff-Cut Guide was created in 2005 and first published in May 2005. A true and correct copy of the 2005 edition of the Soff-Cut Guide is attached hereto as Exhibit H.

17. Soff-Cut owns the worldwide copyright in and to the original content of the Soff-Cut Guides.

18. On January 14, 2007, Soff-Cut delivered to the U.S. Copyright Office, with a request for expedited special handling, an application for a copyright registration for the 2002 edition of the Soff-Cut Guide, including the required number of copies of the work, and the filing fee in proper form. True and correct copies of the materials submitted to the U.S. Copyright Office are attached hereto as Exhibit I.

19. On January 14, 2007, Soff-Cut delivered to the U.S. Copyright Office, with a request for expedited special handling, an application for a copyright registration for the 2005 edition of the Soff-Cut Guide, including the required

number of copies of the work, and the filing fee in proper form. True and correct copies of the materials submitted to the U.S. Copyright Office are attached hereto as Exhibit J.

20. Both the 2002 and 2005 editions of the Soff-Cut Guide bear copyright notices identifying Soff-Cut as the copyright owner of the guides.

**C. Soff-Cut's Trademark.**

21. Since at least as early as 2001, Soff-Cut has continuously used the distinctive trademark ULTRA EARLY ENTRY in interstate commerce to identify concrete cutting saws.

22. Through long and continuous use, the ULTRA EARLY ENTRY mark is associated by the relevant consuming public with Soff-Cut and its products alone, and the mark serves as a valuable symbol of Soff-Cut's quality products and goodwill. Soff-Cut thus owns valid and enforceable trademark rights in and to the ULTRA EARLY ENTRY mark.

**COUNT 1**

**Infringement of the '201 Patent**

23. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

24. On information and belief, Swift has infringed, directly or indirectly, the '201 patent, either literally or under the doctrine of equivalents, by making,

using, selling or offering for sale products or processes that embody each element of at least one claim of the '201 patent.

25. Soff-Cut has been damaged by Swift's infringement of the '201 patent in an amount to be determined at trial.

26. On information and belief, Swift's infringement has been deliberate, willful, intentional, and with knowledge of the existence of the '201 patent, and Soff-Cut accordingly is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

## **COUNT 2**

### **Infringement of the '109 Patent**

27. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

28. On information and belief, Swift has infringed and continues to infringe, directly or indirectly, the '109 patent, either literally or under the doctrine of equivalents, by making, using, selling or offering for sale products or processes that embody each element of at least one claim of the '109 patent.

29. Soff-Cut has been damaged by Swift's past and continuing infringement of the '109 patent in an amount to be determined at trial.

30. Soff-Cut has been and continues to be irreparably injured by Swift's past and continuing infringement of the '109 patent, and Swift's infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

31. On information and belief, Swift's infringement has been and continues to be deliberate, willful, intentional, and with knowledge of the existence of the '109 patent, and Soff-Cut accordingly is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

### **COUNT 3**

#### **Infringement of the '899 Patent**

32. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

33. On information and belief, Swift has infringed and continues to infringe, directly or indirectly, the '899 patent, either literally or under the doctrine of equivalents, by making, using, selling or offering for sale products or processes that embody each element of at least one claim of the '899 patent.

34. Soff-Cut has been damaged by Swift's past and continuing infringement of the '899 patent in an amount to be determined at trial.



35. Soff-Cut has been and continues to be irreparably injured by Swift's past and continuing infringement of the '899 patent, and Swift's infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

36. On information and belief, Swift's infringement has been and continues to be deliberate, willful, intentional, and with knowledge of the existence of the '899 patent, and Soff-Cut accordingly is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

#### **COUNT 4**

##### **Infringement of the '939 Patent**

37. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

38. On information and belief, Swift has infringed, directly or indirectly, the '939 patent, either literally or under the doctrine of equivalents, by making, using, selling or offering for sale products or processes that embody each element of at least one claim of the '939 patent.

39. Soff-Cut has been damaged by Swift's infringement of the '939 patent in an amount to be determined at trial.

40. On information and belief, Swift's infringement has been deliberate, willful, intentional, and with knowledge of the existence of the '939 patent, and

Soff-Cut accordingly is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

## COUNT 5

### Infringement of the '719 Patent

41. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

42. On information and belief, Swift has infringed and continues to infringe, directly or indirectly, the '719 patent, either literally or under the doctrine of equivalents, by making, using, selling or offering for sale products or processes that embody each element of at least one claim of the '719 patent.

43. Soff-Cut has been damaged by Swift's past and continuing infringement of the '719 patent in an amount to be determined at trial.

44. Soff-Cut has been and continues to be irreparably injured by Swift's past and continuing infringement of the '719 patent, and Swift's infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

45. On information and belief, Swift's infringement has been and continues to be deliberate, willful, intentional, and with knowledge of the existence of the '719 patent, and Soff-Cut accordingly is entitled to recover enhanced

damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

### **COUNT 6**

#### **Infringement of the '010 Patent**

46. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 12 of its complaint as if set forth fully herein.

47. On information and belief, Swift has infringed and continues to infringe, directly or indirectly, the '010 patent, either literally or under the doctrine of equivalents, by making, using, selling or offering for sale products or processes that embody each element of at least one claim of the '010 patent.

48. Soff-Cut has been damaged by Swift's past and continuing infringement of the '010 patent in an amount to be determined at trial.

49. Soff-Cut has been and continues to be irreparably injured by Swift's past and continuing infringement of the '010 patent, and Swift's infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

50. On information and belief, Swift's infringement has been and continues to be deliberate, willful, intentional, and with knowledge of the existence of the '010 patent, and Soff-Cut accordingly is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

**COUNT 7**

**Copyright Infringement**

51. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 6 and 13-20 of its complaint as if set forth fully herein.

52. The Soff-Cut Guides constitute original, expressive work subject to protection under the copyright laws of the United States.

53. On information and belief, Swift had access to the Soff-Cut Guides and has misappropriated content from the guides with full knowledge of Soff-Cut's copyright.

54. On information and belief, Swift has copied Soff-Cut's original, copyrighted content from the Soff-Cut Guides and has used the content in an operating guide Swift has created to support its competing Model GM450 concrete cutting saw (the "Swift Guide").

55. The content Swift has copied is substantially similar to the corresponding content of the Soff-Cut Guides.

56. At no time has Soff-Cut granted Swift authorization or consent to copy any content from the Soff-Cut Guides, and Swift's copying is not otherwise authorized by law.

57. On information and belief, Swift's infringement of the Soff-Cut Guide has been willful and deliberate.



58. As a direct and proximate result of Swift's copyright infringement, Soff-Cut has suffered actual and irreparable injury for which no adequate remedy exists at law.

### **COUNT 8**

#### **Trademark Infringement**

59. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 6 and 21 to 22 of its complaint as if set forth fully herein.

60. Without Soff-Cut's authorization or consent, Swift is using Soff-Cut's ULTRA EARLY ENTRY mark in interstate commerce to identify Swift's competing Model GM450 concrete cutting saw.

61. Swift's use of Soff-Cut's ULTRA EARLY ENTRY mark is likely to confuse or deceive the public into believing that Swift's product originates from Soff-Cut, or that Soff-Cut or its product are associated or affiliated with, or sponsored or endorsed by, Swift.

62. The aforesaid actions of Swift constitute use of false designations of origin, false descriptions, and false representations in interstate commerce in violation of § 43(a) of the Trademark Act of 1946, 15 U.S.C. 1125(a) and has caused and will continue to cause irreparable injury to Soff-Cut for which no adequate remedy exists at law.

**COUNT 9**

**Unfair Competition**

63. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 22 and 60 to 62 of its complaint as if set forth fully herein.

64. Swift's unauthorized use of Soff-Cut's ULTRA EARLY ENTRY mark constitutes unfair competition in violation of the common law of Pennsylvania.

65. Swift's willful and deliberate acts of unfair competition have caused and will continue to cause irreparable injury to Soff-Cut for which no adequate remedy exists at law.

**COUNT 10**

**Unfair Enrichment**

66. Soff-Cut realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 22, 60 to 62, and 64 to 65 of its complaint as if set forth fully herein.

67. Swift's unauthorized use of Soff-Cut's ULTRA EARLY ENTRY mark and associated goodwill constitutes unjust enrichment in violation of the common law of Pennsylvania.

68. Swift has been and continues to be unjustly enriched and there exists an obligation implied by law to do justice even though no express promise between

Swift and Soff-Cut requires compensation for the aforementioned use of Soff-Cut's ULTRA EARLY ENTRY mark.

**PRAYER FOR RELIEF**

WHEREFORE, Soff-Cut respectfully requests that this Court:

(a) Declare that Swift has directly or indirectly infringed the '201 patent and that Swift's infringement has been willful.

(b) Declare that Swift has directly or indirectly infringed the '109 patent and that Swift's infringement has been willful.

(c) Declare that Swift has directly or indirectly infringed the '899 patent and that Swift's infringement has been willful.

(d) Declare that Swift has directly or indirectly infringed the '939 patent and that Swift's infringement has been willful.

(e) Declare that Swift has directly or indirectly infringed the '719 patent and that Swift's infringement has been willful.

(f) Declare that Swift has directly or indirectly infringed the '010 patent and that Swift's infringement has been willful.

(g) Preliminarily and permanently enjoin Swift, and all those in active concert or participation with it, from directly or indirectly infringing the '109, '899, '719, and '010 patents, pursuant to 35 U.S.C. § 283.

(h) Award Soff-Cut damages in an amount to be proved at trial because of the injuries suffered by Soff-Cut by reason of Swift's infringement of the '201, '109, '899, '939, '719, and '010 patents.

(i) Increase the damages sustained by Soff-Cut up to three times the amount of its actual damages, as authorized by 35 U.S.C. § 284.

(j) Award Soff-Cut's its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

(k) Award Soff-Cut prejudgment interest and costs pursuant to 35 U.S.C. § 284.

(l) Enter judgment that Soff-Cut owns valid and enforceable copyright rights in the Soff-Cut Guides and that Swift has knowingly and willfully infringed those rights in violation of the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*

(m) Preliminarily and permanently enjoin Swift, and all those in active concert or participation with it, from copying from, or otherwise infringing Soff-Cut's copyright in the Soff-Cut Guides.

(n) Award Soff-Cut the damages it has suffered and the profits Swift has earned by reason of Swift's acts of copyright infringement, together with prejudgment interest accrued thereon.

(o) Award Soff-Cut recovery of its attorneys' fees and other expenses of litigation pursuant to 17 U.S.C. § 505.



(p) Enter judgment that Soff-Cut owns valid and enforceable common law trademark rights in the ULTRA EARLY ENTRY mark and that Swift, as a result of its willful, unauthorized use of the mark, has made false designations of origins, false descriptions, and false representations in interstate commerce in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

(q) Preliminary and permanently enjoin Swift, and all those in active concert or participation with it, from using, in any form or fashion, Soff-Cut's trademarks, or any confusingly similar variation thereof.

(r) Direct Swift to destroy all advertising and promotional materials, labels, signs, business cards and all other materials which bear the ULTRA EARLY ENTRY mark, in any form.

(s) Award Soff-Cut the damages it has suffered and the profits Swift has earned by reason of Swift's violations of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a), with such amounts to be increased and trebled as provided by law, together with prejudgment interest accrued thereon.

(t) Award Soff-Cut recovery of its attorneys' fees and other expenses of litigation pursuant to 15 U.S.C. § 1117(a).

(u) Declare that Swift has engaged in unfair competition with Soff-Cut in violation of the common law of Pennsylvania.

(v) Preliminary and permanently enjoin Swift, and all those in active concert or participation with it, from using, in any form or fashion, Soff-Cut's trademarks, or any confusingly similar variation thereof, or otherwise competing unfairly with Soff-Cut.

(w) Award Soff-Cut the damages it has suffered and the profits Swift has earned by reason of Swift's acts of unfair competition, with prejudgment interest accrued thereon.

(x) Order Swift to pay Soff-Cut punitive damages in light of the willful, intentional, and predatory nature of Swift's acts of unfair competition.

(y) Declare that Swift has been unjustly enriched in violation of the common law of Pennsylvania.

(z) Award Soff-Cut the amount of Swift's unjust enrichment.

(aa) Award Soff-Cut such other and further relief as this Court deems proper.

### **JURY TRIAL DEMAND**

Soff-Cut requests a trial by jury on all issues properly triable to a jury raised in its complaint.

Respectfully submitted,

Dated: January 17, 2008



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