IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-20199-CIV-JORDAN/TORRES

DELAWARE VALLEY FLORAL GROUP, INC. a New Jersey corporation f/k/a DELAWARE VALLEY WHOLESALE FLORIST, INC., and FLOWER TRANSFER, INC., foreign corporations; SUPERIOR FLORALS, INC., a Florida corporation; CHOICE FARMS CORP., a Florida corporation; CONTINENTAL FARMS, LLC, a Florida limited liability company; ESPRIT-MIAMI, INC., a Florida corporation; CONTINENTAL FLOWERS, INC., a Florida corporation; and OLAMOR FLOWERS, INC., a Florida corporation,

Plaintiffs,

v.

SHAW ROSE NETS, LLC, a Florida limited liability company, and KENNETH P. SHAW, an individual,

Defendants.
______________________________________/

MASTER COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, DELAWARE VALLEY FLORAL GROUP, INC., (hereinafter "Delaware Valley"), f/k/a DELAWARE VALLEY WHOLESALE FLORIST, INC., and FLOWER TRANSFER, INC.; SUPERIOR FLORALS, INC. (hereinafter "Superior"); CHOICE FARMS CORP. (hereinafter "Choice Farms"); CONTINENTAL FARMS, LLC (hereinafter "Continental Farms"); ESPRIT-MIAMI, INC. (hereinafter "Esprit"); CONTINENTAL FLOWERS, INC. (hereinafter "Continental Flowers"); and OLAMOR FLOWERS, INC. (hereinafter "Olamor")

(collectively "Plaintiffs"), sue Defendants SHAW ROSE NETS, LLC (hereinafter "SRN") and KENNETH P. SHAW, an individual, (hereinafter "Shaw") (collectively "Defendants"), and allege the following:

NATURE OF THE ACTION

1. This is an action seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that the importation, sale of, and offers to sell certain flowers, and the use of certain methods to grow said flowers, do not constitute patent infringement Title 35 of the United States Code because the Defendants' patent is invalid and unenforceable.

JURISDICTION AND VENUE

2. This action arises under the Patent Act of 1952, 35 U.S.C. §§ 1 *et seq*., as amended, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*.

3. This Court has exclusive original jurisdiction over the subject matter of this action. Exclusive jurisdiction for any action arising under any Act of Congress relating to patents is conferred on U.S. district courts pursuant to 28 U.S.C. §1338(a).

4. This Court has personal jurisdiction over Defendants pursuant to Florida Statute, § 48.193. Upon information and belief, Defendants are Florida residents and are doing business in the State of Florida, specifically in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and §1391(c), because a substantial part of the events giving rise to the claims alleged herein occurred in this judicial district and because Defendants are residents of this judicial district.

THE PARTIES

6. Delaware Valley is a New Jersey corporation with its principal place of business at 520 Mantua Boulevard North, Sewell, New Jersey 08080. Delaware Valley imports, sells, and distributes fresh cut flowers, including roses.

7. Delaware Valley is the successor in interest by way of merger of Delaware Valley Wholesale Florist, Inc, and Flower Transfer, Inc.

8. Superior is a Florida corporation with its principal place of business at 7250 Northwest 35th Terrace, Miami, Florida 33122.

9. Choice Farms is a Florida corporation with its principal place of business at 2153 N.W. 86 Avenue, Miami, Florida 33122.

10. Continental Farms is a Florida limited liability company with its principal place of business at 1800 NW 89th Place, Miami, Florida 33172.

11. Esprit is a Florida corporation with its principal place of business at 3043 N.W. 107th Avenue, Miami, Florida 33172.

12. Continental Flowers is a Florida corporation with its principal place of business at 8175 N.W. 31st Street, Miami, Florida 33122.

13. Olamor is a Florida corporation with its principal place of business at 7005 Northwest 46th Street, Miami, Florida 33166.

14. SRN is a Florida limited liability company with its principal place of business located at 7810 N.W. 52nd Street, Doral, Florida 33152.

15. Shaw is a resident of the State of Florida who maintains addresses at 7810 N.W. 52nd Street, Doral, Florida 33152 and at 570 N Isles, Golden Beach, Florida.

16. Shaw is a director, officer, manager and principal of SRN, exercises direct control over SRN, and has a direct financial interest in, SRN.

FACTUAL ALLEGATIONS

17. On or about January 16, 1996, Shaw caused to be filed with the United States Patent and Trademark Office (hereinafter the "USPTO") a U.S. patent application for a "Method of Increasing the Size of a Rose Head During Growth" (hereinafter the "U.S. Patent Application").

18. On or about June 27, 1997, Shaw caused to be filed with the Colombian Superintendency of Industry and Commerce (hereinafter the "Colombian Patent Office") a Colombian patent application for a "Method of Increasing the Size of a Rose Head During Growth" (hereinafter the "Colombian Patent Application"). A true and correct copy of the "Colombian Patent Application" is attached hereto as Exhibit "A."

19. On or about June 16, 1998, the U.S. Patent Application issued as U.S. Patent Number 5,765,305 (hereinafter the "'305 Patent"). A true and correct copy of the '305 Patent is attached hereto as Exhibit "B."

20. The Colombian Patent Application involves the same claims and the same subject matter as the '305 Patent.

21. On June 9 and June 28, 1999, opposition proceedings were instituted in the Colombian Patent Office by entities who requested that Shaw be denied a Colombian patent because the method described in the Colombian Patent Application: (a) was not invented by Shaw; and (b) was publicly known, and in widespread public use, for at least ten (10) years prior to Shaw's application therefor.

22. In support of the Colombian opposition proceedings, the opposers submitted substantial evidence, including sworn affidavits and business records that supported their contentions.

23. On November 30, 2004, the Colombian Patent Office granted the opposition to the Colombian Patent Application on the basis that the method described in the Colombian Patent Application: (a) was not invented by Shaw; and (b) was publicly known and in widespread public use, for at least ten (10) years prior to Shaw's application thereof. This decision was upheld on appeal on May 31, 2005.

24. Upon information and belief, Shaw did not invent the method claimed in the '305 Patent.

25. Upon information and belief, prior to issuance of the '305 Patent, Shaw knew that he did not invent the method claimed in the '305 Patent and willfully withheld evidence of same from the USPTO.

26. Upon information and belief, the method claimed in the '305 Patent was publicly used to grow flowers that were imported, sold, and offered for sale in the United States more than one year before January 16, 1996, the date of filing for the U.S. Patent Application.

27. Upon information and belief, prior to issuance of the '305 Patent, Shaw knew that the method claimed in the '305 Patent was publicly used to grow flowers that were imported, sold, and offered for sale in the United States more than one year before the January 16, 1996 filing date for the U.S. Patent Application, and willfully withheld evidence of same from the USPTO.

28. On our about October 20, 2000, a purported owner of the rights to the '305 Patent, ostensibly acting as an agent for Shaw or SRN, demanded monies from Delaware Valley as a result of Delaware Valley's alleged infringement of the '305 Patent.

29. On or about December 8, 2006, Defendants caused a letter to be delivered to Plaintiffs, Superior, Choice Farms, Continental Farms, Esprit, and Continental Flowers, accusing Superior, Choice Farms, Continental Farms, Esprit, and Continental Flowers of infringing the '305 Patent through the importation, marketing, selling or offering for sale of "infringing products." True and correct copies of Defendants' letters are attached hereto as Composite Exhibit "C."

30. On or about December 11, 2006, Defendants caused a letter to be delivered to Plaintiffs, Delaware Valley and Olamor, accusing Olamor and again accusing Delaware Valley of infringing the '305 Patent through the importation, marketing, selling or offering for sale of "infringing products." *See* Comp. Ex. "C."

31. Defendants' December 8, 2006 and December 11, 2006 letters demanded that Plaintiffs "immediately cease and desist from importing, marketing, selling and/or distributing any and all infringing products." Defendants' December 8, 2006 and December 11, 2006 letters state that Shaw "zealously protects his intellectual property rights and intends to vigorously enforce his interests in the '305 Patent to the fullest extent of the law."

32. Defendants' letters alleging patent infringement created for Plaintiffs, the importers, distributors and sellers of purportedly infringing products, a reasonable apprehension that Defendants would file a lawsuit against Plaintiffs alleging patent infringement.

33. The Plaintiffs file the instant Master Complaint pursuant to this Court's April 5, 2007 recommendations to all counsel of record, as well as the Plaintiffs' respective Notices of Adoption submitted thereto.

COUNT I
DECLARATORY JUDGMENT OF PATENT INVALIDITY
ANTICIPATION UNDER 35 U.S.C. § 102

34. Plaintiffs incorporate paragraphs 1 through 33 inclusive as if set forth herein.

35. This is an action for a declaratory judgment of patent invalidity under 35 U.S.C. § 102 against Defendants pursuant to 28 U.S.C. §§ 2201 and 2202.

36. Defendants have alleged that Plaintiffs' importation, marketing, sale and/or distribution of roses grown utilizing the method described in the '305 Patent (hereinafter the "Accused Products") constitutes infringement of the '305 Patent.

37. Defendants' allegations of patent infringement create a reasonable apprehension by Plaintiffs that Defendants will file a lawsuit against Plaintiffs asserting claims for patent infringement.

38. Defendants' December 8, 2006 and December 11, 2006 letters create an actual controversy regarding the rights of the Plaintiffs to import, use, sell and offer to sell the Accused Products.

39. Defendants' allegations of patent infringement will adversely affect Plaintiffs because, until the Court makes a determination of Plaintiffs' rights, Plaintiffs will be in doubt as to their right to import, use, sell and offer to sell the Accused Products.

40. Pursuant to 35 U.S.C. § 102, a person shall not be entitled to a patent if, *inter alia,* "the invention was … in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

41. Upon information and belief, the method claimed in the '305 Patent was publicly used to grow flowers that were imported, sold, and offered for sale in the United States more than one year before the January 16, 1996 filing date of the U.S. Patent Application.

42. Therefore, the '305 Patent should be declared invalid in accordance with 35 U.S.C. § 102.

COUNT II
DECLARATORY JUDGMENT OF PATENT INVALIDITY
LACK OF INVENTORSHIP UNDER 35 U.S.C. § 102

43. Plaintiffs incorporate paragraphs 1 through 33 inclusive as if set forth herein.

44. This is an action for a declaratory judgment of patent invalidity under 35 U.S.C. § 102 against Defendants pursuant to 28 U.S.C. §§ 2201 and 2202.

45. Defendants have alleged that Plaintiffs' importation, marketing, sale and/or distribution of roses grown utilizing the method described in the '305 Patent (hereinafter the "Accused Products") constitutes infringement of the '305 Patent.

46. Defendants' allegations of patent infringement create a reasonable apprehension by Plaintiffs that Defendants will file a lawsuit against Plaintiffs asserting claims for patent infringement.

47. Defendants' December 8, 2006 and December 11, 2006 letters create an actual controversy regarding the rights of Plaintiffs to import, use, sell and offer to sell the Accused Products.

48. Defendants' allegations of patent infringement will adversely affect Plaintiffs because, until the Court makes a determination of Plaintiffs' rights, Plaintiffs will be in doubt as to their right to import, use, sell and offer to sell the Accused Products.

49. Pursuant to 35 U.S.C. § 102, a person shall not be entitled to a patent if "he did not himself invent the subject matter sought to be patented."

50. Upon information and belief, Shaw did not invent the method claimed in the '305 Patent.

51. Therefore, the '305 Patent should be declared invalid in accordance with 35 U.S.C. § 102.

COUNT III
DECLARATORY JUDGMENT THAT PATENT IS UNENFORCEABLE
INEQUITABLE CONDUCT

52. Plaintiffs incorporate paragraphs 1 through 33 inclusive as if set forth herein.

53. This is an action seeking declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the '305 Patent is unenforceable under the doctrine of inequitable conduct.

54. Defendants have alleged that Plaintiffs' importation, marketing, sale and/or distribution of roses grown utilizing the method described in the '305 Patent (hereinafter the "Accused Products") constitutes infringement of the '305 Patent.

55. Defendants' allegations of patent infringement create a reasonable apprehension by Plaintiffs that Defendants will file a lawsuit against Plaintiffs asserting claims for patent infringement.

56. Defendants' December 8, 2006 and December 11, 2006 letters create an actual controversy regarding the rights of Plaintiffs to import, use, sell and offer to sell the Accused Products.

57. Defendants' allegations of patent infringement will adversely affect Plaintiffs because, until the Court makes a determination of Plaintiffs' rights, Plaintiffs will be in doubt as to their right to import, use, sell and offer to sell the Accused Products.

58. Pursuant to 37 C.F.R. 1.56, each entity associated with the filing or prosecution of a patent application has a duty to deal with the USPTO with candor, good faith, and honesty.

59. The duty of candor under 37 C.F.R. 1.56 imposes on each inventor named in the application, each attorney who prepares or prosecutes the application, and each individual associated with the assignee of the application, the duty to disclose to the USPTO all information known to the inventor, attorney or individual to be material to patentability of the invention described in the application.

60. Violation of the duty of candor through bad faith or intentional misconduct during or after prosecution of the application subjects any patent issued therefrom to become unenforceable.

61. Upon information and belief, prior to issuance of the '305 Patent, Shaw knew, and had information (hereinafter the "Prior Art Information") evidencing, that (a) he did not invent the method claimed in the '305 Patent; and (b) the method claimed in the '305 Patent was publicly used to grow flowers that were imported, sold, and offered for sale in the United States more than one year before the January 16, 1996 filing date of his U.S. Patent Application.

62. The Prior Art Information was material to patentability with respect to the U.S. Patent Application because there is a substantial likelihood that a reasonable examiner would have considered the information important in deciding whether to allow the application to issue as a patent.

63. Shaw had knowledge of the Prior Art Information, and of its materiality to patentability, prior to issuance of the ‘305 Patent.

64. Shaw failed to disclose the Prior Art Information to the USPTO in violation of 37 C.F.R. §1.56.

65. Shaw’s failure to disclose the Prior Art Information to the USPTO was willful and with the intent to mislead the USPTO.

66. Therefore, the ‘305 Patent should be declared unenforceable for Shaw’s inequitable conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, DELAWARE VALLEY FLORAL GROUP, INC., f/k/a DELAWARE VALLEY WHOLESALE FLORIST, INC., and FLOWER TRANSFER, INC.; SUPERIOR FLORALS, INC.; CHOICE FARMS CORP.; CONTINENTAL FARMS, LLC; ESPRIT-MIAMI, INC.; CONTINENTAL FLOWERS, INC.; and OLAMOR FLOWERS, INC., pray for entry of a judgment against Defendant, SHAW ROSE NETS, LLC, and Defendant, KENNETH P. SHAW, declaring as follows:

1. That the importation, use, sales of, and offers to sell flowers grown using the method described in U.S. Patent No. 5,765,305 does not constitute patent infringement.

2. That U.S. Patent No. 5,765,305 is invalid pursuant to 35 U.S.C. 102.

3. That U.S. Patent No. 5,765,305 is unenforceable under the doctrine of inequitable conduct.

4. That, pursuant to 35 U.S.C. § 285, the Defendants be ordered to pay to Plaintiffs an award covering Plaintiffs' attorneys' fees, costs, and other expenses incurred as a result of this controversy.

5. That this Court grant such further and other relief as this Court deems just and proper.

Dated: May 21, 2007

Respectfully submitted,

FELDMAN GALE, P.A.
Counsel for Delaware Valley Floral Group, Inc.
One Biscayne Tower – 30th Floor
2 S. Biscayne Boulevard
Miami, Florida 33131-4332
Phone: 305-358-5001
Fax: 305-358-3309

By: /s/ James A. Gale______________
James A. Gale, Esq.
Fla. Bar No. 371726
E-Mail: JGale@FeldmanGale.com
Richard Guerra, Esq.
Fla. Bar No. 689521
E-Mail: RGuerra@FeldmanGale.com

MICHAEL SCHIFFRIN & ASSOCIATES, P.A.
Counsel for Superior Florals, Inc.
Suite 1109 – Two Datran Center
9130 South Dadeland Boulevard
Miami, Florida 33131
Phone: 305-539-0000
Fax: 305-539-0013

By: /s/ Michael Schiffrin___________
Michael Schiffrin, Esq.
Fla. Bar No. 178240
E-Mail: Schifflaw@aol.com

MICHAEL A. RUBIN, P.A.
Counsel for Choice Farms Corp.
420 South Dixie Highway
Suite 4B
Coral Gables, Florida 33146
Phone: 305-661-1029
Fax: 305-255-4150

And

RASCO REININGER PEREZ ESQENAZI
& VIGIL, P.L.

Counsel for Choice Farms Corp.
283 Catalonia Avenue
Coral Gables, Florida 33134
Phone: 305-476-7100
Fax: 305-476-7102

By: /s/ Steven B. Reininger_______
Steven B. Reininger, Esq.
Fla. Bar No. 202002
E-Mail: sreininger@rrpev.com
Michael A. Rubin, Esq.
Fla. Bar No. 109030
E-Mail: mrubin@bellsouth.net

LOTT & FRIEDLAND, P.A.
Counsel for Continental Farms, LLC, Esprit-Miami, Inc., and Continental Flowers, Inc.
355 Alhambra Circle
Suite 110 (zip code 33134)
Post Office Drawer 141098
Phone: 305-448-7089
Fax: 305-446-6191

By: /s/ Ury Fischer______________
Ury Fischer, Esq.
Fla. Bar No. 0048534
E-Mail: ufischer@lfiplaw.com

KLUGER, PERETZ, KAPLAN & BERLIN, P.L.
Counsel for Olamor Flowers, Inc.
17th Floor Miami Center
201 S. Biscayne Boulevard
Miami, Florida 33131
Phone: 305-379-9000
Fax: 305-379-3428

By: /s/ William R. Trueba, Jr.______
Steven I. Peretz, Esq.
Fla. Bar No. 329037
E-Mail: speretz@kpkb.com
William R. Trueba, Jr., Esq.
Fla. Bar No. 117544
E-Mail: wtrueba@kpkb.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 21st day of May, 2007, the undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF. The undersigned also certifies that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Richard Guerra________

SERVICE LIST

Mark Raymond, Esq.
Broad & Cassel, *Attorneys for Defendants*
One Biscayne Tower - 21st Floor
2 South Biscayne Blvd.
Miami, Fl 33131