

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ENKAY (INDIA) RUBBER
COMPANY PRIVATE LIMITED

Plaintiff,

v.

SCORE AMERICAN SOCCER,
COMPANY, INC.,

Defendant.

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Civil Action No. 2:08-cv-71 TJW

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

The Parties

1. Plaintiff Enkay (India) Rubber Company Private Limited (hereinafter "Plaintiff") is an India company with its principal place of business at B-3, S.M.A. Industrial Estate, G. T. Karnal Road, Delhi, India, 110 033.

2. Defendant Score American Soccer Company, Inc. ("SASC") is a corporation with its principal place of business at 726 Anaheim St., Wilmington, California 90744 .

3. SASC are collectively referred to herein as the Defendants.

Jurisdiction and Venue

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338 because this action is for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

GENERAL AVERMENTS

Plaintiff's Patent Rights

6. Plaintiff makes and sells certain products, including bladder shells for inflatable balls. These balls include soccer balls.

7. United States Patent Nos. 6,544,608 B1 ("the '608 Patent") and 6,949,276 B2 ("the '276 Patent") were all duly and legally issued (collectively, the "Patents").

8. Plaintiff is the owner of all rights in and to the Patents.

9. A true and correct copy of each of the Patents is attached hereto as **Exhibit A**.

10. Plaintiff has marked its products pursuant to 35 U.S.C. § 287(a).

Defendant and its Infringing Activity

11. Defendant SASC has sold and imported certain soccer balls, including but not limited to Defendant SASC's Jupiter soccer ball, which infringe certain claims in the Patents. *See, e.g., Exhibit B.*

12. Upon information and belief, these infringing soccer balls were imported from a company called Sports Syndicate located at 3, New Vijay Nagar, Basti Road, Jalandhar City, Punjab, India 144001.

13. Upon information and belief, Defendant SASC sells their infringing soccer balls in a wide range of locations, including through Defendant's Internet web site at www.scoresports.com, the relevant pages of which are attached hereto as composite **Exhibit C**.

14. Defendant SASC seeks to directly and/or indirectly sell the Products to the general public, companies, distributors, and/or facilities in the state of Texas and this district.

15. Upon information and belief, Defendant SASC has sold their infringing soccer balls in the state of Texas and this district.

16. The activities of Defendant SASC with regard to their sales and importation of their infringing soccer balls are and have been without authorization from Plaintiff.

COUNT I - PATENT INFRINGEMENT

17. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

18. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. Defendant has infringed and continue to infringe the Patents under 35 U.S.C. § 271 *et seq.* This infringement was and is willful and intentional.

20. Defendant has, without authority, consent, right or license, and in direct infringement of the Patents, imported and/or sold products in this country, and, upon information and belief, such products have been sold and used in the state of Texas.

21. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT II - INDUCEMENT OF PATENT INFRINGEMENT

22. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(b).

23. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 22 of this Complaint as if fully set forth herein.

24. Defendant has, in this country, actively and/or intentionally induced others to use products that infringe the Patents.

25. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT III - CONTRIBUTORY PATENT INFRINGEMENT

26. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

27. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Defendant is furthermore liable for contributory infringement, pursuant to 35 U.S.C. § 271(c), in that Defendant has imported and/or sold within the United States a component of a patented machine, manufacture, composition, combination, or system, and/or a material or apparatus for use in practicing a patented process, including a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the Patents and not a staple article or commodity of commerce suitable for substantial non-infringing use.

29. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

DAMAGES

30. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 29 of this Complaint as if fully set forth herein. Plaintiff has suffered, is suffering, and will continue to suffer irreparable harm and injury as a result of Defendant's aforesaid activities. Defendant will, unless restrained and enjoined, continue to act in the unlawful manner complained of herein, all to Plaintiff's irreparable damage. Plaintiff's remedy at law is not adequate to compensate it for the injuries suffered and threatened. By reason of Defendant's acts complained of herein, Plaintiff has suffered monetary damages in an amount that has not yet been determined.

REQUEST FOR JURY TRIAL

31. Plaintiff hereby demands that this cause be tried by a jury.

PRAYER

32. WHEREFORE, Plaintiff demands:

A. That Defendant and its agents, officers, directors, employees, servants, representatives, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, be enjoined and restrained, immediately and preliminarily, during the pendency of this action and permanently thereafter from:

(1) selling and/or importing the Products, or any colorable imitation thereof,

(2) inducing others from infringing the Patents, and/or contributing to the infringement of the Patents by others; and

(3) otherwise infringing upon the Patents.

B. That this Court order Defendant and its agents, officers, directors, employees, servants, representatives, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, to deliver up to this Court, and to permit the seizure by Officers appointed by the Court of all articles and materials infringing upon the rights of Plaintiff, and particularly, without limitation, all products or other merchandise which embodies or includes the infringing products, and to be delivered up for destruction on the issuance of a final Order in this action, including all infringing products, and Defendant submit in writing, under oath, a description of all actions taken to comply with this portion of the Order.

C. That Defendant be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendant's infringement of the Patents.

D. That, in the alternative, a reasonable royalty be awarded to Plaintiff pursuant to 35 U.S.C. § 284.

E. That Defendant be ordered to account for and pay over to Plaintiff all their respective gains, profits and advantages derived from the infringement of the Patents or such damages as to the Court shall appear proper within the patent laws.

F. That Defendant be ordered to pay Plaintiff enhanced damages (*e.g.*, treble damages).

G. That Defendant be ordered to pay to Plaintiff the costs of this action, prejudgment interest, and post-judgment interest.

H. That this case be found to be exceptional.

I. That Defendant be ordered to pay Plaintiff's reasonable attorneys' fees, experts' fees, and costs.

J. That Plaintiff be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Ryan T. Beard _____

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**ATTORNEYS FOR PLAINTIFF
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