

FILED

DEC - 9 2004

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

LARRY W. PROPPS, CLERK
CHARLESTON, SC

SAWGRASS TECHNOLOGIES, INC.,)
a South Carolina Corporation,)

Plaintiff,)

v.)

CASHEN MARKETING, LLC d/b/a)
SUBLI KING AND STEPHEN CASHEN,)

Defendants.)

Civil Action No.: _____

4 04 - 23212 - 25

COMPLAINT

(JURY TRIAL DEMANDED)

DAMAGES AND

INJUNCTIVE RELIEF SOUGHT

Plaintiff, Sawgrass Technologies, Inc., complaining against the Defendants, alleges and states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, committed by the Defendants throughout the nation and in South Carolina in particular that causes injury to Plaintiff in South Carolina.

PARTIES

2. Plaintiff, Sawgrass Technologies, Inc. (hereinafter "Sawgrass") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of South Carolina. Sawgrass maintains its sole and principal place of business in Mount Pleasant, South Carolina.

3. The Defendant, Cashen Marketing, LLC, is, upon information and belief, a company organized and existing under the laws of Louisiana, and does business under

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the name of Subli King. Cashen Marketing, LLC advertises nationally and internationally, seeks and solicits business from persons in South Carolina, and conducts business in South Carolina.

4. The Defendant Stephen Cashen is, upon information and belief, a resident of Louisiana, and a member of Cashen Marketing, LLC, and owns, operates and controls Cashen Marketing, LLC. By virtue of his direction, control, and operation of Cashen Marketing, LLC, as well as his official position with Cashen Marketing, LLC, Defendant Stephen Cashen seeks and solicits business from persons in South Carolina, and conducts business in South Carolina.

5. Upon information and belief, Cashen Marketing, LLC is the alter ego of Stephen Cashen, and vice versa.

THE PATENT IN SUIT

6. By duly recorded assignments in the United States Patent and Trademark Office (Patent Office), Plaintiff is the owner of all right, title and interest, to and in several U. S. Patents, including Patent No. 5,488,907 (the "Sawgrass patent"). The Sawgrass patent teaches and claims novel and non-obvious methods and processes of printing certain liquid sublimation inks by means of an ink jet printer.

BACKGROUND

7. Sawgrass is a research and development company whose activities are directed to digital printing through the use of sublimation inks. Sawgrass sells liquid sublimation inks which comprise heat-activated sublimation dye solids that are protected by the Sawgrass patent through authorized distributors who sell to end users. Sawgrass sells software and other products to assist in the use of their sublimation inks

and sublimation ink processes by the end user, according to the processes and methods of the Sawgrass patent.

8. Upon information and belief, the Defendants have caused to be manufactured and are selling and using a liquid sublimation ink ("Defendants' liquid sublimation ink") which is used for the purpose of practicing the methods and processes of the Sawgrass patent. Further, upon information and belief, Defendants are teaching and encouraging others to use the Defendants' liquid sublimation inks to practice the methods and processes of the Sawgrass patent, and Defendants are promoting, advertising, and selling the Defendants' liquid sublimation ink to others for the purpose of practicing the methods and processes of the Sawgrass patent.

9. Upon information and belief, Defendants provide persons and entities to whom Defendants' liquid sublimation ink is sold and distributed with instructions, software, hardware, and training which is directed to using the Defendants' liquid sublimation ink to practice the printing methods and processes covered by the Sawgrass patent.

10. Sawgrass has notified Defendants of the existence of the Sawgrass patent, and demanded that they, their distributors, and their customers not engage in infringing conduct. Upon information and belief, Defendants have actual knowledge of the previously described infringements and the demands to desist made by Sawgrass, and Defendant Stephen Cashen has directed Defendant Cashen Marketing, LLC to persist in its infringing conduct, has ratified its prior infringing conduct, and seeks to make a profit from these unlawful actions.

11. In spite of the notice to Defendants, Defendants continue to use the

methods and processes of the Sawgrass patent, and Defendants continue to aid, encourage and teach others how to practice the methods and processes of the Sawgrass patent using the Defendants' liquid sublimation inks, without Sawgrass's authorization, consent or license.

12. Upon information and belief, Defendants' acts as aforesaid have resulted in increased revenues to the Defendants Cashen Marketing, LLC and Stephen Cashen and diminished revenues to Sawgrass.

13. Sawgrass has been, is being, and will continue to be damaged by Defendants' infringing activities as alleged more fully herein. Sawgrass's harm resulting from the infringement is irreparable and cannot be remedied in its entirety by the recovery of money damages, and Sawgrass has no adequate remedy at law.

COUNT I
INFRINGEMENT OF THE SAWGRASS PATENT

14. Sawgrass realleges and incorporates herein Paragraphs 1 through 13 of this Complaint.

15. Upon information and belief, in violation of 35 U.S.C. §271(a), Defendants have infringed and continue to infringe, either directly or by the doctrine of equivalents, the claims of the Sawgrass patent, by using, offering to sell, and selling a liquid sublimation ink which is used to practice the processes and methods of the Sawgrass patent, and by practicing the processes and methods of the Sawgrass patent. Such acts of infringement are occurring, have occurred in the past, and will continue to occur without the authority or license of Sawgrass, unless this Court enjoins Defendants' infringing activities.

16. Such acts of infringement are occurring, have occurred in the past, and will continue to occur without the authority or license of Sawgrass unless this Court permanently enjoins the infringing conduct of Defendants.

17. Sawgrass has been, is being, and will continue to be damaged by the infringing conduct of Defendants.

18. Upon information and belief, Defendants have willfully and deliberately conducted the infringing activities described herein, warranting the assessment of increased damages pursuant to 35 U.S.C. §284. Plaintiff is entitled to judgment against Defendants for an appropriate amount of actual damages, a permanent injunction, and its attorneys' fees.

COUNT II
INDUCING PATENT INFRINGEMENT
(35 U.S.C. §271 (b))

19. Sawgrass realleges and incorporates herein Paragraphs 1 through 18 of this Complaint.

20. Defendants have actively and knowingly encouraged, urged and aided other persons and entities to practice the methods and processes of the Sawgrass patent, such acts include but are not limited to Defendants' sale of Defendants' liquid sublimation inks. Further, Defendants have taught, encouraged, and instructed such other persons and entities to practice the methods and processes of the Sawgrass patent using the Defendants' liquid sublimation inks, thereby inducing said persons or entities to practice, either directly or by the doctrine of equivalents, the methods and processes set forth in the claims of the Sawgrass patent, and to thereby infringe the Sawgrass patent.

21. Defendants have engaged in such conduct with knowledge that Defendants' liquid sublimation inks will be utilized by said persons and entities to practice the methods and processes of the Sawgrass patent without authorization or license from Sawgrass.

22. Defendants are liable for inducing patent infringement under 35 U.S.C. §271(b).

23. Such acts of infringement are occurring, have occurred in the past and will continue to occur without the authority or license of Sawgrass unless this Court permanently enjoins the infringing conduct of Defendants.

24. Sawgrass has been, is being, and will continue to be damaged by the infringing conduct of Defendants.

25. In addition, Sawgrass is informed and believes and thereon alleges that Defendants have willfully and deliberately conducted the infringing activities described herein, thereby warranting the assessment of increased damages pursuant to 35 U.S.C. §284. Plaintiff is entitled to judgment against Defendants for an appropriate amount of actual damages, a permanent injunction, and its attorneys' fees.

COUNT III
CONTRIBUTORY INFRINGEMENT
(35 U.S.C. §271(c))

26. Sawgrass realleges and incorporates herein Paragraphs 1 through 25 of this Complaint.

27. Defendants have sold, and continue to sell, liquid sublimation inks which are components required to practice Sawgrass's methods as taught by the Sawgrass patent.

28. Defendants' liquid sublimation inks sold by Defendants constitute a material for use in the methods and processes of Sawgrass patent, and Defendants know, and have known, or should have known, that Defendants' liquid sublimation inks are especially made, formulated, and adapted for use in practicing the methods and processes claimed in the Sawgrass patent, and are not a staple article or commodity of commerce suitable for a substantial noninfringing use.

29. Defendants are liable for contributory infringement under 35 U.S.C. §271(c). Such acts of infringement are occurring, have occurred in the past, and will continue to occur without the authority or license of Sawgrass unless this Court permanently enjoins the infringing conduct of defendants.

30. Sawgrass has been, is being, and will continue to be damaged by the infringing conduct of Defendants.

31. Sawgrass has been, is being, and will continue to be damaged by the infringing conduct of defendants. In addition, Sawgrass is informed and believes and thereon alleges that Defendants have willfully and deliberately conducted the infringing activities described herein, thereby warranting the assessment of increased damages pursuant to 35 U.S.C. §284. Plaintiff is entitled to judgment against Defendants for an appropriate amount of actual damages, a permanent injunction, and its attorneys' fees.

WHEREFORE, Sawgrass prays for judgment and relief against Cashen Marketing, LLC and Stephen Cashen as follows:

a. That, pursuant to 35 U.S.C. §283, an injunction be issued permanently enjoining Defendants, their principals, members, officers, directors, agents, servants, employees, and all those persons in active concert or participation with


Defendants from further inducing the infringement of the Sawgrass patent;

b. That, pursuant to 35 U.S.C. §284, judgment be entered against Defendants, for actual damages for the infringement of the Sawgrass patent, including enhanced damages, because of the willful nature of such infringement;

c. That Sawgrass be awarded costs, pre-judgment interest, and attorneys' fees for each of its first three counts for patent infringement;

d. That such other and further relief be granted to Sawgrass as may be deemed just and proper by the Court to fully remedy Sawgrass under the circumstances.

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ATTORNEYS FOR SAWGRASS SYSTEMS, INC.

December 9 2004

Charleston, South Carolina