

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CIES BISKER, LLC

Plaintiff,

V.

3M COMPANY, FLOOR*graphics*, INC.,  
NEWS AMERICA MARKETING IN-STORE,  
LLC, and NEWS AMERICA MARKETING  
IN-STORE SERVICES, LLC,

## Defendants



CIVIL ACTION NO. 2:08-CV-115

## JURY TRIAL DEMANDED

## PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff CIES BISKER, LLC (“Plaintiff”) files this First Amended Complaint against Defendants 3M COMPANY, FLOOR*graphics*, INC., NEWS AMERICA MARKETING IN-STORE, LLC, and NEWS AMERICA MARKETING IN-STORE SERVICES, LLC, alleging as follows:

## **I. THE PARTIES**

1. CIES BISKER, LLC is a limited liability company organized and existing under the laws of the State of Colorado, with its principal place of business in Golden, Colorado.

2. Upon information and belief, 3M COMPANY (“3M”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in St. Paul, Minnesota. 3M may be served with process by serving its registered agent, CT Corporation System located at 350 N. St. Paul Street, Dallas, Texas 75201. 3M may also be served by serving its counsel of record.

3. Upon information and belief, FLOOR*graphics*, INC. (“FLOOR*graphics*”) is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal

place of business in Hamilton, New Jersey. FLOOR*graphics* may be served with process by serving an officer, a managing or general agent, at its home office located at 242 Princeton Avenue, Hamilton, NJ 08619. FLOOR*graphics* may also be served by serving its counsel of record.

4. Upon information and belief, NEWS AMERICA MARKETING IN-STORE, LLC (“NAM In-Store”) is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business in New York, New York. NAM In-Store may be served with process by serving an officer, a managing or general agent, at its home office located at 1211 Avenue of the Americas, 5<sup>th</sup> Floor, New York, NY 11036.

5. Upon information and belief, NEWS AMERICA MARKETING IN-STORE SERVICES, LLC (“NAM In-Store Services”) is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business in New York, New York. NAM In-Store Services may be served with process by serving an officer, a managing or general agent, at its home office located at 1211 Avenue of the Americas, 5<sup>th</sup> Floor, New York, NY 11036.

## **II. JURISDICTION AND VENUE**

6. This is an action for infringement of a United States patent. This Court has exclusive jurisdiction of such action under Title 28 U.S.C. § 1338(a).

7. Upon information and belief, Defendants have minimum contacts with the Marshall Division of the Eastern District of Texas such that this venue is fair and reasonable. Defendants have committed such purposeful acts and/or transactions in the Marshall Division of the Eastern District of Texas that they reasonably should know and expect that they could be hailed into this Court as a consequence of such activity. Upon information and belief, Defendants have transacted and, at the time of the filing of this Complaint, are transacting business within the Marshall Division

of the Eastern District of Texas. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

### **III. PATENT INFRINGEMENT**

8. On January 26, 1999, United States Patent No. 5,863,632 (“the ‘632 patent”) was duly and legally issued for a “Decorative Photographic Tile and Method Using Same.” A true and correct copy of the ‘632 patent is attached hereto as Exhibit “A” and made a part hereof.

9. Plaintiff is the owner of all right, title, and interest of the ‘632 patent with all rights to enforce the ‘632 patent against infringers, and collect damages for all relevant times, including the right to prosecute this action.

10. Upon information and belief, Defendants manufacture, make, have made, market, sell, and/or use products and/or systems that infringe at least one or more claims of the ‘632 patent; and/or induce and/or contribute to the infringement of at least one or more of the claims in the ‘632 patent by others. Defendant 3M’s infringement includes, but is not limited to in whole or in part, its Floor Graphics Kit 8566, substantially similar products, component parts, materials, and teaching methods that induce and/or contribute to the infringement of at least one or more of the claims in the ‘632 patent by others. Defendant FLOOR*graphics*’ infringement includes, but is not limited to in whole or in part, its FLOORad and FLOORbillboard products, substantially similar products, component parts, and materials that induce and/or contribute to the infringement of at least one or more of the claims in the ‘632 patent by others. Defendants NAM In-Store and NAM In-Store Services’ infringement includes, but is not limited to in whole or in part, its SmartSource FloorTalk product, substantially similar products, component parts, and materials that induce and/or contribute to the infringement of at least one or more of the claims in the ‘632 patent by others.

11. Plaintiff has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Plaintiff in an amount that adequately compensates for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

12. Upon information and belief, Defendants will continue their infringement of the '632 patent unless enjoined by the Court. Defendants' infringing conduct causes Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

#### **IV. JURY DEMAND**

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of United States Patent No. 5,863,632 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendants' infringement be found to be willful from the time Defendants became aware of the infringing nature of its services, which is the time of filing of Plaintiff's Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285;

- f. That Defendants be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 5,863,632; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

**Dated: May 20, 2008.**

Respectfully submitted,

/s/ Jonathan T. Suder  
State Bar No. 19463350  
Karolyne H. Cheng  
State Bar No. 24053883  
David A. Skeels  
State Bar No. 24041925  
FRIEDMAN, SUDER & COOKE  
Tindall Square Warehouse No. 1  
604 East 4th Street, Suite 200  
Fort Worth, Texas 76102  
(817) 334-0400  
Fax (817) 334-0401  
[jts@fsclaw.com](mailto:jts@fsclaw.com)  
[cheng@fsclaw.com](mailto:cheng@fsclaw.com)  
[skeels@fsclaw.com](mailto:skeels@fsclaw.com)

Eric M. Albritton  
State Bar No. 00790215  
ALBRITTON LAW FIRM  
P.O. Box 2649  
Longview, TX 75606  
(903) 757-8449  
(903) 758-7397 (fax)  
[ema@emafirm.com](mailto:ema@emafirm.com)

T. John Ward, Jr.  
State Bar No. 00794818  
WARD & SMITH LAW FIRM  
111 W. Tyler Street  
Longview, Texas 75601  
(903) 757-6400  
(903) 757-2323 (fax)  
[jw@jwfir.com](mailto:jw@jwfir.com)

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of May, 2008, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Jonathan T. Suder

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