

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

_____)	Civil No. _____
DUCTCAP PRODUCTS, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	
J & S FABRICATION, INC. and)	
RANDY W. SMITH)	
)	
Defendants.)	
_____)	

COMPLAINT

Comes now the Plaintiff, and for its Complaint against Defendants, states and alleges as follows:

THE PARTIES

1. Plaintiff, Ductcap Products, Inc. ("Ductcap"), is a Minnesota corporation, having a principal place of business at 2763 Fairway Drive, Willmar, Minnesota 56201.
2. Upon information and belief, Defendant, J & S Fabrication, Inc. ("J&S"), is a Pennsylvania corporation, having a principal place of business at 9330 Allentown Boulevard, Grantville, Pennsylvania 17028.
3. Upon information and belief, Defendant, Randy W. Smith is an individual residing at 1404 Briarcreek Circle, Las Vegas, Nevada 89110.

BACKGROUND FACTS

4. Plaintiff Ductcap is engaged in the business of selling flexible duct covers.

5. Among other uses, Ductcap's duct covers protect the internal components of unfinished heating, ventilation, and air-conditioning ("HVAC") ductwork from moisture, dirt, and debris.

6. On April 5, 2005, United States Patent No. 6,874,541 (hereinafter "the '541 patent") entitled TEMPORARY DUCT COVER was duly and legally issued to Plaintiff Ductcap, and since that date Plaintiff has been, and still is, the owner of this patent. A copy of the '541 patent is attached as Exhibit A to the Complaint.

7. Defendant J&S is engaged in the business of sheet metal work and fabrication, including making, selling, and distributing sheet metal products and other products for the HVAC industry.

8. From at least June 2008, J&S has been selling and offering to sell Smith Slip™ duct protection covers to the HVAC industry.

9. Defendant J&S advertises the Smith Slip™ on its website at <http://www.smithslips.com/index.html> and describes them as being "designed to help heating; venting and air conditioning contractors protect all components of the HVAC system during construction . . . to keep dirt, moisture, paint and construction debris out of the sytem." [sic]

10. J&S further states on its website that the Smith Slip™ is patented as U.S. Design Pat. No. D492,763 to Defendant Randy W. Smith.

11. Upon information and belief, the U.S. filing date of U.S. Design Pat. No. D492,763 is July 22, 2003.

12. Attached as Exhibit B is a copy of a document posted on J&S's website providing the sizes and advantages of the Smith Slip™.

13. Upon information and belief, Defendant J&S sells and distributes the Smith Slip™ throughout the United States.

JURISDICTION

14. Plaintiff Ductcap repeats the allegations above as if fully set forth herein.

15. This action involves a claim of patent infringement arising under the Acts of Congress.

16. This Court has jurisdiction under 35 U.S.C. §§ 271 and 281-85; and 28 U.S.C. §§ 1331, and 1338(a).

PATENT INFRINGEMENT

17. Plaintiff Ductcap repeats the allegations above as if fully set forth herein.

18. Defendant J&S has infringed the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

19. Defendant J&S has induced the infringement of the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

20. Defendant J&S has contributed to the infringement of the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

21. Defendant Randy W. Smith has infringed the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

22. Defendant Randy W. Smith has induced the infringement of the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

23. Defendant Randy W. Smith has contributed to the infringement of the '541 patent through the manufacture, use, sale and/or offer for sale of flexible duct covers including, but not limited to, the Smith Slip™ as described in Exhibit B.

24. Plaintiff Ductcap has been damaged by Defendants' infringement of said patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing said patent, inducing infringement of said patent, and contributing to the infringement of said patent by others.

25. Upon information and belief, Defendant J&S was aware that the '541 patent was duly and legally issued to Plaintiff Ductcap and Defendant's use, manufacture, sale and/or offer for sale of its duct covers, including but not limited to the Smith Slip™, infringes said patent.

26. Upon information and belief, Defendant Randy W. Smith was aware that the '541 patent was duly and legally issued to Plaintiff Ductcap and Defendant's use, manufacture, sale and/or offer for sale of its duct covers, including but not limited to the Smith Slip™, infringes said patent.

27. Upon information and belief, Defendant J&S's infringement of said patent is now and has been intentional, willful, and deliberate, and will continue unless enjoined by the Court.

28. Upon information and belief, Defendant Randy W. Smith's infringement of said patent is now and has been intentional, willful, and deliberate, and will continue unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment that:

- A. United States Patent No. 6,874,541 is valid and has been infringed by Defendants J&S and Randy W. Smith;
 - B. Defendants J&S and Randy W. Smith, their officers, agents, servants, employees, and heirs, and those persons in active concert or participation with any of them be enjoined from further infringement of United States Patent No. 6,874,541;
 - C. An accounting be had for the profits and damages arising out of Defendants J&S and Randy W. Smith's infringement of United States Patent No. 6,874,541, including treble damages for willful infringement as provided by Title 35 U.S.C. § 284, with interest;
 - D. Defendants J&S and Randy W. Smith be preliminarily and permanently enjoined from continued use or sale of the Defendants' products used to infringe said patent;
 - E. The Court order preliminary and permanent injunctive relief as hereinabove described;
 - F. The Court award Ductcap its attorneys' fees, costs, and expenses of the suit herein, and enhanced or statutory damages as provided by law;
 - G. The Court award prejudgment and post-judgment interest on all sums awarded;
- and

H. Plaintiff be awarded such relief as this Court may deem necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiff Ductcap Products, Inc. hereby demands a trial by jury of all issues so triable.

Respectfully Submitted,

Dated: May 19, 2009

By: /Jeffrey C. Brown
Jeffrey C. Brown (MN Reg. No. 256948)
JEFFREY C. BROWN & ASSOC. PLLC
100 South Fifth Street
Suite 1900
Minneapolis, MN 55402
Ph: 612.605.6108
Fax: 612.605.3761

Kevin Cyr (MN Reg. No. 292321)
CYR & ASSOCIATES P.A.
605 Highway 169 N
Suite 300
Plymouth, MN 55441
Ph: 763.587.7076
Fax: 763.587.7086

ATTORNEYS FOR PLAINTIFF
DUCTCAP PRODUCTS, INC.