

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FILED

SEP - 9 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Pliant Corporation,)
)
Plaintiff,)
)
vs.)
)
MSC Marketing & Technology, Inc.,)
d/b/a/ Sigma Stretch Film,)
and)
)
Atlantis Plastics, Inc.,)
)
Defendants.)

Civil Action No. 04-CV-3509

Judge James B. Zagel

Magistrate Judge Geraldine Soat Brown

DOCKETED

SEP 10 2004

FIRST AMENDED COMPLAINT

Plaintiff Pliant Corporation ("Pliant") for its First Amended Complaint against Defendants MSC Marketing & Technology, Inc., d/b/a/ Sigma Stretch Film ("Sigma") and Atlantis Plastics, Inc., ("Atlantis") asserts the following:

NATURE OF THIS ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq., including 35 U.S.C. §§ 271-285.

THE PARTIES

2. Plaintiff Pliant is a Utah corporation having a principal place of business within the jurisdiction of the Court at 1475 Woodfield Road, Schaumburg, Illinois, U.S.A. 60173.

3. Upon information and belief, Defendant Sigma is a New Jersey corporation having a principal place of business at Page & Schuyler Ave., #8, Lyndhurst, NJ 07071. Upon further information and belief, Sigma has engaged in the complained of acts within the State of Illinois and within the Northern District of Illinois and is subject to the personal jurisdiction of this Court.

4. Upon information and belief, Defendant Atlantis is a Florida corporation having offices at 2665 S. Bayshore Dr., Suite 800, Miami, FL U.S.A. 33131. Upon further information and belief, Atlantis has engaged in the complained of acts within the State of Illinois and within the Northern District of Illinois and is subject to the personal jurisdiction of this Court.

JURISDICTION AND VENUE

5. The court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338.

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

FACTS COMMON TO ALL COUNTS

A. Plaintiff and its Patented Technology

7. Pliant is a leading producer of film and flexible packaging products for personal care, medical, food, industrial, agricultural and other markets. Pliant produces a variety of films including, for example, breathable films for personal care and medical products, sealant films for converter applications, to stretch and shrink films for pallet wrap and case overwrap.

8. Pliant has enjoyed accelerated growth due to an aggressive technological research and development program, and development of licensing and promotional campaigns for both its brand names and its patented technologies. Pliant focuses on a superior technology platform, supported by continuous technical innovation, and a drive to develop meaningful customer partnerships.

9. Pliant owns all right title and interest in U.S. Patent No. 5,531,393 (the '393 Patent"), together with the right to sue for all past, present, and future infringements. A copy of the '393 Patent is attached as Exhibit A.

10. Pliant obtained the '393 patent in an assignment from Saltech, Inc. ("Saltech"). Pliant obtained this assignment in an Addendum to a previously executed "Amended and

Restated License and Equipment Lease Agreement." A copy of the Addendum and the Amended and Restated License and Equipment Lease Agreement are attached as below as Exhibit B. A copy of the patent assignment, which was executed along with the Addendum, is attached below as Exhibit C.

11. The '393 Patent was duly and legally issued on January 26, 1999, and is valid and enforceable.

12. The '393 Patent covers, among other things, a roll of stretched plastic film used, for example, for wrapping pallet loads. Since at least 1993 Pliant including its predecessors in interest have manufactured, marketed and sold rolls of stretched plastic film, commonly known as "pre-stretch" under the registered trademark WINWRAP®. Pliant is a recognized leader in the pre-stretch industry. Pliant markets its WINWRAP® products as patented technology and with the aforementioned patent numbers.

13. Pliant marks products embodying the '393 Patent with a notice pursuant to 35 U.S.C. 287(a).

B. Defendant Sigma and its Infringing Activities

14. Upon information and belief, Defendant Sigma uses, sells, offers for sale and/or distributes a pre-stretch hand wrap product under the names SigmaStretch, Magnum Stretch 300, Sigma Select 1, and/or other names, within the scope of one or more of the claims of the '393 Patent.

15. Upon information and belief Defendant Sigma uses, sells, offers for sale and/or distributes such pre-stretch hand wrap product or products in the Northern District of Illinois and within the jurisdiction of this Court.

C. Defendant Atlantis and its Infringing Activities

16. Upon information and belief, Defendant Atlantis uses, sells, offers for sale and/or distributes a prestrech hand wrap product under the name Xtreme within the scope of one or more of the claims off the '393 Patent.

17. Upon information and belief Defendant Sigma uses, sells, offers for sale and/or distributes such pre-stretch hand wrap product in the Northern District of Illinois and within the jurisdiction of this Court.

**COUNT ONE
(Infringement of the '393 Patent by Sigma)**

18. Pliant repeats and realleges each of the allegations contained in paragraphs 1 through 15 as though fully set forth herein.

19. The acts of Sigma alleged herein constitute infringement of the '393 Patent in violation of the patent laws of the United States, Title 35 of the United States Code under §§ 271 and 281-285.

20. The infringing acts of Sigma alleged herein have been willful and deliberate.

21. By reason of the acts of Sigma alleged herein, Pliant has suffered, is suffering, and will continue to suffer irreparable damage, and unless Sigma is restrained from continuing its wrongful acts, the damage to Pliant will continue.

22. Pliant has no adequate remedy at law.

**COUNT TWO
(Infringement of the '393 Patent by Atlantis)**

23. Pliant repeats and realleges each of the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

24. The acts of Atlantis alleged herein constitute infringement of the '393 Patent in violation of the patent laws of the United States, Title 35 of the United States Code under §§ 271 and 281-285.

25. By reason of the acts of Atlantis alleged herein, Pliant has suffered, is suffering, and will continue to suffer irreparable damage, and unless Atlantis is restrained from continuing its wrongful acts, the damage to Pliant will continue.

26. Pliant has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Pliant prays for judgment as follows:

A. That this Court adjudge and decree that Defendant Sigma has willfully infringed one or more claims of the '393 Patent;

B. That this Court adjudge and decree that Defendant Atlantis has infringed one or more claims of the '393 Patent;

C. That this Court permanently enjoin Defendant Sigma, its agents, attorneys, servants, successors, assigns, employees, and all those in privity or in active concert and participation with it, or any of them, from infringing the '393 Patent;

D. That this Court permanently enjoin Defendant Atlantis and its agents, attorneys, servants, successors, assigns, employees, and all those in privity or in active concert and participation with it, or any of them, from infringing the '845 Patent;

E. That this Court require Defendant Sigma to compensate Pliant adequately for the damages caused by its willful infringement of the '393 Patent, together with interest and costs;

F. That this Court require Defendant Atlantis to compensate Pliant adequately for the damages caused by its infringement of the '393 Patent, together with interest and costs;

G. That this Court adjudge and decree this case is exceptional and award Plaintiff its reasonable attorneys' fees and expenses against Defendant Sigma pursuant to 35 U.S.C. § 285; and

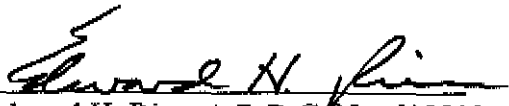
H. That this Court adjudge and decree this case is exceptional and award Plaintiff its reasonable attorneys' fees and expenses against Defendant Atlantis pursuant to 35 U.S.C. § 285; and

I. That this Court assess costs, other expenses and such other and further relief as the Court may deem just and proper.

Date: August 27, 2004

Respectfully submitted,

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**See Case File for
Exhibits**