

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DEGELMAN INDUSTRIES LTD.,

Plaintiff,

-vs-

**PRO-TECH WELDING AND
FABRICATION, INC. and MICHAEL P.
WEAGLEY,**

Defendants.

COMPLAINT

Civil Action No.

JURY TRIAL DEMANDED

Plaintiff, Degelman Industries, Ltd. ("Plaintiff"), by its attorneys, Hiscock & Barclay, LLP, as and for its Complaint against Defendants, Pro-Tech Welding and Fabrication, Inc. and Michael P. Weagley, both individually and as an officer of Pro-Tech Welding and Fabrication, ("Defendants"), alleges as follows:

1. This is a claim for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the matter of this claim under 28 U.S.C. § 1338(a). Venue is proper under 28 U.S.C. §§ 1391(b) and (c), and 1400(b), as Defendants are subject to personal jurisdiction, do business, and have committed acts of infringement in this district.

2. Plaintiff asserts these claims as a result of Defendants' knowing and willful use, without permission or license, of Plaintiff's patented invention and design in a materials moving blade ("Product"). Plaintiff seeks the full extent of relief available to it under the Patent Act, including a preliminary and permanent injunction against Defendants' continued acts, the costs of this action including reasonable attorneys fees, and for such other and further relief as this Court may seem just, proper, and equitable.

3. Plaintiff is a Canadian corporation, with its principal place of business at 272 Industrial Drive, Regina, Saskatchewan S4P 3B1.

4. Upon information and belief, Defendant Pro-Tech Welding & Fabrication, Inc. is a New York corporation with its principal place business at 711 West Avenue, Rochester, New York 14611.

5. Upon information and belief, Defendant Michael P. Weagley is a New York resident and President and Treasurer of Pro-Tech Welding & Fabrication, Inc. with an address of 7436 East River Road, Rush, New York 14543.

6. This Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to 28 U.S.C. § 1338, *inter alia*, based upon the following.

7. Plaintiff owns and has standing to sue for infringement of United States Patent No. D478,097 (the “ ‘097 Patent”) (Exhibit A), entitled “Snow Moving Apparatus.” The ‘097 Patent was duly and legally issued by the United States Patent Office (“USPTO”) on August 5, 2003.

8. Plaintiff owns and has standing to sue for infringement of United States Patent No. 6,845,576 B2 (the “ ‘576 Patent”) (Exhibit B), entitled “Materials Moving Blade.” The ‘576 Patent was duly and legally issued by the USPTO on January 25, 2005.

9. Plaintiff owns and has standing to sue for infringement of United States Patent No. D519,128 (the “ ‘128 Patent”) (Exhibit C), entitled “Snow Moving Apparatus.” The ‘128 Patent was duly and legally issued by the USPTO on April 18, 2006.

10. Plaintiff owns and has standing to sue for infringement of United States Patent No. D519,129 (the “ ‘129 Patent”) (Exhibit D), entitled “Snow Moving Apparatus.” The ‘129 Patent was duly and legally issued by the USPTO on April 18, 2006.

11. Plaintiff complied with the requirements of marking and notice requirements of 35 U.S.C. § 287.

12. Upon information and belief, Defendants were on notice of Plaintiff's snow moving apparatus which was on display at various trade shows, and subsequently copied the patented design and apparatus, and began marketing and selling the infringing snow moving apparatus, under, among other things, a line of products called "Sno-Pusher" (Exhibit E).

13. On November 19, 2003, Plaintiff sent a letter to Defendants further placing them on notice of the '097 Patent, and seeking additional information regarding Defendants' infringing product. Defendants did not respond.

14. Plaintiff, again, wrote to Defendants on February 4, 2004, but Defendants failed to respond.

15. On April 19, 2005, Plaintiff wrote to Defendants to notify them of the issuance of the '576 Patent, and requesting that Defendants review the patented invention and design in view of their Sno-Pusher products.

16. On June 13, 2005, Defendants finally responded to Plaintiff's letters denying infringement.

17. Defendants continue to infringe the '097, '128, '129 and '576 Patents.

COUNT I
(Patent Infringement – Design Patent)

18. Plaintiff repeats and realleges all of the allegations set forth above as if more fully set forth herein.

19. At all times hereinafter relevant, Defendants have infringed Plaintiff's '097, '128, and '129 Patents by making, using, selling, and offered for sale Defendants' Pro-Tech Sno-

Pusher products embodying Plaintiff's patented design, and will continue to do so unless enjoined by this Court.

20. Defendants' Sno-Pusher products are substantially the same as, if not indistinguishable from, Plaintiff's design set forth in the '097, '128, '129 Patents, such that an ordinary observer would be deceived into believing that the Sno-Pusher product is Plaintiff's patented design, and induced into purchasing Defendants' product.

21. The Sno-Pusher products copy the novel ornamental elements and overall aspects of Plaintiff's design as set forth in the '097, '128, '129 Patents.

22. Upon information and belief, Defendants have known of the '097 Patent since at least since November 19, 2003, and have thus willfully and wantonly proceeded to, and continue to infringe Plaintiff's '097 Patents.

23. Upon information and belief, Defendants now have knowledge of the '128 and '129 Patents, and are infringing Plaintiff's patented designs in the '128 and '129 Patents.

24. Plaintiff has been damaged by Defendants acts of infringement.

COUNT II
(Patent Infringement – Utility Patent)

25. Plaintiff repeats and realleges all of the allegations set forth above as if more fully set forth herein.

26. Defendants have infringed Plaintiff's '576 Patent by making, using, selling, and offered for sale Defendants' Pro-Tech Sno-Pusher products embodying Plaintiff's patented invention, and will continue to do so unless enjoined by this Court.

27. Upon information and belief, Defendants have known of the '576 Patent since at least since April 19, 2005, and have thus willfully and wantonly proceeded to, and continue to infringe Plaintiff's '576 Patent.

28. Plaintiff has been damaged by Defendants acts of infringement.

JURY DEMAND


Plaintiff demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, including its affiliates, officers, agents, servants, and employees, and all persons in active concert or participation with them, as follows:

- (a) A preliminary injunction enjoining Defendants during the pendency of this action and thereafter permanently, from infringement of Plaintiff's patents;
- (b) An award to Plaintiff of such damages as it shall prove at trial against Defendants, after a full accounting of all damages that Plaintiff has suffered as a result of Defendants' unlawful conduct, said damages to be no less than a reasonable royalty;
- (c) An award to Plaintiff of all damages so determined for willful infringement, in accordance with 35 U.S.C. §284, together with prejudgment interest;
- (d) A determination that this case is exceptional within the meaning of 35 U.S.C. §285, and an award to Plaintiff of the costs of this action and its reasonable attorneys' fees; and
- (e) Such other and further relief as this Court and/or jury may determine to be just and proper.

DATED: July 10, 2006

HISCOCK & BARCLAY, LLP

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