

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MASSACHUSETTS

ATLANTIC RESEARCH)	
MARKETING SYSTEMS, INC.)	
PLAINTIFF)	CIVIL ACTION
)	NO: _____
V.)	
)	
STEPHEN P. TROY, JR. and)	
TROY INDUSTRIES, INC.)	JURY TRIAL DEMANDED
DEFENDANTS)	

COMPLAINT

Comes now the plaintiff, Atlantic Research Marketing Systems, Inc. (“A.R.M.S.”), who brings this action against defendants Stephen P. Troy, Jr. (“Mr. Troy”) and Troy Industries, Inc. (“Troy Industries”), collectively “the defendants”. By this action, A.R.M.S. seeks injunctive relief and damages against the defendants based upon the defendants’ infringing and wrongful conduct in connection with the manufacture, sale and distribution of certain handguard rail systems. A.R.M.S. seeks, *inter alia*, injunctive relief and damages for acts of patent infringement in violation of the 35 U.S.C. § 101 *et seq.* In addition, A.R.M.S. seeks damages and injunctive relief regarding the use, disclosure and misappropriation of A.R.M.S.’ trade secrets and confidential and proprietary information by the defendants in violation of M.G. L. c. 93, §42 and §42a, unfair methods of competition and deceptive acts by the defendants under M.G.L. c. 93A, breach of contract, breach of fiduciary duty, conversion, and determination of patent priority under 35 U.S.C. §291.

PARTIES

1. Atlantic Research Marketing Systems, Inc. is a Massachusetts corporation having a principal place of business at 230 W. Center Street, West Bridgewater, MA 02379.
2. Upon information and belief, defendant Stephen P. Troy, Jr. is an individual residing at 289 Chanterwood Road, Lee, MA 01239.
3. Upon information and belief, defendant Troy Industries is a Massachusetts corporation having a principal place of business of 128 Myron Street, W. Springfield, MA 01089.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action for patent infringement pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a). In addition, this Court has Supplemental jurisdiction over the state law and common law claims under 28 U. S.C. §1367.
5. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §1391(b)-(c) and §1400(b).

6. Jurisdiction over the defendants is conferred in that, upon information and belief, the defendants conduct business in the Commonwealth of Massachusetts and sell infringing products in the Commonwealth of Massachusetts.

STATEMENT OF FACTS

7. A weapon handguard rail system includes hardware which mounts in some fashion around a gun barrel and serves three purposes. First, it acts as a place to hold and control the weapon. Second, it protects the user's hands from being burned from the hot gun barrel. Third, the rails on the handguard allow the gun to be fitted with various auxiliary equipment, such as scopes, laser pointers, lights, and other attachable devices. As one example, users of the military M16/M4 weapon often require the use of handguard rail systems to help them in combat.

8. Plaintiff A.R.M.S., under leadership of its founder and owner for over 25 years, Richard E. Swan, discovered and documented a problem with standard government issued handguard rail systems: the handguard was attached to the barrel. This design created external pressure on the barrel which caused the barrel to droop when overheated, sometimes resulting in a catastrophic malfunction of the weapon.

9. Mr. Swan developed several handguard rail systems in response. One utilized a barrel nut yoke clamp which fastened only to the barrel nut of the weapon for support. Mr. Swan's handguard rail designs were the first to only attach to the weapon via the barrel nut and provide a true "free floating" handguard rail system that had no attachment to the barrel.

This design successfully eliminated the problem of pressure on the barrel. The free floating design also eliminated the direct conductive heat transfer from the barrel to the handguard. The free floating handguard rail system also included the ability to detach the lower handguard part from the upper part. The U.S. Government awarded A.R.M.S. a contract for the free floating handguard rail system.

10. Mr. Swan was also awarded U.S. Patent No. 6,499,245, reissued as U.S. Patent No. RE39,465, attached hereto as Exhibit 1. A.R.M.S. is the owner of U.S. Patent No. RE39,465 which covers, among other things, the design of a free floating handguard rail system which attaches to the weapon via the barrel nut of the weapon and a handguard with a lower part detachable from the upper part.

11. A.R.M.S. invested hundreds of thousands of dollars in connection with its development of free floating handguard rail systems, and compiled trade secrets and confidential and proprietary information associated with the development and sales of those products to the U.S. Government and A.R.M.S.' other customers. Those expenditures and effort's include, among others, the development of proof of concept designs, product development, prototyping, molds, tooling, fixtures, various modular assembly components, marketing, sales, and evaluating customer needs and requirements. The trade secrets and confidential and proprietary information developed by A.R.M.S. were not readily available to its competitors or the general public.

12. A.R.M.S. has taken reasonable precautions to protect its trade secrets and the confidentiality of its proprietary information, including but not limited to, requiring its

employees to sign non-disclosure agreements and counseling all new employees with respect to their obligations to maintain confidentiality of A.R.M.S. proprietary information and trade secret information.

13. On June 3, 2002, Mr. Troy, a state police officer, was hired to be an employee of A.R.M.S., and commenced his work on June 28th as a marketing manager/technical adviser. Mr. Troy's responsibilities included, *inter alia*, marketing A.R.M.S.' products to the U.S. Government and other A.R.M.S. customers. Mr. Troy's duties included, but were not limited to, customer training, technical support, and test evaluations. Mr. Troy was also required to have a complete understanding of all of A.R.M.S.' products, product development, actual and potential product lines, and history of how and why each was developed. Mr. Troy had seen and was familiar with the A.R.M.S.' free floating handrail rail system.

14. Troy executed a non-disclosure agreement with A.R.M.S. and was legally bound not to disclose or use A.R.M.S.' proprietary information. As an A.R.M.S. employee, Mr. Troy also had a duty to notify and assign to A.R.M.S. anything he invented or designed while employed by A.R.M.S. During his employment with A.R.M.S., Mr. Troy had access to and became intimately familiar with ARMS' trade secrets and proprietary information including, but not limited to, the various free floating handguard rail system designed by Mr. Swan and A.R.M.S. One of these designs included the yoke clamp which fastened only to the barrel nut and included a lower part removable from the upper part. Mr. Troy also became intimately familiar with A.R.M.S.' other trade secrets containing confidential and

proprietary information, including, but not limited to, A.R.M.S.' marketing efforts to the U.S. Government and other A.R.M.S. customers.

15. Mr. Troy incorporated Troy Industries on January 15, 2003.

16. Mr. Troy was fired from A.R.M.S. as of February 28th, 2003.

17. Unbeknownst to ARMS at the time, five days after Mr. Troy was fired, Troy Industries, under the direction and control of Mr. Troy, conspired to sell the proprietary A.R.M.S. product design for the free floating handguard rail system to an A.R.M.S. customer, the U.S. Government.

18. Mr. Troy even filed his own patent application for a free floating handguard rail system naming himself as the sole inventor. Without knowing the truth, the U.S. Patent Office granted Mr. Troy a patent, U.S. Patent No. 7,216,451, attached hereto as Exhibit 2.

19. The defendants have also interfered with A.R.M.S.' U.S. Patent No. RE39,465 and the defendants even filed a request to reexamine A.R.M.S.' patent asserting that Mr. Swan's free floating handguard rail system was not novel and/or was obvious.

20. Upon information and belief, since at least late December 2003, the defendant, Troy Industries, under the direction and control of Mr. Troy, has manufactured and sold thousands of free floating handguard rail systems that infringe A.R.M.S.' Patent No. RE39,465 and that are based on A.R.M.S.' trade secrets and proprietary information. The

defendants have targeted A.R.M.S.' customers and sold a competing handguard rail system, designed by and stolen from A.R.M.S. Inc.

COUNT I

INFRINGEMENT OF ARMS' U.S. PATENT NO. RE39,465
(AGAINST ALL THE DEFENDANTS)

21. The plaintiff re-states and incorporates paragraphs 1-20 of this Complaint as if set forth fully herein.

22. A.R.M.S. owns all rights, title, and interest in and to U.S. Patent No. RE39,465 which was duly and lawfully issued by the U.S. Patent and Trademark Office.

23. In violation of 35 U.S.C. §§271 the defendants have infringed A.R.M.S.' U.S. Patent No. RE39,465 by making, using, offering for sale, and selling products which infringe the patent.

24. The defendants have had notice of A.R.M.S.' U.S. Patent No. RE39,465 and the defendants' infringement has been and continues to be deliberate, willful, and wanton.

25. The defendants' infringement of A.R.M.S.' U.S. Patent No. RE39,465 patent has injured the plaintiff and caused significant financial damage to the plaintiff. The defendants' infringement will continue to injure the plaintiff and cause the plaintiff to suffer financial damage in an amount to be proven at trial.

26. The defendants will continue to infringe the '465 patent unless such infringement is enjoined by this Court.

COUNT II

MISAPPROPRIATION OF TRADE SECRETS AND
CONFIDENTIAL AND PROPRIETARY INFORMATION
UNDER M.G.L. c. 93, §§42 and 42a
(AGAINST ALL THE DEFENDANTS)

27. The plaintiff re-states and incorporates by reference all the allegations in paragraphs 1-26 of this Complaint as if set forth fully herein.

28. By virtue of his employment with A.R.M.S., Mr. Troy, and Troy Industries under the direction and control of Mr. Troy, had access to the trade secret and confidential and proprietary information of A.R.M.S., including but not limited to, information regarding A.R.M.S. free floating handguard rail system, knowledge of A.R.M.S.' marketing efforts to the U.S. Government and other A.R.M.S.' customers, and the needs and requirements of the A.R.M.S.' customers.

29. Mr. Troy was bound under the Non-Disclosure Agreement not to disclose or use proprietary and confidential information obtained during his employment at A.R.M.S.

30. The defendants unlawfully stole, misappropriated, and converted for their own use A.R.M.S.' trade secrets and proprietary information.

31. Such actions by the defendants were deliberate, willful, and wanton.

32. Any use and disclosure of such information by Mr. Troy and Troy Industries constitutes misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information in violation of M.G.L. c.93, §§42 and 42a.

33. The defendants' misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information has caused significant financial damage to the plaintiff.

34. The defendants' misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information will continue to injure the plaintiff and cause the plaintiff to suffer financial damages unless enjoined by this Court.

COUNT III

MISAPPROPRIATION OF TRADE SECRETS AND CONFIDENTIAL AND PROPRIETARY INFORMATION UNDER COMMON LAW (AGAINST ALL THE DEFENDANTS)

35. The plaintiff re-states and incorporates by reference all the allegations in paragraphs 1-34 of this Complaint as if set forth fully herein.

36. Such action on the part of the defendants also constitutes misappropriation of trade secrets in violation of common law.

37. Such acts by the defendants were deliberate, willful, and wanton.

38. The defendants' misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information has caused significant financial damage to the plaintiff.

39. The defendants' misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information will continue to injure the plaintiff and cause the plaintiff to suffer financial damages enjoined by this Court.

COUNT IV

UNFAIR COMPETITION
(AGAINST ALL THE DEFENDANTS)

40. The plaintiff re-states and incorporates by reference all the allegations in paragraphs 1-39 of this Complaint as if set forth fully herein.

41. By its actions, as set forth above, Mr. Troy and Troy Industries under the direction and control of Mr. Troy have engaged and continue to engage in unfair competition prohibited by common law.

42. The actions by the defendants were deliberate, willful, and wanton.

43. Of the defendants' acts of unfair competition has caused significant financial damage to the plaintiff.

44. The defendants' acts of unfair competition will continue to cause the plaintiff to suffer financial damage unless enjoined by this Court.

COUNT V

VIOLATION OF M.G.L. c.93A
(AGAINST ALL THE DEFENDANTS)

45. The plaintiff restates and incorporates by reference, all of the allegations in paragraphs 1-44 of this Complaint as if set forth fully herein.

46. Troy Industries, under the direction and control of Mr. Troy, is engaged in trade or commerce within the Commonwealth of Massachusetts. The defendants committed unfair methods of competition and deceptive acts or practices in trade or commerce by knowingly and willfully manufacturing and selling free floating handguard rail systems designed by and stolen from A.R.M.S. Such actions constitute unfair and deceptive acts in trade or commerce in violation of M.G.L. c.93A.

47. The defendants' unfair methods of competition and deceptive acts and practices in trade or commerce have caused the plaintiff to suffer financial damage. The defendants' unfair methods of competition and deceptive acts and practices in trade or commerce will continue to injure the plaintiff unless enjoined.

48. The defendants' unfair methods of competition and deceptive acts and practices in trade or commerce have been willful violations.

COUNT VI

BREACH OF CONTRACT
(AGAINST STEPHEN P. TROY, JR.)

49. The plaintiff re-states and incorporates by reference all of the allegations in paragraphs 1-48 of this Complaint as if set forth fully herein.

50. The Non-Disclosure Agreement signed by Mr. Troy constitutes a binding contract.

51. Mr. Troy had a duty to not breach the terms of the Non-Disclosure Agreement.

52. Mr. Troy materially breached the Non-Disclosure Agreement by disclosing and using A.R.M.S.' proprietary information.

53. Mr. Troy's breach of the Non-Disclosure Agreement was deliberate, willful, and wanton.

54. Mr. Troy's breach of contract has caused the plaintiff to suffer financial damage.

55. Mr. Troy's breach of contract will continue to injure the plaintiff unless enjoined by this Court.

COUNT VII

CONVERSION
(AGAINST ALL THE DEFENDANTS)

56. The plaintiff re-states and incorporates by reference all of the allegations in paragraphs 1-55 of this Complaint as if set forth fully herein.

57. A.R.M.S. is the lawful owner of certain property including, but not limited to, A.R.M.S.' free floating handguard rail systems, certain proprietary information and trade secrets concerning the same.

58. The defendants converted A.R.M.S.' property for their own use.

59. Upon information and belief, the defendants' were deliberate, willful and wanton.

60. The defendants' acts have caused the plaintiff to suffer financial damage.

61. The defendants' acts will continue to injure the plaintiff unless enjoined by this Court.

COUNT VIII

BREACH OF FIDUCIARY DUTY
(AGAINST STEPHEN P. TROY, JR.)

62. The plaintiff re-states and incorporates by reference all of the allegations in paragraphs 1-61 in this Complaint as if set forth fully herein.

63. Mr. Troy, as an employee of A.R.M.S., owed a fiduciary duty and a duty of loyalty to A.R.M.S. Mr. Troy breached those duties by, *inter alia*, by disclosing and using A.R.M.S.' product designs and confidential and proprietary information and trade secrets for his own benefit.

64. Mr. Troy's breach was deliberate, willful, and wanton.

65. Mr. Troy's breach of fiduciary duty has caused the plaintiff to suffer financial damages.

66. Mr. Troy's wrongful acts will continue to injure the plaintiff unless enjoined by this Court.

COUNT IX

DETERMINATION OF PRIORITY UNDER 35 U.S.C. §291
(AGAINST STEPHEN P. TROY, JR.)

67. The plaintiff re-states and incorporates by reference all of the allegations in paragraphs 1-66 in this Complaint as if set forth fully herein.

68. A.R.M.S. is the owner of U.S. Patent No. RE39,465.

69. Mr. Troy's U.S. Patent No. 7,216,451 is an interfering patent pursuant to 35 U.S.C. §291.

70. As the owner of U.S. Patent No. RE39,465, A.R.M.S., pursuant to 35 U.S.C. §291, is requesting relief against Mr. Troy that the Court declare U.S. Patent No. 7,216,451 invalid or owned by A.R.M.S.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper, against the defendants:

1. Enter judgment in favor of the plaintiff determining that the defendants infringe U.S. Patent No. RE39,465 in violation of 35 U.S.C. §101, *et seq.*
2. Permanently enjoin Mr. Troy and Troy Industries, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privities with them, from infringing U.S. Patent No. RE39,465.
3. Declare Mr. Troy's U.S. Patent No. 7,216,451 an interfering patent pursuant to 35 U.S.C. §291 and disclose said patent invalid or owned by A.R.M.S.

4. Award the plaintiff monetary damages for patent infringement.
5. Award the plaintiff treble damages and plaintiff's attorney fees for willful infringement of the U.S. Patent No. RE39,465.
6. Award the plaintiff damages arising from the defendants' misappropriation of A.R.M.S.' trade secrets and confidential and proprietary information, defendants' acts of unfair competition, Mr. Troy's breach of contract, Mr. Troy's breach of the fiduciary duty, and the defendants' acts of conversion.
7. Award the plaintiff treble damages for the defendants' willful misconduct as provided by M.G.L. c.93A.
8. Permanently enjoin the defendants from misappropriation of the plaintiff's trade secrets, and confidential and proprietary information.
9. Permanently enjoin the defendants from unfair competition against A.R.M.S.
10. Permanently enjoin the defendants from committing unfair methods of competition and deceptive acts or practices pursuant to M.G.L. c 93A.
11. Permanently enjoin Mr. Troy from breaching the Non-Disclosure Agreement.

12. Permanently enjoin the defendants from converting A.R.M.S.' personal property.
13. Permanently enjoin Mr. Troy from breaching his fiduciary duty to A.R.M.S.
14. Award the plaintiff prejudgment and post-judgment interest, declare this case exceptional and award the plaintiff attorneys' fees, costs and such other and further relief as the Court may deem just and proper.
15. Order the return or destruction of any of A.R.M.S.' trade secrets and confidential and proprietary information in the possession of the defendants, including, but not limited to, all means of infringing A.R.M.S.' U.S. Patent No. RE39,465.

Respectfully submitted,
Attorneys for the plaintiff,
Atlantic Research Marketing Systems,
Inc. (A.R.M.S., INC.)



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