

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Tristar Products, Inc., a Pennsylvania)
 corporation, and Precise Exercise)
 Equipment, Inc., a New Jersey)
 Corporation,)

Plaintiffs,

VS.

E. Mishan & Sons, Inc., a New York corporation)
and)
EMSON, Inc., a New York corporation)

Defendants.

CIVIL ACTION NO. 6:08-CV-162-LED

JURY

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND JURY
DEMAND

Plaintiffs Tristar Products, Inc. (“Tristar”), and Precise Exercise Equipment, Inc. (“Precise”), for their First Amended Complaint against Defendants E. Mishan & Sons, Inc. and EMSON, Inc., allege:

THE PARTIES

1. Tristar is a corporation organized under the laws of the Commonwealth of Pennsylvania with its corporate headquarters located at 720 Centre Avenue, Reading, Pennsylvania.

2. Precise is a corporation organized under the laws of the State of New Jersey with its corporate headquarters located at 145 Route 206, Chester, New Jersey.

3. On information and belief, defendant E. Mishan & Sons, Inc. (“Mishan”) is a corporation organized under the laws of the State of New York with its principal place of business located at 230 Fifth Avenue, Suite 800, New York, New York 10001.

4. On information and belief, defendant EMSON, Inc. (“EMSON”) is a corporation organized under the laws of the State of New York with its principal place of business located at 230 Fifth Avenue, Suite 800, New York, New York 10001. On information and belief, EMSON is a wholly owned subsidiary of E. Mishan & Sons, Inc.

JURISDICTION AND VENUE

5. This is an action for infringement of a United States patent arising under the patent laws of the United States, 35 USC §§1 et. seq. Accordingly, this court has subject matter jurisdiction pursuant to 28 USC §§1331 and 1338(a). The Court has personal jurisdiction over Defendants because each infringes Tristar’s patent by selling, offering for sale, using and/or inducing the sale, offer for sale or use of infringing products in the State of Texas and the Eastern District of Texas.

6. Venue is proper in this judicial district pursuant to the 28 USC §§1391(c) and 1400(b) because EMSON and Mishan, either directly or through its wholly owned subsidiary EMSON, have done business in the Eastern District of Texas including but not limited to the sale and distribution of infringing products in this District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,577,987

[35 USC §271(a)]

7. Plaintiffs incorporate herein the allegations of paragraphs 1 through 6 as though fully set forth herein.

8. On November 26, 1996, United States Patent No. 5,577,987, entitled “Abdominal Exerciser Device,” (the “987 Patent”) was issued. A true and correct copy of the ‘987 Patent is attached hereto as Exhibit A.

9. Plaintiffs are the owner of all right, title and interest in the ‘987 Patent.

10. Upon information and belief, EMSON has infringed and/or is currently infringing the ‘987 Patent by selling and/or offering for sale throughout the United States including, but not limited to, this District or importing into the United States products

including, but not limited to, a product called the “Ab Rocket,” which infringe one or more claims of the ‘987 Patent. EMSON is liable for infringement of the ‘987 Patent pursuant to 35 USC § 271(a).

11. Upon information and belief, Mishan, at a minimum, has authorized, directed, contributed to, and/or controlled EMSON’s infringing activities identified in Paragraph 10. Accordingly, Mishan has infringed and/or is currently infringing the ‘987 Patent by selling and/or offering for sale throughout the United States including, but not limited to, this District or importing into the United States products including, but not limited to, a product called the “Ab Rocket,” which infringe one or more claims of the ‘987 Patent. Mishan is liable for infringement of the ‘987 Patent pursuant to 35 USC § 271(a).

12. Defendants’ infringing actions are without the consent, authority or license of Plaintiffs.

13. Defendants’ infringing actions have damaged Plaintiffs and Plaintiffs are entitled to recover from Defendants such damages in an amount as proved at trial.

14. Defendants’ infringement of the ‘987 Patent will continue to damage Plaintiffs causing irreparable damage to Plaintiffs for which there is no adequate remedy at law, unless enjoined by this Court.

15. Upon information and belief, Defendants have knowledge of their infringement of the ‘987 Patent but have continued to infringe said patent. Consequently, Defendants’ infringement of the ‘987 Patent is willful and deliberate, entitling Plaintiffs under 35 U.S.C. § 284 to increased damages and under 35 U.S.C. § 285 to its attorneys fees and costs.

COUNT II

INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO. 5,577,987

[35 USC § 271(b)]

16. Plaintiffs incorporate the allegations of paragraphs 1 through 15 as though fully set forth herein.

17. On information and belief, EMSON has actively induced and/or is actively inducing others to infringe the '987 Patent by encouraging them to sell, offer to sell and/or use throughout the United States, including but not limited to this District, products including but not limited to the "Ab Rocket," which infringe one or more claims of the '987 Patent. EMSON is liable for inducing infringement of the '987 Patent pursuant to 35 USC § 271(b).

18. Upon information and belief, Mishan, at a minimum, has authorized, directed, contributed to, and/or controlled EMSON's inducing activities identified in Paragraph 17. Accordingly, Mishan has actively induced and/or is actually inducing others to infringe the '987 Patent by encouraging them to sell, offer to sell and/or use throughout the United States including, but not limited to, this District products including, but not limited to, the "Ab Rocket," which infringe one or more claims of the '987 Patent. Mishan is liable for inducing infringement of the '987 Patent pursuant to 35 USC § 271(b).

19. Defendants' infringing actions are without the consent, authority or license of Plaintiffs.

20. Defendants' infringing actions have damaged Plaintiffs and Plaintiffs are entitled to recover from Defendants such damages in an amount as proved at trial.

21. Defendants' infringement of the '987 Patent will continue to damage Plaintiffs causing irreparable damage to Plaintiffs for which there is no adequate remedy at law, unless enjoined by this Court.

22. Upon information and belief, Defendants have knowledge of their infringement of the '987 Patent but have continued to infringe said patent. Consequently, Defendants' infringement of the '987 Patent is willful and deliberate, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to its attorneys fees and costs under 35 U.S.C. § 285.

DEMAND FOR JURY TRIAL

23. Plaintiffs hereby demand a trial by jury of all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request entry of judgment in their favor and against Mishan and EMSON as follows:

- (a) Declaring that Mishan and EMSON have infringed the '987 Patent;
- (b) Permanently enjoining Mishan and EMSON, their respective officers, agents, employees, and those acting in concert with them from infringing the '987 Patent;
- (c) Awarding to Plaintiffs damages adequate to compensate them for Mishan's and EMSON's infringement but in no event less than a reasonable royalty, including enhanced damages pursuant to 35 U.S.C. § 284 together with prejudgment and post-judgment interest;
- (d) Awarding to Plaintiffs their attorneys fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- (e) Awarding to Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: September 2, 2008

Respectfully submitted,

By: /s/ Michael E. Jones
James E. Doroshow (Lead Counsel)
CA State Bar No. 112920
Edward A. Klein
CA State Bar No. 145736
Brian T. Hafter
CA State Bar No. 173151
Robert M. Shore
CA State Bar No. 166018
LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3503
Telephone: (310) 500-3500
Facsimile: (310) 500-3501
Email: jdoroshow@linerlaw.com
Email: eklein@linerlaw.com
Email: bhafter@linerlaw.com
Email: rshore@linerlaw.com

Michael E. Jones
State Bar No. 10929400

Allen Gardner
State Bar No. 24043679
Potter Minton, A Professional Corporation
110 North College, Suite 500
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 583-0846
Email: mikejones@potterminton.com
Email: allengardner@potterminton.com

**Attorneys for Plaintiff
Tristar Products, Inc. and Precise
Exercise Equipment, Inc.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 2, 2008. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Michael E. Jones