

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED-ED4
01 MAY -3 PM 4:31
CLERK
U.S. DISTRICT COURT

EAZYPOWER CORP.)
)
Plaintiff,)
)
v.)
)
VERMONT AMERICAN CORP.,)
)
Defendant,)

01C 3252

Case No.

JUDGE RONALD GUZMAN

Judge:

MAGISTRATE JUDGE KE **DOCKETED**

JURY TRIAL DEMANDED

MAY 07 2001

COMPLAINT

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 U.S.C. §§1-376; for infringement of Plaintiff's trade dress in violation of Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. §1125; for violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§510/1 *et seq.*; and for unfair competition.

2. This Court has jurisdiction of the subject matter of this action under 28 U.S.C. §§1331, 1338(a), 1338(b) and 15 U.S.C. §1121.

3. Venue is predicated upon 28 U.S.C. §§1391(b), 1391(c) and 1400(b), and 735 ILCS §5/2-209.

4. Plaintiff, Eazypower Corporation ("Eazypower"), is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at 4006 W. Belden Avenue, Chicago, Illinois, 60639.

5. Defendant, Vermont American Corporation, ("Vermont") is a corporation organized and existing under the laws of the State of Kentucky, with its principal place of business at 101 South Fifth Street, Louisville, KY 40202

6. Eazypower designs and sells various tools, including a unique flexible extension shaft for use with certain tools, such as a screwdriver.

7. Vermont also sells a flexible extension shaft separately for use with certain tools,

such as portable electric screwdrivers, said shaft sold by Vermont as a "Flexi-shaft Bit Holder" part no. 15468, through stores in Illinois, including Home Depot.

COUNT I
PATENT INFRINGEMENT

8. Paragraphs 1-7 are incorporated herein by reference.

9. On October 31, 1989, United States Letters Patent No. 4,876,929 ("the '929 Patent") entitled "Portable Screw Driver Having Flexible Extension Shaft" issued on an application filed by Mr. Burton Kozak. Eazypower is the owner, by assignment, of the entire right, title and interest in and to the '929 Patent. The '929 Patent is attached hereto as Attachment A.

10. Pursuant to 35 U.S.C. §271, Vermont is directly infringing and actively inducing infringement of claims 1 and 7 of the '929 Patent in this district by selling its "Flexi-shaft Bit Holder" in this District.

11. The infringing acts in this district and elsewhere within the United States are without authorization or license from Eazypower.

12. Vermont has been notified of the '929 patent, but nonetheless continues to infringe, thus committing willful infringement of the '929 Patent in complete disregard of Eazypower's rights.

13. Eazypower had placed, and continues to place, the required statutory notice on all flexible extension shafts sold under the '929 patent.

14. As a result of the foregoing infringing activity of Vermont, Eazypower will suffer irreparable harm unless Vermont is enjoined by this Court.

15. Vermont's conduct renders this an exceptional case under 35 U.S.C. §285

entitling Eazypower to an award of reasonable attorney fees.

COUNT II
VIOLATION OF LANHAM ACT SECTION
43(a), 15 U.S.C. §1125(a)

16. Eazypower hereby incorporates by reference the allegations contained in paragraphs 1-15 as if fully stated herein.

17. Eazypower has expended considerable effort and sums of money in designing, developing, manufacturing, advertising, packaging, distributing and marketing its flexible extension shaft. As a result of Eazypower's activities, both the trade and the public at large have come to identify the trade dress, designations and the nonfunctional design features of the Eazypower's flexible extension shaft with Eazypower and Eazypower's business. The trade dress, designations, and the nonfunctional design features of Eazypower's flexible extension shaft are inherently distinctive and have acquired a secondary meaning associating them with Eazypower and Eazypower's business.

18. Eazypower has not granted Vermont or any person or entities related to Vermont a license or assignment of any rights in the trade dress or nonfunctional design features of the Eazypower flexible extension shaft.

19. Upon information and belief, Eazypower alleges that with full knowledge of and disregard for Eazypower's rights, Vermont has advertised, offered for sale, sold and distributed, in this district and in other locations in the United States, flexible extension shafts having nonfunctional design features, trade dress and/or trademarks confusingly similar to the nonfunctional design features and/or trademarks of Eazypower.

20. Upon information and belief, Vermont has aided and abetted and has knowingly

induced others to offer for sale and sell for profit flexible extension shafts having nonfunctional design features, trade dress and/or trademarks confusingly similar to the nonfunctional design features, trade dress or trademarks of the Eazypower flexible extension shaft, thereby creating the false impression to the public that Vermont's flexible extension shaft is an Eazypower product, originated with, or is backed by Eazypower and its goodwill.

21. Vermont has committed the foregoing acts without the consent of Eazypower or any claim or right, with reckless disregard of Eazypower's rights and the rights of the public and with the intent to deceive the public and the trade, all for the purpose of unjustly enriching Vermont.

22. Vermont's conduct as hereinabove alleged has confused and is likely to confuse the public to Eazypower's detriment and constitutes false designation of origin and false description in violation of Lanham Act Section 43(a), 15 U.S.C. §1125(a). Irreparable harm and injury to Eazypower is imminent as a result of Vermont's conduct and Eazypower is without an adequate remedy at law.

23. Eazypower is further entitled to recover from Vermont damages sustained by Eazypower as a result of Vermont's wrongful acts.

COUNT III
VIOLATION OF THE ILLINOIS UNIFORM
DECEPTIVE TRADE PRACTICES ACT

24. Eazypower hereby incorporates by reference the allegations contained in paragraphs 11-23 as if fully stated herein.

25. Vermont by its acts herein alleged, has willfully, knowingly and intentionally violated the Illinois Uniform Deceptive Trade Practices Act 815 Ill. Compiled Stat. §§510/1 *et*

seq. by passing off its flexible extension shaft as emanating from Eazypower and also causing a likelihood of confusion or misunderstanding by ultimate purchasers of Vermont's flexible extension shaft that it is an Eazypower product, originated with or backed by Eazypower and its goodwill.

COUNT IV

UNFAIR COMPETITION UNDER THE LAW OF ILLINOIS

26. Eazypower hereby incorporates by reference the allegations contained in paragraphs 11-25 as if fully stated herein.

27. Vermont, by its acts herein alleged, has willfully, knowingly and intentionally engaged in unfair competition by palming off its flexible extension shaft as a product emanating from Eazypower so as to cause confusion of the ultimate purchaser of Vermont's flexible extension shaft that it is an Eazypower product, originated with Eazypower or is based by Eazypower and its goodwill.

28. Vermont's actions violate Illinois Common Law pertaining to unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Eazypower prays for judgement against Vermont as follows:

(A) For a finding that Vermont has infringed claims 1 and 7 of U.S. Patent No. 4,876,929; has violated 15 U.S.C. §1125(a) and 815 Ill. Compiled Stat. §§510/1 *et seq.*; has unfairly competed with Eazypower by falsely designating the origin of its flexible extension shaft by making false representations; has infringed Eazypower's trade dress, and by engaging in other acts of unfair competition;

(B) That Vermont, its officers, directors, shareholders, agents, servants, employees and attorneys, and all entities and persons in active concert or participation with Vermont or with

any of the foregoing, be permanently enjoined from:

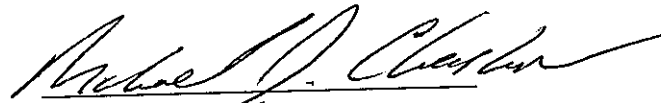
- (1) Making, using or selling any product that infringes U.S. Patent Number 4,876,929;
 - (2) Manufacturing, assembling, importing, selling, offering for sale, or distributing in any manner any product that simulates the non-functional design features or bears trade dress confusingly similar to those of Eazypower's flexible extension shaft;
 - (3) Advertising or otherwise representing, for any purpose, any products whatsoever as emanating from, manufactured by and/or sponsored by Eazypower;
 - (4) Otherwise competing unfairly with Eazypower and from violating Ill. Comp. Stat. §§510/1 *et seq.*;
- (C) For an award of damages suffered by Eazypower including Eazypower's lost profits, and Vermont's profits obtained as a result of its aforesaid acts;
- (D) For an award of three times the amount of compensatory damages, pursuant to 35 U.S.C. §285 and 15 U.S.C. §1117;
- (E) For an award of Eazypower's costs, expenses and reasonable attorney's fees;
- (F) For an award of prejudgement interest;
- (G) For an award of punitive damages;
- (H) For the destruction of all labels, packages or other items which bear trade dress, trademarks or nonfunctional design features confusingly similar to the Eazypower's flexible extension shaft; and
- (I) Any such other and further relief as is warranted and justified by the pleadings and the evidence.

DEMAND FOR JURY TRIAL

Eazypower demands a trial by jury as to all issues triable by jury in this action.

Dated:

May 3, 2007



Michael J. Cherskov
Donald G. Flaynik, Jr.
CHERSKOV & FLAYNIK
The Civic Opera Building
20 N. Wacker Drive
Chicago, IL 60606
TEL: (312) 621-1330
FAX: (312) 621-0088
Attorneys for Plaintiff
Eazypower Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Cut I

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): **EAZYPOWER CORPORATION**

County of Residence: **COOK IL**

Plaintiff's Atty: **Michael J. Cherskov
CHERSKOV & FLAYNIK
20 N. Wacker Dr. Chicago IL
60606
312-621-1330**

Defendant(s): **VERMONT AMERICAN CORPORATION**

County of Residence: **BULLITT KY**

Defendant's Atty:

**DOCKETED
MAY 07 2001**

01C 3252

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

JUDGE RONALD GUZMAN

III. Citizenship of Principle Parties (Diversity Cases Only)

Plaintiff: **-1 Citizen of This State**
Defendant: **-2 Citizen of Another State**

MAGISTRATE JUDGE KEYS

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **830 Patent**

VI. Cause of Action: **Patent Infringement, 35 U.S.C. 1-376, Trade Dress Infringement
15 U.S.C. 1125, Deceptive Trade practices 815 ILCS 510/1 et seq.,
unfair competition**

VII. Requested in Complaint

Class Action:
Dollar Demand:
Jury Demand: **Yes**

VIII. This case **Is NOT** a refiling of a previously dismissed case. (If yes case number)

**FILED-ED4
01 MAY -3 PM 1:31
CLERK
U.S. DISTRICT COURT**

Signature: *Michael J. Cherskov*
Michael J. Cherskov

Date: *May 3, 2001*

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**
Revised: 06/28/00

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

EAZYPOWER CORPORATION V.

VERMONT AMERICAN CORPORATION

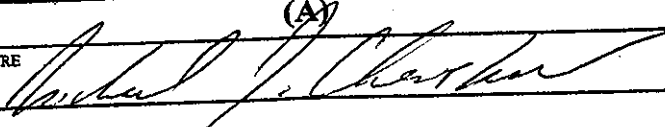
01c 3252
Case Number:

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

EAZYPOWER CORPORATION, Plaintiff

JUDGE RONALD GUZMAN

MAGISTRATE JUDGE KEYS

(A)		(B)	
SIGNATURE 		SIGNATURE DOCKETED MAY 07 2001 U.S. DISTRICT COURT FILED-EDA MAY - 3 PM 4:31	
NAME Michael J. Cherskov		NAME	
FIRM CHERSKOV & FLAYNIK		FIRM	
STREET ADDRESS 20 N. Wacker Dr.		STREET ADDRESS	
CITY/STATE/ZIP Chicago IL 60606		CITY/STATE/ZIP	
TELEPHONE NUMBER 312-621-1330	FAX NUMBER 312-621-0088	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS patents@interaccess.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6198292		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>