

Eastern District of Kentucky  
**FILED**

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

DEC 30 2005

AT COVINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

IMAGEPOINT INC.,	)	
Plaintiff,	)	
v.	)	Case No. 2:05-CV-105
	)	
KEYSER INDUSTRIES, INC., a/k/a	)	Judge William O. Bertelsman
FLORIDA PLASTICS	)	(Magistrate Judge J. Gregory Wehrman)
INTERNATIONAL, INC.	)	
Defendant.	)	JURY DEMANDED
	)	
KEYSER INDUSTRIES, INC., a/k/a	)	
FLORIDA PLASTICS	)	
INTERNATIONAL, INC.	)	
Third Party Plaintiff,	)	
v.	)	
	)	
MARKETING DISPLAYS, INC.,	)	
Third Party Defendant.	)	

PROPOSED SECOND AMENDED COMPLAINT OF IMAGEPOINT INC.  
AND FIRST AMENDED COUNTERCLAIM OF MARKETING DISPLAYS, INC.

Plaintiff, ImagePoint Inc. ("ImagePoint") and Third Party Defendant Marketing Displays, Inc. ("MDI"), for their respective complaint and counterclaim against Defendant/Third Party Plaintiff Keyser Industries, Inc. (a/k/a "Florida Plastics International, Inc.")(hereinafter "Florida Plastics"), allege as follows:

1. This is a Complaint for patent infringement under Title 35 of the United States Code. Subject matter jurisdiction is conferred pursuant to 28 U.S.C. §1338(a) and 35 U.S.C. § 281.

2. ImagePoint, formerly known as Plasti-Line, Inc., is a Tennessee corporation having a principal place of business at 445 S. Gay Street, Suite 100, Knoxville, Tennessee 37902. ImagePoint is and at all times relevant hereto has been in the business of designing, manufacturing, assembling, selling, and installing menupanels and menuboard systems containing such panels for use by fast food restaurants and the like. Since at least 1997, many of ImagePoint's menuboard systems have featured modular, adjustable menupanels which contain a number of generally horizontal dividers,

adjustably mounted on their ends to a frame in vertical spaced-apart relation such as by a snap-fit mechanism. The dividers in turn support multiple menustrips or display members which show, for example, the food/drink offerings of fast food restaurants to people in drive-through lines or at the inside counters. These adjustable, modular menupanel systems enable employees of fast food restaurants to more easily load and change the menustrips, and to accommodate menustrips of varying heights. The menuboard of these modular, adjustable systems may contain as many as six or more adjustable menupanel modules, which may be individually and selectively removed from the menuboard and the arrangement of menustrips therein adjusted without disassembling the menupanel frame (the aforementioned menuboard and associated menupanel modules are referred to herein as "ImagePoint's Modular Adjustable Menuboard Products").

3. MDI is a Michigan corporation having a principal place of business at 38271 W. Twelve Mile Road, Farmington Hills, Michigan, 48331. MDI is and at all times relevant hereto has been in the business of designing, manufacturing, assembling, selling, and installing menupanels and menuboard systems containing such panels for use by fast food restaurants and the like. Since the 1990s, many of MDI's menuboard systems have featured modular, adjustable menupanels which contain a number of generally horizontal dividers, adjustably mounted on their ends to a frame in vertical spaced-apart relation such as by a snap-fit mechanism. The dividers in turn support multiple menustrips or display members which show, for example, the food/drink offerings of fast food restaurants to people in drive-through lines or at the inside counters. These adjustable, modular menupanel systems enable employees of fast food restaurants to more easily load and change the menustrips, and to accommodate menustrips of varying heights. The menuboard of these modular, adjustable systems may contain as many as six or more adjustable menupanel modules, which may be individually and selectively removed from the menuboard and the arrangement of menustrips therein adjusted without disassembling the menupanel frame (the aforementioned menuboard and associated menupanel modules are referred to herein as "MDI's Modular Adjustable Menuboard Products").

4. On information and belief, Florida Plastics is an Illinois corporation having a place of business at 10200 South Kedzie Avenue, Evergreen Park, Illinois. Florida Plastics is and at all times relevant hereto has been in the business of designing, manufacturing, selling, assembling, and installing menupanels and menuboard systems containing such panels for use by fast food restaurants and the like. Since at least 1999, Florida Plastics' menuboard systems have featured modular, adjustable menupanels which contain a number of generally horizontal dividers, adjustably mounted on their ends to a frame in vertical spaced-apart relation such as by a snap-fit mechanism. The dividers in turn support multiple menustrips or display members which show, for example, the food/drink offerings of fast food restaurants to people in drive-through lines or at the inside counters. These adjustable, modular menupanel systems enable employees of fast food restaurants to more easily load and change the menustrips, and to accommodate menustrips of varying heights. The menuboard of these modular, adjustable systems may contain as many as six or more adjustable menupanel modules, which may be individually and selectively removed from the menuboard and the arrangement of menustrips therein adjusted without disassembling the menupanel frame (the aforementioned menuboard and associated menupanel modules are referred to herein as "Florida Plastics' Modular Adjustable Menuboard Products").

5. This action was originally filed in the Eastern District of Tennessee. Upon information and belief, Florida Plastics now has and at all times relevant hereto has had substantial, systematic, and continuous business contacts with the State of Tennessee and with the Eastern District of Tennessee in connection with the sale and installation of Florida Plastics' Modular Adjustable Menuboard Products. In particular, Florida Plastics is conducting and at all times relevant hereto has conducted substantial, systematic, and continuous business with substantially all McDonald's restaurants in the State of Tennessee and in the Eastern District of Tennessee, such business including, but not limited to, selling Florida Plastics' Modular Adjustable Menuboard Products to such McDonalds restaurants and/or installing such Products at such restaurants.

6. This action has now been transferred to the Eastern District of Kentucky. Upon information and belief, Florida Plastics now has and at all times relevant hereto has had substantial, systematic, and continuous business contacts with the State of Kentucky

and with the Eastern District of Kentucky in connection with the sale and installation of Florida Plastics' Modular Adjustable Menuboard Products.

7. This Court has personal jurisdiction over Florida Plastics. Venue is proper in this district under 28 U.S.C. §§1391 and 1400(b).

8. Florida Plastics competes directly with ImagePoint and MDI throughout the United States and in this District in connection with the design, manufacture, sale, assembly, and/or installation of Florida Plastics' Modular Adjustable Menuboard Products vis-a-vis ImagePoint's and MDI's Modular Adjustable Menuboard Products. In particular, Florida Plastics competes directly with ImagePoint and MDI in the sale and installation of their respective Modular Adjustable Menuboard Products to large, nationwide fast food restaurants such as McDonalds in the United States, in Kentucky, and in this District.

9. On or about November 4, 1997, the United States Patent Office issued United States Patent No. 5,682,694 (hereinafter the '694 patent) to MDI as the assignee of the inventor named thereon. The '694 claims filing date priority to Application Serial No. 08/317,690 filed in the United States Patent Office on October 5, 1994. A copy of the '694 patent is attached as Exhibit A.

10. On or about November 16, 1999, the United States Patent Office issued United States Patent No. 5,983,543 (hereinafter the '543 patent) to MDI as the assignee of the inventor named thereon. Like the '694 patent, the '543 claims ultimate filing date priority to the '690 application filed on October 5, 1994. A copy of the '543 patent is attached as Exhibit B.

11. On or about October 3, 2000, the United States Patent Office issued United States Patent No. 6,125,565 (hereinafter the '565 patent) to MDI as the assignee of the inventor named thereon. Like the '694 patent, the '565 claims ultimate filing date priority to the '690 application filed on October 5, 1994. A copy of the '565 patent is attached as Exhibit C.

12. On or about October 9, 2001, the United States Patent Office issued United States Patent No. 6,298,589 (hereinafter the '589 patent) to MDI as the assignee of the inventor named thereon. Like the '694 patent, the '589 claims ultimate filing date

priority to the '690 application filed on October 5, 1994. A copy of the '589 patent is attached as Exhibit D.

13. On or about October 14, 2003, the United States Patent Office issued United States Patent No. 6,631,576 (hereinafter the '576 patent) to MDI as the assignee of the inventor named thereon. Like the '694 patent, the '576 claims ultimate filing date priority to the '690 application filed on October 5, 1994. A copy of the '576 patent is attached as Exhibit E.

14. On or about January 18, 2005, the United States Patent Office issued United States Patent No. 6,843,011 (hereinafter the '011 patent) to MDI as the assignee of the inventor named thereon. Like the '694 patent, the '011 claims ultimate filing date priority to the '690 application filed on October 5, 1994. A copy of the '011 patent is attached as Exhibit F. The aforementioned patents are referred to collectively herein as the "MDI patents".

15. The MDI patents are valid, subsisting, and un-revoked, and all right, title and interest therein is and has at all times relevant hereto been owned by MDI.

16. On or about August 25, 2000, ImagePoint became the exclusive licensee of MDI under the MDI patents and all continuations, divisions, continuation-in-parts, reexaminations, and reissues thereof. By virtue of its exclusive license, ImagePoint received substantially all of the exclusive rights under the MDI Patents including, but not limited to, the exclusive right to grant sublicenses under the MDI patents and the right to bring suit against others for infringement of the MDI patents.

17. The Florida Plastics' Modular Adjustable Menuboard Products infringe at least one claim of each of the MDI Patents.

18. Florida Plastics has actively induced others including, but not limited to, customers of the Florida Plastics' Modular Adjustable Menuboard Products and other manufacturers or suppliers of menuboard and/or menupanel products (or services relating thereto) to manufacture, use, sell or install the Florida Plastics' Modular Adjustable Menuboard Products or other products which infringe at least one claim of at least one of the MDI Patents.

19. Florida Plastics has sold or offered to sell within the United States one or more components of menuboards and/or menupanels which infringe at least one claim of

at least one of the MDI Patents, with knowledge of the fact that such components are or were especially made or especially adapted for use in an infringement of such patent and not a staple item of commerce capable of substantial noninfringing use. In particular and by way of illustration only, Florida Plastics has sold or offered for sale menupanels for use in menuboard which infringe at least one claim of at least one of the MDI Patents, such menupanels constituting a material part of such menuboard, knowing that the menupanels are or were especially made or especially adapted for use in such infringing menuboard and not staple items of commerce capable of substantial noninfringing use.

20. The aforementioned and other acts of Florida Plastics of actively inducing others to infringe the MDI Patents and/or selling or offering to sell components of products that infringe the patents are and have been carried out in Kentucky in this District.

21. Neither MDI nor ImagePoint has granted Florida Plastics any right, license, or other authorization or consent to carry out any of the activities alleged herein or any other activities that would, if unauthorized, constitute infringement, contributory infringement, or active inducement of infringement of the MDI patents under 35 USC § 271, or otherwise violate any rights of MDI or ImagePoint pertaining thereto.

Count I – Infringement of United States Patent No. 5,682,694.

22. ImagePoint hereby restates the averments of paragraphs 1-21 as if fully rewritten herein.

23. Florida Plastics has been and is now engaged in activities which infringe the '694 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '694 patent in violation of 35 U.S.C. §271 (a).

24. Florida Plastics has infringed and is now infringing the '694 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '694 patent.

25. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '694 patent under 35 USC § 271.

26. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '694 patent by Florida Plastics and/or others.

27. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.

Count II – Infringement of United States Patent No. 5,983,543.

28. ImagePoint hereby restates the averments of paragraphs 1-27 as if fully rewritten herein.

29. Florida Plastics has been and is now engaged in activities which infringe the '543 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '543 patent in violation of 35 U.S.C. §271 (a).

30. Florida Plastics has infringed and is now infringing the '543 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '543 patent.

31. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '543 patent under 35 USC § 271.

32. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '543 patent by Florida Plastics and/or others.

33. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.

Count III – Infringement of United States Patent No. 6,125,565.

34. ImagePoint hereby restates the averments of paragraphs 1-33 as if fully rewritten herein.

35. Florida Plastics has been and is now engaged in activities which infringe the '565 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '565 patent in violation of 35 U.S.C. §271 (a).

36. Florida Plastics has infringed and is now infringing the '565 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '565 patent.

37. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '565 patent under 35 USC § 271.

38. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '565 patent by Florida Plastics and/or others.

39. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.



Count IV – Infringement of United States Patent No. 6,298,589.

40. ImagePoint hereby restates the averments of paragraphs 1-39 as if fully rewritten herein.

41. Florida Plastics has been and is now engaged in activities which infringe the '589 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '589 patent in violation of 35 U.S.C. §271 (a).

42. Florida Plastics has infringed and is now infringing the '589 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '589 patent.

43. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '589 patent under 35 USC § 271.

44. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '589 patent by Florida Plastics and/or others.

45. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.

Count V – Infringement of United States Patent No. 6,631,576.

46. ImagePoint hereby restates the averments of paragraphs 1-45 as if fully rewritten herein.

47. Florida Plastics has been and is now engaged in activities which infringe the '576 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics'

Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '576 patent in violation of 35 U.S.C. §271 (a).

48. Florida Plastics has infringed and is now infringing the '576 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '576 patent.

49. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '576 patent under 35 USC § 271.

50. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '576 patent by Florida Plastics and/or others.

51. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.

Count VI – Infringement of United States Patent No. 6,843,011.

52. ImagePoint hereby restates the averments of paragraphs 1-51 as if fully rewritten herein.

53. Florida Plastics has been and is now engaged in activities which infringe the '011 patent. In particular, Florida Plastics has been and/or is now making, using, selling and/or offering to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '011 patent in violation of 35 U.S.C. §271 (a).

54. Florida Plastics has infringed and is now infringing the '011 patent under 35 USC § 271(b) by reason of the fact that Florida Plastics has actively induced and/or is actively inducing others to make, use, sell, and/or offer to sell products including, but not limited to, the Florida Plastics' Modular Adjustable Menuboard Products, which infringe one or more of the claims of the '011 patent.

55. By reason of the acts alleged herein, Florida Plastics has contributorily infringed and/or is now contributorily infringing the '011 patent under 35 USC § 271.

56. The acts of Florida Plastics complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute, actively induce, and/or contribute to infringement of the '011 patent by Florida Plastics and/or others.

57. The acts of Florida Plastics complained of herein are continuing in nature and will continue unless and until enjoined and restrained by this Court. Moreover, ImagePoint has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which ImagePoint has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ImagePoint and Third Party Defendant MDI pray for and urge this Court to grant the following relief:

1. That the Court find and declare each of the MDI patents infringed by Florida Plastics.

2. That Florida Plastics and its agents, servants, attorneys, and all those in privity or active participation with Florida Plastics as well as those who receive actual or constructive notice of the order be enjoined pursuant to 35 U.S.C. §283 during the pendency of this action and permanently thereafter from and against any and all acts that directly or indirectly infringe any of the MDI patents including, but not limited to, making, using, selling, or offering to sell the Florida Plastics' Modular Adjustable Menuboard Products, and any and all other menupanel, menuboard, or other products falling within the scope of any of the claims of any of the MDI patents in violation of 35 USC § 271(a), and from and against any and all acts that actively induce and/or contribute to the infringement of any of the claims of the MDI patents by others in violation of 35 USC § 271(b) and/or (c), respectively.

3. That Florida Plastics be required to pay damages to ImagePoint and MDI under 35 USC § 284 for each of the acts of Florida Plastics in violation of 35 USC § 271(a), (b), and/or (c), together with interest and costs as fixed by the Court, and that the damages be trebled.

4. That the Court find this to be an exceptional case under 35 U.S.C. § 285 and, as a result, order Florida Plastics pay the reasonable attorneys fees and expenses of ImagePoint and MDI .

5. That ImagePoint and MDI have such other and further relief as this Court deems just.

JURY DEMAND

ImagePoint and MDI demand a trial by jury on all issues in this case that may be tried to a jury.

Respectfully submitted,

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