

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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FOREVER GREEN HOLDINGS LLC,	:	
	:	
Plaintiff,	:	Civil Action No. 1:06-cv-01541-JGK
	:	ECF CASE
v.	:	
	:	
DARD PRODUCTS, INC. D/B/A	:	<u>JURY DEMANDED</u>
TAGMASTER,	:	
	:	
Defendant.	:	
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COMPLAINT

Plaintiff, Forever Green Holdings LLC, by its undersigned attorneys, for its Complaint against Defendant, Dard Products, Inc. d/b/a Tagmaster, alleges:

JURISDICTION AND VENUE

1. This cause of action arises under the Patent Laws of the United States, 35 U.S.C. §101 et. seq.
2. Jurisdiction of the subject matter of this action is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(c)

THE PARTIES

4. Plaintiff, Forever Green Holdings LLC (hereinafter “Forever Green” or “Plaintiff”), is a New Jersey limited liability company having a principal, regular and established place of business at 117 Fort Lee Road, Unit A-11, Leonia, NJ 07605.

5. Upon information and belief, Defendant Dard Products, Inc. d/b/a Tagmaster (hereinafter “Dard” or “Defendant”), is an Illinois corporation having a principal, regular and

established place of business at 912 Custer Avenue, Evanston, IL 60202-1897.

6. Upon information and belief, Defendant transacts business within this district, derives substantial revenue from intrastate and interstate commerce, including commerce between Illinois and the City and State of New York, and has committed tortious acts of patent infringement within this district and also without this district having injurious consequences within this district, and Defendant is otherwise within the jurisdiction of this Court.

7. In particular, upon information and belief, Defendant is advertising and offering for sale, and possibly selling into this district a product that infringes upon at least one claim of Plaintiff's United States Patent No. 6,979,143, as is more thoroughly described below, and/or is actively doing business in this district and thereby is, and has been, regularly availing itself of the benefits of doing business in this district.

COUNT I
PATENT INFRINGEMENT

8. Plaintiff re-alleges all of the foregoing paragraphs, as if fully set forth herein.

9. Plaintiff is the owner of United States Patent No. 6,979,143, for the invention entitled "Carabiner Writing Instrument," duly issued by the United States Patent and Trademark Office on December 27, 2005 (hereinafter "the '143 patent"). Upon information and belief, the '143 patent has at all times been valid, enforceable and subsisting.

10. Defendant is a supplier of products to the promotional products industry. Defendant, and companies like Defendant (hereinafter "promotional products companies"), typically provide a selection of products (pens, flashlights, mugs, shirts, key chains, note pads, and a myriad of other common products) to their customers for their customers to buy in bulk (ten (10), fifty (50) or even hundreds at a time) and distribute to their own customers. Prior to such sales by these promotional

products companies, the promotional products companies brand the product(s) selected by their customer with any information wanted by the customer; but usually such information is the name, logo, slogan, address, website location, etc. of the customer's business. Such distribution by these customers of the promotional products company is usually for free to its customers; as, for example, pens handed out with a bank's name for free to the bank's customers.

11. Defendant advertises its services and promotes and offers for sale its products on its website, and sells these products through its website, such website having the web address <http://tagmaster.mysupplierwebsite.com>.

12. Upon information and belief, Defendant also promotes its services and offers its products for sale and actually sells its products to its customers through catalogs.

13. Plaintiff is in the same industry as Defendant, although Plaintiff's role in the industry is slightly different from that of Defendant. Plaintiff's customers are companies like Defendant; i.e., Plaintiff is the supplier of un-branded bulk products to the promotional products companies, of which Defendant is a group. However, Defendant is not, at the time of the commencement of this action, a customer of Plaintiff.

14. Since Plaintiff's '143 patent issued, or as soon as practicably possible thereafter, Plaintiff has regularly and continuously marked its products covered by the '143 patent with notice of the '143 patent, pursuant to the patent marking provisions of the Patent Laws of the United States, 35 U.S.C. §101 et. seq. Upon information and belief, Defendant is advertising and/or offering for sale and/or selling in the United States and this judicial district, a pen that infringes at least one claim of the '143 patent.

15. Defendant was served with a notice letter date January 26, 2006, informing it that its

product advertised, offered for sale and sold under Item No. DP-35 infringed Plaintiff's '143 patent. Defendant therefore had full knowledge of the patent rights of Plaintiff in the '143 patent at least as early as the January 26, 2006 notice date, but has continued to advertise and/or offer for sale and/or sell its products in the United States, and in this judicial district, which products infringe at least one claim of the '143 patent.

16. All of the acts of Defendant are without the permission, license or consent of Plaintiff and, if allowed to continue, will cause irreparable injury to Plaintiff, unless enjoined by the Court.

17. Defendant has been unjustly enriched and Plaintiff is entitled to an accounting and award of damages, interest, attorneys' fees and costs.

18. Defendant's acts of infringement have been willful, wanton and exceptional, thereby subjecting Defendant to an award of enhanced damages.

19. Defendant's foregoing activities have damaged Plaintiff in an amount as yet unknown, but if Defendant's foregoing activities continue, Plaintiff believes damages will exceed the sum of at least \$250,000, but will likely be far higher.

COUNT II
INDUCEMENT AND/OR CONTRIBUTORY INFRINGEMENT

20. Plaintiff re-alleges all of the foregoing paragraphs, as if fully set forth herein.

21. Defendant by its acts is inducing infringement and/or contributorily infringing at least one claim of the '143 patent.

JURY DEMAND

22. Plaintiff hereby demands trial by jury.

PRAYER

WHEREFORE, Plaintiff prays for a judgment, including:

- A. A declaration that Defendant's products infringe Plaintiff's '143 patent, and that such infringement is, and was, willful;
- B. An accounting and award for damages, interest, attorneys' fees and costs of this action;
- C. An award of treble damages for Defendant's willful infringement of Plaintiff's patent;
- D. A permanent injunction against Defendant, prohibiting the continuance of their infringing activities, including but not limited to, advertising, offering for sale, importing into the U.S. and/or selling the infringing products;
- E. An immediate recall of all catalogs and/or flyers and/or any other advertising or promotional materials containing the infringing products, if any; and
- F. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Dated: February 23, 2006

S/Michael R. Gilman
Michael R. Gilman (MG 7608)