

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA (TAMPA)

LUIS MEDINA and
EVATECH, INC.

Plaintiffs,

v.

Case No: 8:10-cv-02134-EAK-AEP

JOHN WRIGHT, ANDREW BERRY and
KELLI BERRY,

Defendants,

_____ /

AMENDED COMPLAINT

Plaintiffs LUIS MEDINA and EVATECH, INC. sue Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY and allege:

GENERAL ALLEGATIONS

1. This is a cause of action for damages and for injunctive relief.
2. Plaintiff, LUIS MEDINA is a resident of Florida. Plaintiff, EVATECH, INC. is a Florida corporation, with its principal place of business in Florida. Defendant JOHN WRIGHT is a resident of Mississippi. Defendants ANDREW BERRY and KELLI BERRY are residents of Georgia. The amount in controversy, without interest, exceeds the sum specified by 28 U.S.C. §1332.
3. In addition, this action arises under a federal statute, namely, 35 U.S.C. § 271.
4. Plaintiffs have retained the services of the undersigned attorneys and are obligated to pay a reasonable attorney's fee to said attorneys.
5. All conditions precedent to this action have occurred or have been waived.

COUNT I
PATENT INFRINGEMENT

6. All general allegations are realleged.

7. Plaintiffs LUIS MEDINA and EVATECH, INC. own and/or hold two U.S. patents on a Hybrid Remote Control Lawnmower, patent numbers (7318493, 7677344).

8. On or about December 4, 2008 Defendant JOHN WRIGHT purchased a Hybrid Remote Control Lawnmower from Plaintiff EVATECH, INC. A copy of the invoice for this purchase is attached hereto as Exhibit "A."

9. Soon thereafter, Defendant JOHN WRIGHT became an authorized dealer of Plaintiff EVATECH, INC.'s products. Defendant JOHN WRIGHT built his own personal business called: Southern RobotX with a website of remotemower.com. Defendant, JOHN WRIGHT (Southern RobotX) knowingly and intentionally represented patented products of Plaintiffs as his own. He renamed Plaintiff EVATECH, INC.'s products and posted numerous ads and webpages on the Internet advertising the Hybrid Remote Control Lawnmower for sale.

10. Defendant, JOHN WRIGHT infringed on the two patents by copying, attempting to sell and by selling the EVATECH, INC. Hybrid Remote Control Lawnmower as his own ("knock-off units").

11. Defendant JOHN WRIGHT used EVATECH, INC. photos and videos to sell knock-off units to Charles Blackwell. A copy of the email transaction for this sale is attached hereto as Exhibit "B." A copy of photos comparing the genuine EVATECH, INC. product with what Charles Blackwell received is attached hereto as Exhibit "C."

12. Defendant JOHN WRIGHT used EVATECH, INC. photos and videos to sell knock-off units to Jason Van Jaarsveld. A copy of the email transaction for this sale

is attached hereto as Exhibit "D." A copy of the purchase order is attached hereto Exhibit "E."

13. Defendant, JOHN WRIGHT used EVATECH, INC. photos and videos to sell knock-off units to Thomas Ebert and Ricardo Valencia. These individuals contacted Plaintiff LUIS MEDINA and were advised to cancel their orders which they did.

14. Defendants ANDREW and KELLI BERRY assisted Defendant JOHN WRIGHT in his efforts to manufacture and sell knock-off units. Defendants ANDREW and KELLI BERRY also marketed and, upon information and belief, sold knock-off units of EVATECH, INC. products.

15. Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY knowingly and intentionally copied and offered for sale knock-off units of EVATECH, INC. products. Photos of the infringed copy of the EVATECH, INC. Hybrid Remote Control Lawnmower are attached hereto as Exhibits "F" and "G." Photos of the infringed copy of the Hybrid Remote Control Lawnmower and Defendant JOHN WRIGHT are attached hereto as Exhibits "H" and "I". Videos of Defendant JOHN WRIGHT, demonstrating the infringed copy of the Hybrid Remote Control Lawnmower is attached hereto as Exhibit "J."

16. A photo of the infringed copy of the EVATECH, INC. Hybrid Remote Control Lawnmower with tracks, is attached hereto as Exhibit "K." This exhibit also illustrates the name of Defendant JOHN WRIGHT as it was downloaded from his Facebook account. A brochure showing genuine EVATECH, INC. products for residential use is attached hereto as Exhibit "L." A brochure showing genuine EVATECH, INC. products for commercial use is attached hereto as Exhibit "M."

17. Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY have infringed on U.S. patent 7318493 pertaining to claims 1, 2, 3, 5, 6 and 7. A copy of the patent 7318493 claims is attached hereto as Exhibit "N."

18. Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY have infringed on U.S. patent 7677344 pertaining to claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 21 and 34. A copy of patent 7677344 is attached hereto as Exhibit "O."

19. Defendants JOHN WRIGHT, ANDREW and KELLI BERRY have shared and provided trade secrets, proprietary information and U.S. patent information pertaining to the patents to various individuals and companies. A copy of comments posted by Defendants ANDREW and KELLI BERRY to Plaintiff EVATECH, INC.'s Youtube account is attached hereto as Exhibit "V."

WHEREFORE, Plaintiffs EVATECH, INC. and LUIS MEDINA demand entry of judgment against Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY for damages, injunctive relief to prevent the manufacture, display, demonstration, marketing and sale of the knock-off products and the use of trade secrets, proprietary information and U.S. patent information, prejudgment interest, attorneys fees, costs of this action, jury trial of all issues so triable and other relief as may be appropriate.

COUNT II
THEFT OF INTELLECTUAL PROPERTY AND TRADE SECRETS

20. All general allegations are realleged as are the allegations of Count I herein.

21. Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY obtained intellectual property and trade secrets of Plaintiffs regarding the Hybrid Remote Control Lawnmower from business conversations, emails, marketing materials and

product demonstrations. They used that information without the permission of Plaintiffs, to market and sell knock-off units of the Hybrid Remote Control Lawnmower.

WHEREFORE, Plaintiffs EVATECH, INC. and LUIS MEDINA demand entry of judgment against Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY for damages, injunctive relief to prevent the manufacture, display, demonstration, marketing and sale of the knock-off products and the use of trade secrets, proprietary information and U.S. patent information, prejudgment interest, attorneys fees, costs of this action, jury trial of all issues so triable and other relief as may be appropriate.

COUNT III
LIBEL AND SLANDER

22. All general allegations are realleged.

23. Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY have published false and defamatory statements of and concerning Plaintiffs EVATECH, INC. and LUIS MEDINA without reasonable care as to the truth or falsity of those statements. Examples include:

24. Defendant JOHN WRIGHT posted a blog on the Internet defaming Plaintiffs EVATECH, INC. and LUIS MEDINA. He made false claims about the quality of products, customer service and reputation. He made numerous posts to the Internet on feedback sites, information sharing sites as well as the EVATECH, INC. website and email accounts. A copy of a selection of the Internet blog websites of Southern RobotX are attached hereto as Exhibits "P" and "Q." A still screen print copy of the Youtube.com site created by Defendant JOHN WRIGHT is attached hereto as Exhibit "R."

25. Defendants ANDREW and KELLI BERRY posted messages on the Internet defaming the Plaintiffs EVATECH, INC. and LUIS MEDINA. They emailed

and telephoned EVATECH, INC. shareholders, dealers and customers defaming Plaintiffs. They made numerous personal attacks on Plaintiff LUIS MEDINA. They made false claims about the originality and quality of product, customer service, business ethics and reputation of Plaintiffs. Defendants ANDREW and KELLI BERRY also made numerous posts to information sharing sites on the Internet as well as the EVATECH, INC. website and email accounts.

26. A copy of messages sent from Defendants ANDREW and KELLI BERRY to the Youtube.com account of Plaintiff LUIS MEDINA is attached hereto as Exhibit "S." A copy of messages sent from Defendants ANDREW and KELLI BERRY to the email addresses of Plaintiff MEDINA and an EVATECH, INC. client is attached hereto as Exhibit "T." A copy of messages sent from Defendants ANDREW and KELLI BERRY to the email addresses of Plaintiff LUIS MEDINA and EVATECH, INC.'s United Kingdom dealer is attached hereto as Exhibit "U."

WHEREFORE, Plaintiffs EVATECH, INC. and LUIS MEDINA demand entry of judgment against Defendants JOHN WRIGHT, ANDREW BERRY and KELLI BERRY for damages, injunctive relief, prejudgment interest, costs of this action, jury trial of all issues so triable and other relief as may be appropriate.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: John Wright, 304 S. Central Avenue, New Albany, MS 38652, Andrew Berry and Kelly Berry, 139 Hidden Creek Drive, Canton, GA 30114.

/s/ Gregory J. Orcutt
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