

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

*ELECTRONICALLY FILED*

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**POLYLOK, INC. and PETER GAVIN AND  
MICHAEL N. DELGASS, AS TRUSTEES OF  
THE PETER GAVIN SPRAY TRUST,**

**Plaintiffs,**

**v.**

**BEAR ONSITE, LLC**  
55 Thompson Way  
Somerville, Tennessee 38068

**Serve:** Theo B. Terry, III  
55 Thompson Way  
Somerville, TN 38068  
(Registered Agent for Service of Process)

**PROMOLD & TOOL, LLC**  
1616 E. Rockford Lane  
Louisville, Kentucky 40216

**Serve:** Charles W. Dobbins, Jr.  
1400 One Riverfront Plaza  
Louisville, Kentucky 40222  
(Registered Agent for Service of Process)

**MICHAEL JAY HORNBACK,**  
1616 E. Rockford Lane  
Louisville, Kentucky 40216

**Defendants.**

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**Civil Action No. 3-12-cv-535-S**

**Jury Trial Demanded**

**COMPLAINT**

Plaintiffs, Polylok, Inc. and The Peter Gavin Spray Trust, of which Peter Gavin and  
Michael N. Delgass are the Trustees, for their Complaint against Defendants, Bear Onsite, LLC,

Promold & Tool, LLC and Michael J. Hornback, allege:

1. This is an action for patent infringement, arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, in particular 35 U.S.C. §§ 271 and 281. This is also an action arising under the laws of the State of Wisconsin for breach of contract, and under the laws of the Commonwealth of Kentucky (“State”) for common law unjust enrichment and unfair competition. This Court has subject matter jurisdiction under 35 U.S.C. § 281, and 28 U.S.C. §§ 1331, 1338(a), and 1367(a).

### **THE PARTIES AND VENUE**

2. Polylok, Inc. (“Polylok”) is a Connecticut corporation with its principal place of business at 3 Fairfield Boulevard, Wallingford, Connecticut 06492.

3. The Peter Gavin Spray Trust, of which Peter Gavin and Michael N. Delgass are the trustees, is a Connecticut trust pursuant to an agreement dated May 26, 2004, by and between Norman W. Gavin as Grantor and Peter Gavin and Michael N. Delgass as trustees. Trustee Peter Gavin is a resident of Durham, Connecticut, and Trustee Michael N. Delgass is a resident of Weston, Connecticut.

4. Bear Onsite, LLC (“Bear Onsite”) is, on information and belief, a Tennessee limited liability company with its principal place of business at 55 Thompson Way, Somerville, Tennessee 38068.

5. Promold & Tool, LLC (“Promold”) is, on information and belief, a Kentucky limited liability company with its principal place of business at 1616 E. Rockford Lane, Louisville, Kentucky 40216.

6. Michael Jay Hornback (“Hornback”) is, on information and belief, a resident of Louisville, Kentucky and is an owner and employee of Promold.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(b) and 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred here.

8. Bear Onsite is a company subject to personal jurisdiction in this judicial district because Bear Onsite transacts business in this State or supplies infringing goods into this State, and committed tortious conduct in this State.

9. Promold is a company subject to personal jurisdiction in this judicial district because Promold is a resident of this State, has entered a contract to be performed in this State, solicited business in this State, and committed tortious conduct in this State.

10. Hornback is an individual subject to personal jurisdiction in this judicial district because he is a resident of this State, who regularly does business in this State, and who has committed a tortious act inside the State causing injury to Plaintiffs and should reasonably expect the act to have consequences in this State.

### **FACTS**

11. Polylok began almost thirty years ago in the business of precast, drainage and wastewater products. As a part of its product offerings, Polylok provides wastewater filters and water level control alert devices throughout the United States.

12. On October 10, 2000, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,129,837 ("the '837 patent"), entitled "Waste Water Treatment Filter Including Waste Water Level Control Alert Device." A true and correct copy of the '837 patent is attached to this Complaint as Exhibit A. Through an assignment, recorded in the U.S. Patent and Trademark Office on April 17, 2006, at Reel 017480, Frame 0186, The Peter W. Gavin Spray Trust, owns all right, title and interest in and to the '837 patent, including the right

to redress all past and present infringements of the '837 patent. The '837 patent is in full force and effect, with all necessary fees having been paid.

13. Through an Asset Purchase Agreement ("the APA") entered on March 15, 2007, Polylok purchased the assets of Bluegrass Environmental Septic Technology, LLC's ("B.E.S.T.") high-quality effluent septic filter business, including the '837 patent. A true and correct copy of the Asset Purchase Agreement is attached to this Complaint as Exhibit B.

14. B.E.S.T. was a Wisconsin limited liability company whose members included Hornback.

15. Par. 13 of the APA included a covenant not to compete whereby the members of B.E.S.T., including Hornback, agreed:

For a period of five (5) years following the Effective Date, Seller and Michael J. Hornback . . . covenant and agree that ***they shall not, directly or indirectly, own, operate, or be employed by any business which manufactures or sells any effluent septic filter,*** the rights to which are owned by such business doing the manufacturing or selling, which effluent septic filter competes with the Filter within the United States.

16. As President of B.E.S.T., Hornback signed and agreed to the APA.

17. Individually and as a member of B.E.S.T., Hornback signed and agreed to Par. 13 of the APA, the covenant not to compete.

18. On January 1, 2007, Polylok also entered into a Consulting Agreement with Promold whereby Promold would assist and consult with Polylok regarding the effluent septic filter being purchased from B.E.S.T. A true and correct copy of the Consulting Agreement is attached to this Complaint as Exhibit C.

19. Hornback is President and a member of Promold and signed the Consulting Agreement on behalf of Promold.

20. After consulting with Polylok and selling the effluent septic filter business to Polylok, and agreeing not to compete with Polylok, upon information and belief, Hornback, operating as Promold, continues to manufacture effluent septic filters and compete with Polylok. Those activities caused and will cause injury to Polylok in Connecticut.

21. Upon information and belief, Hornback manufactures effluent septic filters for Bear Onsite.

22. Upon information and belief, Bear Onsite conducts business in or sells effluent septic filters and water level control alert devices through its website, [www.bearonsite.com](http://www.bearonsite.com), and various distributors throughout the United States.

23. Upon information and belief, Bear Onsite's infringing effluent septic filters and water level control alert devices are respectively marketed and sold under the names ML3-916 effluent filter and BO-VRS Vertical Reed Switch alarm.

24. Upon information and belief, through various means, including its website and distributors, Bear Onsite sells and offers for sale in the United States its ML3-916 effluent filter and BO-VRS Vertical Reed Switch alarm that infringe the '837 patent. A true and correct copy of a Bear Onsite sales brochure is attached to this Complaint as Exhibit D.

#### **COUNT I – PATENT INFRINGEMENT AGAINST BEAR ONSITE**

25. Plaintiffs incorporate paragraphs 1 through 24 as if fully set forth herein.

26. Bear Onsite, without Plaintiffs' authorization, is engaged in this judicial district and elsewhere in the United States in the manufacture and/or use and/or offering for sale and/or sale of its "ML3-916 effluent filter and BO-VRS Vertical Reed Switch alarm" and/or is contributing to and/or actively inducing others to engage in such activities, in infringement of the '837 patent and in violation of one or more sub-paragraphs of 35 U.S.C. § 271.

27. Bear Onsite's infringing acts have damaged, and are continuing to damage Plaintiffs, and unless the Court preliminarily and permanently enjoins those acts, Bear Onsite will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law, entitling Plaintiffs to injunctive relief under 35 U.S.C. § 283 and damages under 35 U.S.C. § 284.

## **COUNT II – BREACH OF CONTRACT AGAINST HORNBACK**

28. Plaintiffs incorporate paragraphs 1 through 27 as if fully set forth herein.

29. Hornback agreed not to compete with Polylok in the effluent septic filter business for a period of five years.

30. Hornback directly or indirectly owns, operates or is employed by a business which manufactures or sells effluent septic filters which compete with Polylok's effluent septic filters.

31. Hornback failed to abide by the agreed covenant not to compete and breached his contract with Polylok.

32. Polylok was damaged, and will continue to be damaged, by Hornback's breach of contract.

## **COUNT III – UNJUST ENRICHMENT AGAINST HORNBACK AND PROMOLD**

33. Plaintiffs incorporate paragraphs 1 through 32 as if fully set forth herein.

34. Hornback and Promold have benefited from their unlawful use of Polylok's intellectual property, and technology.

35. Hornback and Promold unjustly have not compensated Polylok for this benefit to Polylok's detriment.

36. As a direct result of these actions, Hornback and Promold have been unjustly enriched and have benefited to Polylok's detriment in an amount not yet fully ascertained. In addition, Hornback's and Promold's unjust enrichment has irreparably harmed and will continue to irreparably harm Polylok in ways and extents that are not fully compensable in monetary damages.

**COUNT IV – COMMON LAW UNFAIR COMPETITION  
AGAINST HORNBACK AND PROMOLD**

37. Plaintiffs incorporate paragraphs 1 through 36 as if fully set forth herein.

38. The aforementioned activities of Hornback and Promold constitute unfair competition in violation of the common law of the Commonwealth of Kentucky.

39. Upon information and belief, Hornback's and Promold's use of Polylok's intellectual property, and technology was in bad faith and willful disregard of Polylok's rights, with intent to divert customers and revenues from Polylok.

40. The aforementioned actions and activities of Hornback and Promold have caused and will continue to cause Polylok irreparable harm unless and until such time as they are enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Polylok prays for this relief:

- A. A judgment that Bear Onsite has infringed the '837 patent;
- B. A judgment requiring Bear Onsite to pay damages adequate to compensate Polylok for its infringement of the '837 patent, pursuant to 35 U.S.C. § 284, including an accounting;
- C. A preliminary and permanent injunction barring Bear Onsite and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with it, from further infringement of the '837 patent pursuant to 35 U.S.C. § 283;

- D. A preliminary and permanent injunction barring Hornback from further breaches of the Asset Purchase Agreement;
- E. An award to Polylok of damages caused by Hornback's breach of the Asset Purchase Agreement;
- F. A preliminary and permanent injunction barring Hornback and Promold from further act of unfair competition;
- G. An award to Polylok of damages cause by Hornback's and Promold's acts of unfair competition;
- H. A preliminary and permanent injunction barring Defendants from the use of Polylok's intellectual property and technology;
- I. An award to Polylok of its costs in connection with this action;
- J. An award to Polylok of pre-judgment and post-judgment interest on its damages;
- K. An award to Polylok of its reasonable attorney's fees in connection with this action; and
- L. Such other and further relief as the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs request trial by jury of all claims and issues so triable under law.

/s/ Reva D. Campbell

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