

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF MARYLAND
(Northern Division)

2012 SEP 10 PM 2:15

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BY ACT DEPUTY

COSMO FILMS, INC.
775 W. Belden Ave., Suite D
Addison, IL 60601,

Plaintiff,

vs.

Civil Action No.

CCB 12 CV 2691

Kangde Xin America LLC
a/k/a KDX America, LLC
8880 Mistletoe Drive, Suite 201
Easton, MD 21601,

Serve on:
Resident Agent
Ramon Gras
Hollis, Cronan, Fronk & Gras, P.A.
208 E. Dover St.
Easton, MD 21601,

Defendant.

* * * * *

COMPLAINT

Plaintiff, Cosmo Films, Inc., by and through its attorneys, and as and for its Complaint, avers as follows:

This is an action for patent infringement of United States Patent No. 5,626,969 (the '969 patent) arising under the patent laws of the United States Title 35, U.S.C. §271; for tortious interference with prospective business advantage, and for unlawful taking of trade secrets and breach of a confidential relationship in violation of the Maryland Uniform Trade Secrets Act,

Md. Code Ann., Com. Law §§11-1201, *et seq.* The amount in controversy exclusive of interest and costs exceeds the sum of the value of \$75,001.

PARTIES

1. Plaintiff Cosmo Films, Inc. (sometimes referred to as “Cosmo”) is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 775 W. Belden Ave., Suite D, Addison, IL 60101. .

2. Upon information and belief Defendant Kangde Xin America LLC (hereinafter sometimes referred to as “KDX”) is a limited liability company organized under the laws of the state of Maryland having its principal place of business at 8880 Mistletoe Dr., Easton MD 21601.

3. Upon information and belief, KDX has transacted business within the judicial district for its gain and benefit and is subject to the jurisdiction of this court.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims Cosmo is asserting under 28 U.S.C. §§ 1331, 1332(a), 1338(a) and (b) and 1367(a). Venue is proper under 28 U.S.C. §§ 1391(b) and 1400(b).

COUNT I – PATENT INFRINGEMENT

5. Each of the preceding paragraphs (1) through (4) is incorporated as if fully set forth herein.

6. As a cause of action and ground for relief, Cosmo alleges patent infringement by KDX under 35 U.S.C. § 271, and incorporates ¶¶ (1) through (4) of the Complaint as a part of this count.

7. Cosmo is the owner, by assignment, of Joson United States Letters Patent No. 5,626,969, titled Method of Manufacturing Film for Lamination (hereinafter "the '969 patent"). A true and correct copy of the '969 patent is attached hereto as Exhibit A. The claims of the '969 patent are valid and enforceable.

8. The claims of the '969 patent cover, *inter alia*, a method of manufacturing a soft cover book including the step of forming a soft cover for the book by providing a length of flexible paper material having a thickness which is susceptible to moisture induced corner curl and applying to only one side of the length of paper material a nylon film having substantially equivalent ambient moisture absorption as the flexible paper to prevent moisture induced corner curl of the soft cover for the book.

9. The claims of the '969 patent also cover the product of a one sided lamination for a flexible soft cover for a soft cover book that consists essentially of a flexible, thin paper layer forming a cover to the book and being of a thickness which causes the paper layer to be susceptible of corner curl and a coextensive, clear nylon film layer covering the paper layer and having substantially the same ambient moisture absorption as the flexible, thin paper layer.

10. KDX, with knowledge of the '969 patent and its scope of coverage, has infringed and is still infringing Plaintiff's United States Letters Patent No. 5,626,969 by inducing its customers to purchase anti-curl nylon film for laminating the nylon film to a flexible paper substrate which infringes both the method an article claims the '969 patent. KDX will continue to induce its customers to infringe the claims of the '969 patent unless enjoined by this court.

11. KDX also contributes to the infringement by selling the anti-curl nylon film which is not a staple article of commerce and is a product which has substantially no other

purpose than use in the method and article covered by the '969 patent. KDX will continue to contribute to the infringement of others unless enjoined by this court.

12. On information and belief, KDX had actual notice of United States Letters Patent No. 5,626,969 and has infringed and is infringing the '969 patent with knowledge of Plaintiff's patent rights. KDX's acts of infringement have been and are willful and deliberate.

13. As a result of KDX's unlawful activity and contributory and inducing infringement, Cosmo has suffered and will continue to suffer grievous damages.

14. KDX's infringement of United States Letters Patent No. 5,626,969 will continue unless and until enjoined by this court.

**COUNT II – INTERFERENCE WITH BUSINESS ADVANTAGE AND
MISAPPROPRIATION OF TRADE SECRETS IN VIOLATION
OF THE MARYLAND UNIFORM TRADE SECRETS ACT**

15. Each of the preceding paragraphs (1) through (14) is incorporated as if fully set forth herein.

16. In addition to scientific and technical information, Cosmo's trade secrets includes information about its business, customers and licensees of the '969 patent including, but not limited to (a) the names of its customers and its licensees and (b) the confidential and trade secret royalty rates at which Cosmo has granted licenses to others under the '969 patent.

17. The license agreements entered into by Cosmo with its licensee are confidential agreements precluding the parties from disclosing the terms and conditions of the licensing agreement to others.

18. Keith Borcz, a former Executive Vice President of Cosmo, left the employ of Cosmo near the end of September 2010 and, on information and belief, presently is the President

of Defendant KDX. During the period of his employment with Cosmo, Keith Borcz became familiar with the technology and trade secrets of Cosmo, including confidential and trade secret information relating to the '969 patent, including the confidential and trade secret terms under which the '969 patent was licensed to others and the confidential business dealings between Cosmo and its Licensee.

19. Keith Borcz was hired by KDX after his employment with Cosmo terminated, and, on information and belief, while employed by KDX during the relevant time period KDX obtained from him the above-stated trade secrets which were not generally known and not readily ascertainable by proper means by others who could or would obtain economic value from disclosure or use of these trade secrets.

20. Specifically, on information and belief, KDX obtained from Keith Borcz, or from others by using improper means, the confidential and trade secret terms and conditions of the license agreements between Cosmo and its Licensees of the '969 patent, including, but not limited to, the confidential and trade secret royalty rates being charged to those licensees.

21. Cosmo Films has continued to preserve the secrecy of its above-identified trade secrets.

22. On information and belief, KDX hired Keith Borcz for the purpose of misappropriating Plaintiff's trade secrets and confidential information and using such trade secrets and confidential information for the commercial advantage of KDX and to the detriment of Cosmo.

23. On information and belief, KDX has used the confidential and trade secret licensing information it improperly obtained, including the confidential royalty rates being

charged by Cosmo to its Licensees of the '969 patent, to gain an unfair commercial advantage, *inter alia*, in attempting to negotiate a license from Cosmo under the '969 patent.

24. As a high ranking Officer of Cosmo, Keith Borcz was in a position of the highest trust and confidence with Cosmo and owed an obligation not to disclose confidential and/or trade secrets of Cosmo to any other party.

25. On information and belief, KDX knew the position of trust and confidence Keith Borcz had with Cosmo at the time his employment with Cosmo; knew that Keith Borcz had significant confidential and trade secret information of Cosmo, including information relating to the licensing of the '969 patent; knew that Keith Borcz, as an officer of Cosmo, had an obligation not to use or disclose confidential and/or trade secret information to others and, in spite of all that knowledge, knowingly induced Keith Borcz to disclose Cosmo confidential and trade secret information to KDX.

26. The aforesaid acts of the Defendant constituted willful and malicious conduct in that said acts by KDX knowingly induced a breach by Keith Borcz of his fiduciary obligations to Cosmo and that said acts were intended to cause harm to Cosmo. Said willful and malicious acts and conduct thereby justify an award of punitive damages in favor of Plaintiff and against Defendant in order to punish Defendant and to deter Defendant and others from engaging in similar conduct in the future.

27. On information and belief, KDX knowingly, willfully and deliberately misappropriated Cosmo's trade secrets and confidential information with full knowledge of the secret and confidential nature of the trade secrets and information and of the commercial value of

the trade secrets and information. KDX has willfully exploited and continues to willfully exploit Cosmo's trade secrets and confidential information resulting in great damage to Cosmo.

28. The aforesaid breach of confidence and trust, and the aforesaid misappropriation of Cosmo's trade secrets and confidential information, are greatly and irreparably damaging to Plaintiff, and Defendant will continue to damage the Plaintiff unless the Defendant is enjoined by this Court, whereby Plaintiff is without an adequate remedy at law.

29. The aforesaid acts of the Defendant KDX constitute willful and malicious conduct in that said acts were specifically intended to cause Keith Borcz to breach his fiduciary duties to Cosmo, and said acts were intended to cause harm to Cosmo, and said willful and malicious acts and conduct justify an award of punitive damages in favor of Plaintiff and against the Defendants in order to punish the Defendants and to deter them and others from engaging in similar conduct in the future.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rule of Civil Procedure, Cosmo Films, Inc. demands trial by jury on all claims asserted herein.

PRAYER FOR RELIEF

WHEREFORE Cosmo Films, Inc. prays as follows:

1. For a judgment that Defendants:
 - a. Have infringed United States Letters Patent No. 5,626,969 in violation of 35 U.S.C. § 271; by knowingly inducing the infringement of the '969 patent by others and by knowingly contributing to the infringement of the '969 patent by others.

b. Have violated the Maryland Uniform Trade Secrets Act, Md. Code Ann., Com. Law §§11-1201, et seq.

2. For an injunction permanently enjoining KDX, its officers, agents and servants, employees, parents and subsidiaries, successors and assigns, and all others in privity or in active concert or participation with KDX from:

a. Infringing United States Letters Patent No. 5,626,969, and from making, using, selling, importing, offering for sale any and all products that induce or contribute to the infringement by others of United States Letters Patent No. 5,626,969.

b. Using the trade secrets of Plaintiff.

3. For an accounting of damages arising from Defendant's acts of infringement and violation of trade secrets and breach of trust.

4. For an accounting of the profits made by KDX and/or lost profits by Cosmo Films, Inc. in consequence of the acts complained of herein including profits on all related and convoyed products and processes.

5. For an award of damages not less than \$75,001 for interference with prospective business advantage, and pursuant to 35 U.S.C. § 284 and pursuant to the Maryland Uniform Trade Secrets Act, Md. Code Ann., Com. Law §§11-1201, et seq.

6. For an award of punitive damages up to twice Plaintiff's actual damages attributable to acts of willfully or maliciously taking Plaintiff's trade secrets and confidential information and using said trade secrets and confidential information for their own use, as provided for in the Maryland Uniform Trade Secrets Act, Md. Code Ann., Com. Law §11-1201, et seq., and

7. For an assessment of interest and costs against KDX, and
8. For its attorney's fees, and
9. For such other and further relief that this Court deems just and proper and necessary to adequately compensate Cosmo Films, Inc.

September 10, 2012

Respectfully Submitted,



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