

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ONASSET INTELLIGENCE, INC.,

PLAINTIFF,

v.

**FREIGHTWATCH
INTERNATIONAL (USA), INC.,**

DEFENDANT.

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CIVIL ACTION NO. 3:11-cv-03148-G

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff OnAsset Intelligence, Inc. (“OnAsset”) hereby files its Amended Complaint for patent infringement, trademark infringement, and violations of the Lanham Act against Defendant FreightWatch International (USA), Inc. (“FreightWatch”).

PARTIES

1. Plaintiff OnAsset is a Texas corporation with its headquarters and principal place of business at 3080 Story Road West, Irving, Texas 75038-3529.

2. Defendant FreightWatch is a Texas corporation with its corporate headquarters and principal place of business at 7501 N. Capital of Texas Highway, Suite A140, Austin, Texas 78731-1797. FreightWatch may be served through its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This action arises under the Patent Act of 1952, 35 U.S.C. § 101 *et seq.* and Lanham Act. This Court has original and exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a) and (b) and 15 U.S.C. § 1221. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b), because, on information and belief, Defendant has transacted business in this district and, on information and belief, has committed acts of patent and trademark infringement, false designation of origin, false description and unfair competition in this district.

U.S. PATENT NO. 7,652,576

5. OnAsset is the owner by assignment of United States Patent No. 7,652,576 (“the ’576 Patent”), entitled “Method and Apparatus for Locating And/Or Otherwise Monitoring an ID Tagged Asset’s Condition.” A true and correct copy of the ’576 Patent is attached as Exhibit A. The ’576 Patent was duly and legally issued on January 26, 2010.

U.S. TRADEMARK NOS. 3978933 AND 3905566

6. Commencing at least as early as 2009, OnAsset began using the mark SENTRY “FlightSafe” in connection with its sale and marketing of its air cargo tracking and monitoring system and device. OnAsset owns two “FlightSafe” marks, both of which were issued by the United States Patent and Trademark Office, with registration numbers 3,978,933 and 3,905,566.

7. OnAsset uses its registered “FlightSafe” mark in each of the states in which it does business, on its website, and in its print advertising. OnAsset has generated substantial goodwill in the “FlightSafe” mark. The mark has come to signify superior quality air cargo

tracking systems and devices sold by OnAsset. OnAsset's SENTRY "FlightSafe" devices are commonly recognized as the best air cargo tracking devices on the market.

8. OnAsset has recently discovered that FreightWatch has been selling and marketing an air cargo tracking system and device under the designation "FlightSmart," and on information and belief, FreightWatch continues to do so. FreightWatch's "FlightSmart" designation is confusingly similar to OnAsset's "FlightSafe" mark and has resulted in actual customer confusion in the marketplace. FreightWatch's continued use of the "FlightSmart" designation, or variations thereof that are confusingly similar, is likely to continue to cause customer confusion, is causing and will continue to cause OnAsset injury, including monetary injury and the dilution of the distinctiveness of OnAsset's "FlightSafe" mark.

9. OnAsset has also recently discovered that FreightWatch has and is continuing to falsely market its "FlightSmart" device as certified and approved by the Federal Aviation Administration, when, on information and belief, it is not.

FIRST CLAIM OF RELIEF

Infringement of the '576 Patent

10. Defendant has been and now is directly and indirectly infringing the '576 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and offering to sell real-time tracking and monitoring platforms covered by one or more claims of the '576 Patent to the injury of OnAsset.

11. Defendant markets, sells and offers for sale an air cargo tracking system and device referred to as the "FSNtracks" Real-Time Tracking and Monitoring Platform, which infringes one or more claims of the '576 Patent.

12. Defendant has induced and induces its customers and end users to infringe one or more claims of the '576 Patent and has had knowledge of the '576 patent and the infringement at least as of the date of the filing of this lawsuit.

13. On information and belief, Defendant was aware of the '576 Patent prior to any infringing acts.

14. As a result of Defendant's infringement of the '576 Patent, OnAsset has suffered monetary damages in an amount not yet determined and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

15. Defendant's infringement of the '576 Patent is causing OnAsset irreparable harm that cannot be adequately compensated by a damage award. Unless Defendant is enjoined from infringing the '576 Patent, OnAsset will be greatly and irreparably harmed.

SECOND CLAIM FOR RELIEF

Trademark Infringement

16. OnAsset is the owner and has the exclusive right to use its "FlightSafe" mark in interstate commerce for its goods and services pursuant to the Lanham Act.

17. Defendant has used and continues to use the "FlightSmart" designation, or variations thereof that are confusingly similar, to identify its goods.

18. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, is without the consent of OnAsset.

19. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, to identify its goods is likely to cause, and has caused, confusion, mistake, or deception, all of which is prohibited by the Lanham Act.

20. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has been and is knowing and intentional with the intent to cause confusion, mistake, or deception and to trade on OnAsset's established goodwill.

21. As a proximate result of Defendant's infringement, OnAsset has suffered and will continue to suffer damages. Defendant is inappropriately profiting from its violations of OnAsset's trademark rights under the Lanham Act. OnAsset is entitled to recover treble damages due to Defendant's willful and intentional infringement.

THIRD CLAIM FOR RELIEF

False Designation of Origin

22. Defendant's use of the "FlightSmart" designation to identify its goods constitutes a false designation of origin and false description under the Lanham Act.

23. As a proximate result of Defendant's infringement, OnAsset has suffered and will continue to suffer damages. Defendant is inappropriately profiting from its violations of OnAsset's trademark rights under the Lanham Act. OnAsset is entitled to recover treble damages due to Defendant's willful and intentional infringement.

FOURTH CLAIM FOR RELIEF

Injury to Business Reputation and Dilution Section 16.29 of the Texas Business and Commerce Code

24. Defendant has used and continues to use without OnAsset's consent the "FlightSmart" designation to identify its goods.

25. As a proximate result of Defendant's unauthorized use, OnAsset's "FlightSafe" trademark has been, continues to be, and will be tarnished, degraded and diluted.

26. Pursuant to Chapter 16 of the Texas Business and Commerce Code, Defendant is injuring OnAsset's business reputation and diluting the value and distinctiveness of its trademarks.

FIFTH CLAIM FOR RELIEF

Declaratory Judgment

27. OnAsset seeks a declaratory judgment from the Court setting forth the rights and status of the parties and declaring that:

- a. OnAsset has the exclusive right to use the "FlightSafe" trademark;
- b. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has infringed upon OnAsset's exclusive rights.
- c. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has created a false designation of origin;
- d. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has diluted the value and distinctiveness of OnAsset's "FlightSafe" trademark; and
- e. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, was done willfully and in bad faith.

JURY DEMAND

28. OnAsset demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

OnAsset requests that the Court enter:

A. A preliminary and permanent injunction against Defendant enjoining it, its officers, directors, agents, servants, employees, investors, affiliates, divisions, branches,

subsidiaries, parents and all others acting in active concert or in participation with them from infringement, inducement to infringe, or contributory infringement of the '576 Patent, including the manufacture, sale, offer for sale, distribution, or promotion of products falling within the scope of the '576 Patent;

B. A judgment in favor of OnAsset that Defendant has infringed, directly or indirectly, the '576 Patent;

C. A judgment ordering Defendant to pay OnAsset damages adequate to fully compensate OnAsset for Defendant's infringement of the '576 Patent, together with pre- and post-judgment interest and costs as fixed by the Court under 35 U.S.C. § 284;

D. A judgment in favor of OnAsset that Defendant has willfully infringed the '576 Patent;

E. A judgment ordering Defendant to pay OnAsset enhanced damages up to three times the amount of actual damages found or assessed as appropriate under 35 U.S.C. § 284;

F. A judgment and order that this is an "exceptional" case under 35 U.S.C. § 285 and awarding OnAsset its reasonable attorneys' fees;

G. A declaratory judgment in favor of OnAsset finding that:

- a. OnAsset has the exclusive right to use the "FlightSafe" trademark;
- b. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has infringed upon OnAsset's exclusive rights.
- c. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has created a false designation of origin;

d. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, has diluted the value and distinctiveness of OnAsset's "FlightSafe" trademark; and

e. Defendant's use of the "FlightSmart" designation, or variations thereof that are confusingly similar, was done willfully and in bad faith.

H. A judgment and order requiring the destruction or removal of all items infringing OnAsset's exclusive trademark rights and all marketing materials and websites using the "FlightSmart" designation, or marks that are confusingly similar;

I. A judgment ordering Defendant to pay OnAsset its actual damages, including compensatory and consequential damages, for Defendant's trademark infringement and other violations of the Lanham Act and Texas anti-dilution laws, as well as special damages arising from pecuniary loss, and treble damages in view of the knowing and intentional nature of FreightWatch's acts;

J. A judgment and order requiring corrective advertising to remedy the actual and potential customer confusion in the marketplace due to Defendant's unlawful acts.

K. A permanent injunction barring Defendant from using the "FlightSmart" designation or trademarks that are confusingly similar;

L. A judgment requiring Defendant to pay OnAsset punitive damages;

M. A judgment requiring Defendant to pay OnAsset's attorneys' fees because its infringement under the Lanham Act constitutes an exceptional case and pursuant to applicable Texas law.

N. A judgment ordering Defendant to pay OnAsset's costs;

O. A judgment awarding OnAsset both re- and post-judgment interest on all sums for which judgment is granted; and

P. Any and all other and further relief as this Court deems just and proper.

Dated: November 7, 2012

BUETHER JOE & CARPENTER, LLC

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***ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record are deemed to have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5.1(e) on this 7th day of November, 2012.

/s/ Monica Tavakoli
Monica Tavakoli