

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MAGNA MIRRORS OF AMERICA, INC.,

Plaintiff and Counter-Defendant,

v.

3M COMPANY,

Defendant and Counter-Plaintiff.

Case No. 2:07-cv-10688

Honorable Victoria A. Roberts

Magistrate Judge Laurie J. Michelson

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SECOND AMENDED COMPLAINT AND JURY DEMAND

For its Second Amended Complaint against Defendant 3M Company (“Defendant” or “3M”), Magna Mirrors of America, Inc, d/b/a Magna Donnelly (“Magna”) hereby complains and alleges as follows:

THE PARTIES

1. Magna Mirrors of America, Inc. is a corporation organized and existing under the laws of the State of Michigan, having a registered address of 30600 Telegraph Road, Bingham Farms, Michigan, 48025. Magna Mirrors of America, Inc. is also doing business under the registered assumed names “Magna Donnelly Corporation” and “Donnelly Corporation.”

2. 3M is a corporation organized and existing under the laws of the State of Delaware, and having a place of business at 3M Center, St. Paul, MN 55144, and offices in Livonia, MI, Detroit, MI, and Midland, MI.

3. 3M, upon information and belief, is doing business within the State of Michigan and within the Eastern District of Michigan, and is engaged in continuous and systematic business within the Eastern District of Michigan, and including the commission of acts of infringement as hereinafter stated.

JURISDICTION AND VENUE

4. This Court has jurisdiction in this action under 28 U.S.C. §§ 1331 and 1338, as there is a federal question, and upon information and belief, the matter in controversy exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars.

5. The cause of action for patent infringement arises under the Patent Laws of the United States, Title 35 U.S.C. §§ 101 and 271, and this Court has federal jurisdiction of this claim pursuant to §§ 1331, 1338, and 2201 *et seq.*

COUNT I
INFRINGEMENT OF THE '236 PATENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)

6. Magna repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

7. On December 24, 1996, United States Patent No. 5,587,236, entitled "Interior Rear View Mirror Mounting System Utilizing One-Package Structural Adhesive", was duly and legally issued by the United States Patents and Trademark Office. On March 22, 2011, a Reexamination Certificate was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of United States Patent No. 5,587,236 and Reexamination Certificate are attached hereto as **Exhibit A** (hereinafter the "'236 Patent").

8. Magna is the current Assignee of all right, title, and interest in the '236 Patent, including the right to bring and maintain this action with respect to the '236 Patent.

9. 3M has, upon information and belief, in the past been and still is infringing the '236 Patent by making, importing, exporting, using, selling, and/or offering for sale in and to the United States products and components embodying the patented inventions of the '236 Patent. Interior rear view mirror mounting systems used in the United States include structural bonding tapes (hereinafter "SBT") sold under the designation 9214, 9263 and 9270 by 3M. 3M applies its SBT to mirror mounting buttons, either directly or indirectly, and the mirror mounting buttons with SBT applied are sold to automotive windshield manufacturers (such as, but not limited to, Pittsburgh Glass Works, Pilkington North America, Guardian Automotive, Carlex Glass America, Safelite Auto Glass, AGC Automotive, and Asahi Glass Company, Ltd.) with instructions on and with intention for bonding the aforementioned mirror mounting buttons to windshields in a manner infringing on the '236 Patent. Beyond selling directly to the automotive

windshield manufacturers, 3M sells 3M's SBT to intermediaries that, upon information and belief, apply 3M's SBT to mirror mounting buttons for sale to the aforementioned automotive windshield manufacturers for bonding the aforementioned mirror mounting buttons to windshields in a manner infringing on the '236 Patent. In conjunction with such sales, upon information and belief, 3M has participated, directly or indirectly, in the validation of its SBT to adhere mirror mounting buttons to windshields. 3M has performed numerous tests related to bonding the mirror buttons with 3M's SBT to glass for supporting interior rear view mirrors. Such participation and use by 3M directly infringes the '236 patent.

10. In addition to 3M's direct infringement, original equipment manufacturers ("OEMs"), such as Ford, Chrysler, General Motors, Toyota, Volkswagen, Renault, Fiat, Mitsubishi, Mazda, BMW, Suzuki, Isuzu, Volvo, Porsche, Nissan, Subaru, KIA, Honda, Hyundai, and others, manufacture vehicles with windshields that include 3M's SBT adhering mirror mounting buttons to windshields for supporting the interior rear view mirror used in such vehicles. As set forth above, these windshields are made by numerous automotive windshield manufacturers that bond to windshields the aforementioned mirror mounting buttons in a manner infringing on the '236 Patent and are supplied to the respective OEMs. These windshields with interior rear view mirrors supported by mirror mounting buttons adhered by 3M's SBT directly infringe the '236 patent. Vehicles manufactured and sold by original equipment manufacturers, such as Ford, Chrysler, General Motors, Toyota, Volkswagen, Renault, Fiat, Mitsubishi, Mazda, BMW, Suzuki, Isuzu, Volvo, Porsche, Nissan, Subaru, KIA, Honda, Hyundai, and others, that are equipped with windshields that include 3M's SBT adhering mirror mounting buttons for supporting the interior rear view mirror in the subject vehicles constitute direct infringement of the '236 Patent. 3M has caused, assisted, aided and abetted infringement of the '236 Patent at

automotive windshield manufacturers and controls actions of and at the automotive windshield manufacturers in such infringing activity.

11. Use by third parties of the aforesaid interior rear view mirror mounting systems utilizing SBT as obtained from or through 3M, such as (but not limited to) automotive windshield manufacturers and OEMs, upon information and belief, infringes the '236 Patent. 3M has had knowledge of the '236 patent since at least 1998. Upon information and belief, with knowledge and/or reckless disregard amounting to knowledge of the infringement of the '236 Patent by the aforesaid products and entities utilizing SBT obtained from or through 3M, 3M has provided 3M's SBT for interior rear view mirror mounting systems to at least one third party for use in infringement of the '236 Patent, and otherwise aided and abetted third parties in infringing the '236 Patent. 3M knew or should have known that its actions would induce actual infringement of the '236 Patent by these third parties. 3M marketing and product/technical literature (including but not limited to 3M's web-sites¹ actively, affirmatively and specifically induces usage of 3M's SBT in a manner that constitutes infringement of the '236 Patent.

12. Upon information and belief, 3M makes, imports, exports, sells, and/or offers to sell interior rear view mirror mounting systems and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '236 Patent and that are especially made or especially adapted for use in infringement of the '236 Patent, and said interior rear view mounting systems and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of 3M constitute contributory infringement of the '236 Patent. 3M knew of the '236 Patent; 3M communicated with another

person(s) such as at automotive windshield manufacturers with the intent of causing that person(s) to infringe the '236 Patent; and that other person(s) actually infringed and continues to infringe the '236 Patent. 3M exhibited willful blindness of infringement of the '236 Patent. The actions of 3M induced and continue to induce infringement of the '236 Patent.

13. Upon information and belief, 3M has caused, and continues to cause, all or a substantial portion of the components of the '236 Patent to be supplied from the United States in such a manner as to actively induce the combination of such components outside of the United States, in a manner that would infringe the '236 Patent if such combination occurred within the United States. Such actions by 3M include supplying and transferring taped or cladded, mirror buttons and/or rolled or die-cut 3M SBTs to 3M foreign entities for further sale to glass manufacturers and OEMs, which then, during the windshield manufacturing process, attach such mirror buttons to windshields utilizing 3M SBTs and an autoclave. 3M has done so without the authority of Magna. 3M's actions constitute infringement of the '236 Patent.

14. Upon information and belief, 3M has also caused, and continues to cause, all or a substantial portion of the components of the '236 Patent to be supplied from the United States in such a manner as to actively induce the combination of such components outside of the United States, in a manner that would infringe the '236 Patent if such combination occurred within the United States by supplying taped or cladded, mirror buttons and/or rolled or die-cut 3M SBTs to glass manufacturers, such as, but not limited to, Pittsburgh Glass Works, Pilkington North America, Guardian Automotive, Carlex Glass America, Safelite Auto Glass, AGC Automotive, and Asahi Glass Company, Ltd., outside of the United States, which then, during the windshield manufacturing process, attach such mirror buttons to windshields utilizing 3M SBTs and an

¹ See, for example, **Exhibit B:** http://Solutions.3M.com/wps/portal/3M/en_US/3M_Automotive/OEMs/Product_Center/Product_Catalog/?PC_7_R

autoclave. 3M has done so without the authority of Magna. 3M's actions constitute infringement of the '236 Patent.

15. Upon information and belief, 3M has caused, and continues to cause, components of the '236 Patent to be supplied from the United States by supplying and transferring taped or clad, mirror buttons and/or rolled or die-cut 3M SBTs to 3M foreign entities, such as, but not limited to, 3M Canada Co., 3M Korea Ltd., 3M Mexico, 3M International, 3M Company, Sumitomo 3M Ltd., 3M Argentina, 3M Australia, 3M Austria, 3M Brazil, 3M Belgium N.V., 3M Cesko SPOL SRO, 3M Chile, 3M China, 3M Deutschland GMBH, 3M Espana, S.A., 3M Ecuador, 3M France, 3M German, 3M Gulf Ltd, 3M Hong Kong Limited, 3M Hungary, 3M International Trading 3M India, 3M Italy, 3M Israel, 3M Peru, 3M Seremban, 3M Malaysia Sdn Bhd, 3M Oesterreich GMBH, 3M Poland, 3M Portugal, Lda, 3M Sanayi VE Ticaret AS, 3M United Kingdom PLC, Sumitomo 3M Limited, Suomen 3M Oy, 3M Taiwan, and 3M Thailand, for sale to glass manufacturers and OEMs, which then, during the windshield manufacturing process, attach such mirror buttons to windshields utilizing 3M SBTs and an autoclave. Said components are especially made or especially adapted for use in the infringement of the '236 Patent, and said interior rear view mounting systems and/or components thereof are not staple articles or commodities of commerce suitable for substantial non-infringing use. 3M intended and continues to intend that such components will be combined outside of the United States in a manner that would infringe the '236 Patent if such combination occurred within the United States. 3M has taken such actions without the authority of Magna. 3M's actions constitute infringement of the '236 Patent.

16. Upon information and belief, 3M has caused, and continues to cause, components of the '236 Patent to be supplied from the United States by supplying and transferring taped or

cladded, mirror buttons and/or rolled or die-cut 3M SBTs to glass manufacturers and OEMs, located outside of the United States, which then, during the windshield manufacturing process, attach such mirror buttons to windshields utilizing 3M SBTs and an autoclave. Said components are especially made or especially adapted for use in the infringement of the '236 Patent, and said interior rear view mounting systems and/or components thereof are not staple articles or commodities of commerce suitable for substantial non-infringing use. 3M intended and continues to intend that such components will be combined outside of the United States in a manner that would infringe the '236 Patent if such combination occurred within the United States. 3M has taken such actions without the authority of Magna. 3M's actions constitute infringement of the '236 Patent.

17. Despite any statement to the contrary, and upon information and belief, 3M will continue to infringe, contributorily infringe, induce infringement of the '236 Patent unless enjoined by the Court.

18. Upon information and belief, 3M's infringement, contributory infringement, and inducement of infringement have been willful.

19. Upon information and belief, 3M's infringement, contributory infringement, and inducement of infringement have resulted in damage to Magna and will continue to do so unless enjoined by this Court.

20. Magna has no adequate remedy at law and is, therefore, entitled to a permanent injunction prohibiting further infringement by 3M.

21. 3M's manufacture, use, sale, offer to sell, and/or distribution of these products that infringe, contributorily infringe, and induce infringement of the '236 Patent have caused Magna to suffer damages in an amount not yet determined but will be proven at trial.

22. Magna, therefore, seeks judgment as set forth herein.

WHEREFORE, Magna demands judgment against 3M as follows:

- A. Permanently enjoining 3M, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the '236 Patent.
- B. Permanently enjoining 3M, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further acts of infringement of the '236 Patent.
- C. Ordering an accounting.
- D. Awarding damages in an amount to be determined at trial, but adequate to compensate Magna for 3M's infringement, contributory infringement, inducement of infringement of the '236 Patent.
- E. Increasing the damages up to three times the amount found or assessed for 3M's willful acts of infringement.
- F. Awarding prejudgment interest and costs.
- G. Finding this to be an exceptional case and awarding reasonable attorneys' fees to Magna.
- H. Such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: November 20, 2012

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JURY DEMAND

Plaintiff requests a jury for all issues triable by jury in this action.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: November 20, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2012, I electronically filed *Plaintiff's Second Amended Complaint and Jury Demand* with the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the ECF registrants of record.

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