

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Vent-Matic Company, LLC, and

Ameramid, Inc.

Plaintiffs,

Case No. 14-cv-902

v.

Draught Technologies, LLC,

Beverage Services, LLC,

Beverage Equipment International, LLC, and

Steven Salcedo,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs Vent-Matic Company, LLC (“Vent-Matic”) and Ameramid, Inc. (“Ameramid”) by its attorneys Ryan Kromholz and Manion, S.C., by Daniel R. Johnson and Melissa S. Hockersmith, for its complaint against Defendants Draught Technologies, LLC (“Draught Technologies”), Beverage Services, LLC (“Beverage Services”), Beverage Equipment International, LLC, (“BEI”) and Steven Salcedo (“Salcedo”) alleges as follows:

The Parties

1. Vent-Matic is a Nevada limited liability company having a principal of business at N30W23789 Green Road, #15, Pewaukee, Wisconsin 53072. Vent-Matic is in the business of designing, marketing, distributing and selling equipment for

draught beverage dispensing, including faucets.

2. Ameramid is an administratively dissolved Wisconsin corporation having a principal place of business at N30W23789 Green Road, #15, Pewaukee, Wisconsin 53072. Ameramid was in the business of designing, marketing, distributing and selling equipment for draught beverage dispensing, including faucets.

3. Upon information and belief, Draught Technologies is a limited liability company organized under the laws of the state of Delaware. Upon information and belief, Draught Technologies has a principal place of business at 420 Woodland Avenue, Bloomfield, Connecticut, 06002. Upon information and belief, Draught Technologies is in the business of providing draught dispensing products and services, including faucets.

4. Upon information and belief Beverage Services is a limited liability company organized under the laws of the state of Massachusetts. Upon information and belief, Beverage Services has a principal place of business at 420 Woodland Avenue, Bloomfield, Connecticut, 06002. Upon information and belief, Beverage Services is in the business of providing draught dispensing products and services, including faucets.

5. Upon information and belief BEI is a limited liability company organized under the laws of the state of Connecticut. Upon information and belief, BEI has a principal place of business at 420 Woodland Avenue, Bloomfield, Connecticut, 06002. Upon information and belief, BEI is in the business of providing

draught dispensing products and services, including faucets.

6. Upon information and belief Salcedo is an adult resident of the State of Connecticut. Upon information and belief, Salcedo resides at 10 Westwood Drive, Canton, Connecticut 06019. Upon information and belief, Salcedo is a member of Draught Technologies. Upon information and belief, Salcedo was president of Beverage Services from at least October 2012 through December 2013. Upon information and belief, Salcedo is a member of BEI.

7. Upon information and belief, one or more Defendant sells and/or offers for sale a variety of products, including faucets, through the website www.draughtech.com (“DT Website”).

Jurisdiction and Venue

8. This action arises under the patent laws of the United States, Title 35 U.S. Code and is a complaint for patent infringement, at least under 35 U.S.C. § 271. This action also arises under the trademark laws of the United States, 15 U.S.C. § 1051 et seq. and is a complaint for trademark infringement (at least under 15 U.S.C. § 1114) and unfair competition (at least under 35 U.S.C. § 1125(a)). This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, and 1338. This action also arises under the laws of the State of Wisconsin, and is a complaint for breach of contract. This Court has supplemental jurisdiction over such state law claims under 28 U.S.C. § 1367.

9. One or more defendants have made, used, sold, offered for sale, or caused to be sold infringing faucets throughout the United States, including in this

judicial jurisdiction.

10. This Court has personal jurisdiction over Defendants, because the infringing faucets have been offered for sale and sold in this judicial district.

11. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants regularly transact or have transacted business in the State of Wisconsin and in this judicial district by, among other things, the offering for sale and sale of faucets through the DT Website, and shipment of at least one faucet into this judicial district. At a minimum, Defendants place or have placed their products, including the infringing product identified in this Complaint, into the stream of commerce knowing that such products will be sold in this district.

12. Venue in this judicial district also is proper pursuant to 28 U.S.C. §1391(b)(2) and 28 U.S.C. §1400(b), because Defendants' offer to sell and sale of the infringing faucets occurred in this district.

13. This Court also has personal jurisdiction over Defendants because Defendants are or have been engaged in substantial and not isolated activities within this state.

General Allegations

14. On or about January 31, 2012, Draught Technologies entered into a non-exclusive patent license ("January 2012 License"), a copy of which is attached as Exhibit 1, with Ameramid.

15. Salcedo is a member of Draught Technologies and signed the January 2012 License on behalf of Draught Technologies.

16. Upon information and belief, Salcedo was the sole and managing member of Draught Technologies from at least January 2012 through December 2012.

17. The January 2012 License granted Draught Technologies the non-exclusive worldwide right and license to make, have made, improve upon, use and sell beverage faucets utilizing and/or employing the inventions claimed in U.S. Patent Nos. 6,457,614, 6,626,420, 6,840,281 and 7,077,299, (Exh. 1 at p. 1-2), which patents were at that time owned by Ameramid.

18. In consideration of the license, Draught Technologies was to pay Ameramid a lump sum royalty in the amount of \$230,000.00, paid as \$30,000.00 at the time of signing the agreement and \$200,000.00 over a four year quarterly installment plan of \$12,500 each, with the installment payments beginning at the earlier of July 1, 2012 or the first shipment of licensed products. (Exh. 1 at p.2.)

19. In addition to the lump sum payment, Draught Technologies was to pay Ameramid a continuing periodic royalty based on the gross selling price of licensed product. (Exh. 1 at p.2-3.)

20. On February 17, 2012, Draught Technologies made a payment of \$20,000.00 to Ameramid. (Exh. 2, First Declaration of Bradford G. Amidzich, at ¶8.)

21. On April 5, 2012, Draught Technologies made a payment of \$2,000.00 to Ameramid. (Exh. 2 at ¶9.)

22. On April 11, 2012, Draught Technologies made a payment of \$2,500.00 to Ameramid. (Exh. 2 at ¶10.)

23. Prior to October 3, 2012 Draught Technologies made an additional \$3,500.00 in payments to Ameramid. (Exh. 2 at ¶11.)

24. Draught Technologies made a total of \$28,000 in payments to Ameramid. Draught Technologies made no further payments to Ameramid. (Exh. 2, ¶12.)

25. Upon information and belief Draught Technologies ordered components for 2,500 faucets (“DT Faucets”) in July 2012. Upon information and belief, such components were sent to Draught Technologies on August 20, 2012.

26. The January 2012 License was terminated on October 3, 2012 due to Draught Technologies’ failure to timely cure its payment delinquencies despite multiple default notices. (Exh. 19.)

27. Upon termination of the January 2012 License, Draught Technologies did not transfer all of the licensed products to Licensor as required by Paragraph 6(g) the January 2012 license. (Exh. 1 at p. 5.)

28. On December 8, 2012 Beverage Services entered into a non-exclusive patent license (“December 2012 License”), a copy of which is attached as Exhibit 20, with Ameramid.

29. Upon information and belief, Salcedo was the president of Beverage Services from December 2012 through December 2014.

30. Upon information and belief Salcedo was employed by Beverage Services full time to consult, advise, be present on-site full-time and assist in connection with the company’s strategic planning, business development, sales,

marketing, financial management, product development, employee development and oversight and any other services and duties that were assigned by the company from time to time.

31. The December 2012 License granted Beverage Services the non-exclusive worldwide right and license to make, have made, improve upon, use and sell beverage faucets utilizing and/or employing the inventions claimed in U.S. Patent Nos. 6,457,614, 6,626,420, 6,840,281 and 7,077,299 (Exh. 20 at p. 1-2), such patents were owned by Ameramid at this time.

32. In consideration of the license, Beverage Services was to pay Ameramid a lump sum royalty in the amount of \$22,000.00 at the time of signing. (Exh. 20 at p.2.)

33. In addition to the lump sum payment, Beverage Services was to pay Ameramid a continuing periodic royalty based on the gross selling price of licensed product. (Exh. 20 at p.2-3.)

34. Paragraph 4 of the December 2012 License required Beverage Services to, within 30 days of the end of each accounting period, provide Ameramid with a certain reports containing information related to the preceding accounting period. (Exh. 20 at p.3-4.)

35. Upon information and belief, the components for the 2,500 DT Faucets were transferred to Beverage Services from Draught Technologies.

36. Upon information and belief, the DT Faucets are “licensed products” as defined in the December 2012 License.

37. Upon information and belief, Beverage Services sold at least 80 DT Faucets.

38. Upon information and belief Beverage Services sold at least 80 DT Faucets under the name “VENTMATIC”.

39. Beverage Services has never provided a royalty report or royalty payment to any of Ameramid, Bradford Amidzich, or Vent-Matic.

40. Paragraph 5 of the December 2012 License provides that if “Licensee should default or otherwise fail to perform under the terms of this agreement, upon Licensee’s failure to cure within thirty (30) days from receipt of written notice of default to cure the deficiency described in the notice, this license shall automatically terminate...” (Exh. 20 at p.4.)

41. On September 19, 2013 Ameramid provided notice to Beverage Services that Beverage Service was in default of the December 2012 License for failure to provide quarterly records, reports and audits as required by paragraph 4 and failure to provide quarterly royalty payments under paragraph 3 of the December 2012 License. (Exh. 21.)

42. Beverage Services did not cure such default within 30 days. As such, the December 2012 License terminated 30 days after such notice.

43. On October 25, 2013 Ameramid provided notice to Beverage Services that the December 2012 License was terminated due to Beverage Services’ failure to timely cure. (Exh. 22.)

44. Paragraph 6(g) of the December 2012 License provided that “[u]pon

termination of this License, all of the licensed products in Licensee's possession or control shall be transferred to Licensors." (Exh. 20 at p.5.)

45. Upon termination of the December 2012 License, Beverage Services did not return any of the DT Faucets to Ameramid. To date, Beverage Services has not returned any DT Faucets to any of Ameramid, Bradford Amidzich or Vent-Matic.

46. Upon information and belief, on December 13, 2013 Beverage Services entered into an Asset Purchase Agreement with BEI.

47. Upon information and belief, Salcedo, who was president of Beverage Services and is a member of Draught Technologies, is a member of BEI.

48. Upon information and belief, Beverage Services transferred approximately 2420 DT Faucets to BEI as a part of the Asset Purchase Agreement.

49. Upon information and belief BEI has sold at least 190 DT Faucets.

50. Upon information and belief BEI has sold at least 190 DT Faucets under the name "VENTMATIC".

51. At least as of January 31, 2012 Salcedo had knowledge of U.S. Patent Nos. 6,457,614, 6,626,420 and 7,077,299.

52. At least as of October 2012 Beverage Services had knowledge of U.S. Patent Nos. 6,457,614, 6,626,420 and 7,077,299 as a result of Salcedo's position as president of Beverage Services.

53. At least as of November 19, 2013 BEI had knowledge of U.S. Patent Nos. 6,457,614, 6,626,420 and 7,077,299 as a result of Salcedo's membership in BEI.

54. At least as of October 28, 2013 Beverage Services, including Salcedo as its president, had notice and knowledge of the termination of the December 2012 License.

55. At least as of November 19, 2013 BEI had knowledge of the termination of the December 2012 License as a result of Salcedo's membership in BEI.

56. On September 17, 2014, Ameramid assigned U.S. Patent Nos. 6,457,614, 6,626,420 and 7,077,299 to Plaintiff Vent-Matic. (Exh. 2 at ¶14.) A copy of the patent assignment is attached as Exhibit 3.

57. On March 26, 2015 Ameramid assigned all rights to recover damages for past infringements of U.S. Patent Nos. 6,457,614, 6,626,420 and 7,077,299 to Plaintiff Vent-Matic.

58. On September 17, 2014, Ameramid, by Bradford Amidzich, assigned Trademark Registration No. 4,474,409 to Plaintiff Vent-Matic. (Exh. 2 at ¶15.) A copy of the trademark assignment is attached as Exhibit 4.

59. Plaintiff Vent-Matic is the owner of U.S. Patent No. 6,457,614 ("the '614 Patent", a copy of which is attached as Exhibit 5) entitled "Dispensing faucet for a pressurized source."

60. Plaintiff Vent-Matic is the owner of U.S. Patent No. 6,626,420 ("the '420 Patent", a copy of which is attached as Exhibit 6) entitled "Dispensing faucet for a pressurized source."

61. Plaintiff Vent-Matic is the owner of U.S. Patent No. 7,077,299 ("the

‘299 Patent”, a copy of which is attached as Exhibit 7) entitled “Dispensing faucet for a pressurized source.”

62. At least as early as January 2000, Mr. Bradford Amidzich used the trademark VENT-MATIC in commerce on liquid dispensing faucets.

63. On May 31, 2013, Mr. Amidzich filed a trademark application to register the trademark VENT-MATIC for use on liquid dispensing faucets.

64. On January 28, 2014, the United States Patent and Trademark Office issued U.S. Trademark Registration No. 4,474,409 to Mr. Amidzich.

65. Plaintiff Vent-Matic is the owner, by assignment, of U.S. Trademark Registration No. 4,474,409 (a copy of which is attached as Exhibit 8) of the trademark VENT-MATIC (“VENT-MATIC Mark”) for use on liquid dispensing faucets in international class 11.

66. Plaintiff Vent-Matic has the sole right to license others to manufacture, import, use, offer to sell and sell products claimed in the ‘614 Patent, the ‘420 Patent and the ‘299 Patent.

67. Plaintiff Vent-Matic has the sole right to license others to use the VENT-MATIC Mark on liquid dispensing faucets sold or transported in interstate commerce.

68. Since October 5, 2012 Draught Technologies has not been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the ‘614 Patent.

69. Since October 5, 2012 Draught Technologies has not been licensed by

Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '420 Patent.

70. Since October 5, 2012 Draught Technologies has not been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '299 Patent.

71. Since at least October 5, 2012 Draught Technologies has not been licensed to use the trademark VENT-MATIC on liquid dispensing faucets sold or transported in interstate commerce.

72. Since October 28, 2013 Beverage Services has not been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '614 Patent.

73. Since October 28, 2013 Beverage Services has not been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '420 Patent.

74. Since October 28, 2013 Beverage Services has not been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '299 Patent.

75. Beverage Services has never been licensed to use the trademark VENT-MATIC on liquid dispensing faucets sold or transported in interstate commerce.

76. BEI has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '614 Patent.

77. BEI has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '420 Patent.

78. BEI has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '299 Patent.

79. BEI has never been licensed to use the trademark VENT-MATIC on liquid dispensing faucets sold or transported in interstate commerce.

80. Salcedo has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '614 Patent.

81. Salcedo has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '420 Patent.

82. Salcedo has never been licensed by Plaintiffs to manufacture, import, use, offer to sell and sell products claimed in the '299 Patent.

83. Salcedo has never been licensed to use the trademark VENT-MATIC on liquid dispensing faucets sold or transported in interstate commerce.

84. At least as recently as December 24, 2014 a faucet referred to as the "Vent-Matic S/S Faucet with 10mm Spout" ("Accused Faucet") was offered for sale on and sold through the DT Website. This product was identified with item code DTF550C on the DT Website. (*See* Exh. 9.)

85. At least as recently as December 24, 2014 the DT Website appeared to be under the control of Draught Technologies as evidenced by the copyright notice stating "© 2014 Draught Technologies, LLC".

86. The Accused Faucet was advertised as having a "patented vent-free

forward seal design.” (Exh. 9.)

87. At least one Accused Faucet has been sold in this judicial district. (*See* Exh. 10.) The packing slip for such sale, dated November 25, 2014, indicates the Accused Faucet was sold by “Draught Technologies.”

88. Exhibits 11-18 show a faucet which is an example of an Accused Faucet. Exhibits 11 and 12 show the valve in its closed and open positions respectively. Exhibit 13 shows the valve disassembled. Exhibit 14 shows the valve from the inlet port (C). Exhibits 15 and 16 show the valve in the closed and open position, respectively, from the outlet port (D) side of the valve. Exhibits 17 and 18 show the valve in the closed and open positions, respectively, with the plunger (F) superimposed on the valve body (A) with a line (X) indicating where the valve seat (E) would be.

89. The faucet of Exhibits 11-18 has a valve body (A) having a bore (B) that has axially aligned inlet (C) and outlet ports (D) and having a seat (E) disposed adjacent the outlet port (D).

90. The faucet of Exhibits 11-18 has a plunger (F) disposed in the valve body (A) between the inlet port (C) and the outlet port (D), wherein the plunger (F) has an upstream end (G) and a downstream (H), free end, and wherein the plunger is moveable axially within the bore (*see* Exhs. 11-12 and Exhs. 17-18), in a direction parallel to fluid flow, from a valve-open position (Exhs. 12, 18) to a valve-closed position (Exhs. 11, 17.)

91. The faucet of Exhibits 11-18 has a valve seal (I) disposed adjacent to

the downstream end (H) of the plunger (F), wherein the seal (I) seals against the seat (E) when the plunger (F) is in the valve-closed position (*see* Exh. 15), and wherein at least a majority of the plunger (F) is configured to be immersed in fluid in the bore when the plunger (F) is in the valve closed position.

92. The faucet of Exhibits 11-18 has a valve body (A) having a bore (B), an inlet port (C), an outlet port (D), and a seat (E) disposed adjacent the outlet port (D) (*see* Exhs. 14 and 16).

93. The faucet of Exhibits 11-18 has a plunger (F) disposed in the valve body (A) between the inlet port (C) and the outlet port (D), wherein the plunger (F) has a first, upstream end (G) and a second, downstream end (H), wherein the plunger (F) is moveable axially within the bore, in a direction parallel to fluid flow, from a valve-open position to a valve-closed position (*see* Exhs. 11-12 and Exhs. 17-18), and wherein the plunger has a flow modifying tip (J) on its downstream end (H) that extends at least partially into the outlet port when the plunger (F) is in the valve-open position (*see* Exh. 18).

94. The faucet of Exhibits 11-18 has a valve seal (I) disposed adjacent to the downstream end (H) of the plunger (F), wherein the seal (I) seals against the seat (E) when the plunger (F) is in the valve-closed position (*see* Exh. 15).

95. The faucet of Exhibits 11-18 has a valve body (A) having a bore (B) that has axially aligned inlet (C) and outlet (D) ports and having a seat (E) disposed adjacent the outlet port (D) (*see* Exhs. 14 and 16).

96. The faucet of Exhibits 11-18 has a plunger (F) disposed in the valve

body (A) between the inlet port (B) and the outlet port (C), wherein the plunger (F) has an upstream end (G) and a downstream (H), free end, and wherein the plunger (F) is moveable axially within the bore, in a direction parallel to fluid flow, from a valve-open position to a valve-closed position (*see* Exhs. 11-12 and Exhs. 17-18).

97. The faucet of Exhibits 11-18 has a valve seal (I) mounted on the plunger (F), wherein the seal (I) seals against the seat (E) when said plunger is in the valve-closed position (*see* Exhs. 15, 17) and is spaced from the seat when the plunger is in the valve-open position (*see* Exh. 18), and wherein at least a majority of the plunger is configured to be immersed in fluid in the bore when the plunger is in the valve closed position.

98. The faucet of Exhibits 11-18 has a flow-modifying tip (J) disposed on the downstream end (H) of the plunger (F) (*see* Exh. 13), the tip (J) extending at least partially into the outlet port when the plunger (F) is in the valve-open position (*see* Exh. 18), and wherein the flow modifying tip (J) has a larger diameter at its upstream end and a smaller diameter at its downstream end.

Count I-Direct Patent Infringement U.S. Patent No. 6,457,614

99. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-98 of the Complaint.

100. The acts of Defendants Draught Technologies and BEI (“Direct Patent Infringers”) complained of herein constitute patent infringement under 35 U.S.C. § 271(a).

101. More specifically, Direct Patent Infringers’ offer for sale and sale of at

least the Accused Faucet infringes at least one claim of the '614 Patent.

102. Direct Patent Infringers' offer for sale and sale of the Accused Faucet infringes claim 1 of the '614 Patent.

103. Upon information and belief, Direct Patent Infringers acted, as complained of herein, despite a high likelihood that Direct Patent Infringers' actions infringed, or with reckless disregard of, a valid and enforceable patent, namely, the '614 Patent.

104. Upon information and belief, Direct Patent Infringers actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent, namely, the '614 Patent.

Count II-Direct Patent Infringement U.S. Patent No. 6,626,420

105. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-104 of the Complaint.

106. The acts of Direct Patent Infringers complained of herein constitute patent infringement under 35 U.S.C. § 271(a).

107. More specifically, Direct Patent Infringers' offer for sale and sale of at least the Accused Faucet infringes at least one claim of the '420 Patent.

108. Direct Patent Infringers' offer for sale and sale of the Accused Faucet infringes claim 1 of the '420 Patent.

109. Upon information and belief, Direct Patent Infringers acted, as complained of herein, despite a high likelihood that Direct Patent Infringers' actions infringed, or with reckless disregard of, a valid and enforceable patent, namely, the

‘420 Patent.

110. Upon information and belief, Direct Patent Infringers actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent, namely, the ‘420 Patent.

Count III-Direct Patent Infringement U.S. Patent No. 7,077,299

111. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-110 of the Complaint.

112. The acts of Direct Patent Infringers complained of herein constitute patent infringement under 35 U.S.C. § 271(a).

113. More specifically, Direct Patent Infringers’ offer for sale and sale of at least the Accused Faucet infringes of at least one claim of the ‘299 Patent.

114. Direct Patent Infringers’ offer for sale and sale of the Accused Faucet infringes claim 12 of the ‘299 Patent.

115. Upon information and belief, Direct Patent Infringers acted, as complained of herein, despite a high likelihood that Direct Patent Infringers’ actions infringed, or with reckless disregard of, a valid and enforceable patent, namely, the ‘299 Patent.

116. Upon information and belief, Direct Patent Infringers actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent, namely, the ‘299 Patent.

Count IV-Inducement to Infringe

117. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-116 of the Complaint.

118. The acts of Defendant Salcedo complained of herein constitute patent infringement under 35 U.S.C. § 271(b), by active inducement.

119. More specifically, Salcedo induced Direct Patent Infringers' to infringe at least one claim of each of the '614 Patent, the '420 Patent, and the '299 Patent.

120. Direct Patent Infringers' offer for sale and sale of the Accused Faucet infringes at least one claim of each of the '614 Patent, the '420 Patent, and the '299 Patent.

121. Salcedo took action during the time the '614 Patent, the '420 Patent, and the '299 Patent were in force intending to cause the infringing acts by Direct Patent Infringers, namely, Salcedo controlled the sales function of Direct Patent Infringers including, upon information and belief, selling the Accused Faucet and talking to customers and distributors about the Accused Faucet.

122. Salcedo was aware of the '614 Patent, the '420 Patent, and the '299 Patent based on his involvement with the January 2012 and December 2012 Licenses.

123. Salcedo knew that the offering for sale and sales of the Accused Faucet by Direct Patent Infringers would constitute infringement of '614 Patent, the '420 Patent, and the '299 Patent, namely because Salcedo had notice and knowledge of the termination of the January 2012 and December 2012 Licenses.

Count V-Contributory Infringement

124. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-123 of the Complaint.

125. The acts of Defendant Beverage Services complained of herein constitute contributory patent infringement under 35 U.S.C. § 271(c).

126. Beverage Services had within its possession some number of Accused Faucets or components sufficient to assemble same (“Beverage Services Inventory”).

127. After the termination of the December 2012 License, Beverage Services offered to sell, sold, or otherwise supplied the Beverage Services Inventory to BEI.

128. The Beverage Services Inventory had and/or has no substantial use that would not infringe the ‘614 Patent, the ‘420 Patent, and the ‘299 Patent.

129. The Beverage Services Inventory constitutes a material part of the invention claimed in at least one claim of each of the ‘614 Patent, the ‘420 Patent, and the ‘299 Patent.

130. Beverage Services was aware of the ‘614 Patent, the ‘420 Patent, and the ‘299 Patent and knew that the Beverage Services Inventory had and/or has no other substantial use beyond that covered by at least one claim of each of the ‘614 Patent, the ‘420 Patent, and the ‘299 Patent, either literally or under the doctrine of equivalents.

131. The assembly, use, sales, and/or offers for sale of the Beverage Services Inventory by BEI directly infringed at least one claim of each of the ‘614 Patent, the ‘420 Patent, and the ‘299 Patent, either literally or under the doctrine of

equivalents.

Count VI-Trademark Infringement (BEI)

132. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-131 of the Complaint.

133. Defendant BEI has used words, terms, names and colorable imitations or counterfeits of or copies of Vent-Matic's VENT-MATIC Mark in connection with the sale, offering for sale or advertising of goods.

134. BEI has used the word VENTMATIC in commerce by placing VENTMATIC on Accused Faucets or their containers or the displays associated therewith (including the DT Website) or on the tags or labels affixed thereto, and the Accused Faucets have been sold or transported in interstate commerce by BEI or under its direction or control.

135. BEI's use of the term "VENTMATIC" to describe the Accused Faucet constitutes use of a "counterfeit mark" as that term is defined in 15 U.S.C. §1116 (d)(1)(B).

136. The acts of BEI complained of herein constitute infringement of the VENT-MATIC Mark.

137. The use, sale of products under, offering products for sale under, and display of the word VENTMATIC in connection with goods including liquid dispensing faucets by BEI was and is without permission or authority from Vent-Matic and is likely to cause confusion or mistake and to deceive customers into thinking that BEI's unauthorized and infringing goods and services are Vent-

Matic's goods and services sold under the VENT-MATIC Mark, or are sponsored, licensed, or otherwise authorized by, or affiliated, connected or otherwise associated with Vent-Matic, its services or its products.

138. BEI's activities have caused and will continue to cause Vent-Matic grave and irreparable harm and damage. Unless permanently restrained and enjoined by this Court, BEI will persist in its unlawful activities, thereby causing further damage and irreparable harm to Vent-Matic and to the public interest.

139. Upon information and belief, all of aforesaid acts were made by BEI with full knowledge of Vent-Matic's (or Mr. Amidzich's) proprietary rights in the VENT-MATIC Mark, and such acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

Count VII-Unfair Competition

140. Plaintiff Vent-Matic re-alleges and incorporates by reference paragraphs 1-139 of the Complaint.

141. The aforesaid activities of Defendants Beverage Services, Draught Technologies, and BEI constitute the use in commerce of a word, term, name, symbol or device or combination thereof, false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to a respective affiliation, connection or association of Beverage Services, Draught Technologies, and/or BEI with Vent-Matic, or as to the origin, sponsorship, or approval of

Beverage Services, Draught Technologies, and BEI's goods, services, or other commercial activities by Vent-Matic.

142. The aforesaid activities of Defendants Beverage Services, Draught Technologies, and BEI constitute the use in commerce of a word, term, name, symbol or device, or combination thereof, false designation of origin, false or misleading description of fact, or false or misleading representation of fact that in commercial advertising or promotion, misrepresents the nature, characteristics or qualities of Beverage Services', Draught Technologies', and BEI's goods, services or other commercial activities.

143. The aforesaid activities of Beverage Services, Draught Technologies, and BEI constitute false and misleading descriptions or representations of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

144. The aforesaid acts of Beverage Services, Draught Technologies, and BEI have caused and are causing great and irreparable harm and damage to Vent-Matic, and unless permanently restrained by this Court, said irreparable injury will continue.

Count VIII-Breach of Contract

145. Plaintiff Ameramid re-alleges and incorporates by reference paragraphs 1-144 of the Complaint.

146. Draught Technologies breached the January 2012 License by at least the following actions or inactions:

- a. Draught Technologies failed to make payments to Ameramid, which

was contrary to the requirements of section 3 of the January 2012 License;

- b. Draught Technologies failed to provide reports to Ameramid, which was contrary to the requirements of section 4 of the January 2012 License; and/or
- c. After termination of the January 2012 License in October 2012, Draught Technologies failed to transfer all licensed products to Ameramid, which was contrary to section 6(g) of the January 2012 License.

Count IX-Breach of Contract

147. Plaintiff Ameramid re-alleges and incorporates by reference paragraphs 1-146 of the Complaint.

148. Beverage Services breached the December 2012 License by at least the following actions or inactions:

- a. Beverage Services failed to make payments to Ameramid, which was contrary to the requirements of section 3 of the December 2012 License;
- b. Beverage Services failed to provide reports to Ameramid, which was contrary to the requirements of section 4 of the December 2012 License; and/or
- c. After termination of the December 2012 License in October 2013, Beverage Services failed to transfer all licensed products to Ameramid,

which was contrary to section 6(g) of the December 2012 License.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor on each and every claim for relief set forth above and an award for relief including, but not limited to, the following:

A. An order permanently enjoining Defendants Draught Technologies, Beverage Services, and BEI and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with it:

- i. From manufacturing, importing, using, offering to sell and selling the Accused Faucet or any other product that infringes any of the patents-in-suit;
- ii. From directly or indirectly manufacturing, importing, marketing, offering to sell and selling the Accused Faucet, or any confusingly similar devices incorporating a colorable imitation of the VENT-MATIC Mark;
- iii. From using the names or mark VENT-MATIC or any confusingly similar mark, name, domain name, or colorable imitation thereof in any way which misleads or confuses anyone as to the source, affiliation, or sponsorship of goods or services offered under such marks; and
- iv. From committing any other acts calculated to cause purchasers to believe that Defendant's products are Plaintiffs', and from competing unfairly with Plaintiffs in any manner;

B. An order permanently enjoining Salcedo from manufacturing, importing, using, offering to sell and selling the Accused Faucet or any other product that

infringes any of the patents-in-suit or inducing another to do so;

C. An Order directing each Defendant to file with this Court and serve on Plaintiffs' attorneys, thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which it has complied with the injunction;

D. An Order directing Defendants Draught Technologies, Beverage Services, and BEI to surrender for destruction all infringing products and manufacturing supplies in Defendant's possession or control, which are unauthorized copies of Plaintiffs' property, or to cause the destruction of products that violate Plaintiffs' patent or trademark rights;

E. An Order directing Defendants Draught Technologies, Beverage Services, and BEI to surrender for destruction all labels, signs, prints, packages, wrappers, receptacles, and advertisements bearing the word VENTMATIC or any reproduction, counterfeit, copy, derivative or colorable imitation of the VENT-MATIC Mark, and all plates, molds, screens, or other means of making the same;

F. An Order directing Defendant Draught Technologies, Beverage Services, and BEI to remove from all websites that it owns or controls, directly or indirectly, the word VENTMATIC or any reproduction, counterfeit, copy, derivative or colorable imitation of the VENT-MATIC Mark and any variations thereof, and any other marks that are likely to cause confusion with Vent-Matic's trademark;

G. A judgment that Defendants have willfully and deliberately committed respective acts of patent infringement, trademark infringement, and/or unfair

competition;

H. An award of actual monetary damages Plaintiffs have incurred as a result of Defendants' infringements, in an amount to be proven at trial;

I. An award of damages to Ameramid against Draught Technologies resulting from Draught Technologies' breach of the January 2012 License, in an amount to be proven at trial;

J. An award of damages to Ameramid against Beverage Services resulting from Beverage Services' breach of the December 2012 License, in an amount to be proven at trial;

K. An accounting and disgorgement of Defendants' profits, including prejudgment and post-judgment interest, resulting from their infringing activity, in an amount to be proven at trial;

L. An award to Vent-Matic of treble damages for any patent infringement by any Defendant that is deemed to be willful, deliberate and intentional pursuant to 35 U.S.C. § 284;

M. An award to Vent-Matic of treble damages for any trademark infringement by any Defendant that is deemed to be a counterfeit pursuant 15 U.S.C. § 1117;

N. A judgment that the patent infringement conduct of any Defendant renders this case exceptional under 35 U.S.C. § 285;

O. An award of Plaintiffs' attorneys' fees, costs, and disbursements incurred in prosecuting this action;

P. An award to Vent-Matic of damages required to be expended in corrective advertising related to its VENT-MATIC brand and to be expended in distancing itself from Defendants in the market; and

Q. An award to Plaintiffs of such other further relief as the Court deems just and equitable.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs, hereby demand and request a trial by jury of all claims and issues so triable.

Date: _____ Respectfully submitted,

RYAN KROMHOLZ & MANION, S.C.

s/Melissa S. Hockersmith

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