

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

EXMARK MANUFACTURING CO.,
INC.,

Plaintiff,

V.

**BRIGGS & STRATTON POWER
PRODUCTS GROUP, LLC and
SCHILLER GROUNDS CARE, INC.,**

Defendant.

Case No. 10-CV-00187

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Exmark Manufacturing Company, Inc. (“Exmark” or “Plaintiff”) brings this First Amended Complaint for patent infringement against Briggs & Stratton Power Products Group, LLC (“Briggs”) and Schiller Grounds Care, Inc. (“Schiller”) (collectively Briggs and Schiller are referred to as “Defendants”), as outlined below.

The Parties

1. Exmark is a corporation organized and existing under the laws of Nebraska and has a principal place of business at Industrial Park N.W., P.O. Box 808, Beatrice, Nebraska 68310.

2. Upon information and belief, Briggs is a Delaware Limited Liability Company having a principal place of business at 900 North Pkwy., Jefferson, Wisconsin 53549.

3. Upon information and belief, Schiller is a Pennsylvania corporation having a principal place of business at 1028 Street Road, Southampton, Pennsylvania 18966.

Jurisdiction

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(a)(1) and 1338(a).

Count I
Claim for Patent Infringement of U.S. Patent No. 5,987,863 against Briggs

6. Paragraphs 1–5 are incorporated into this Count by reference.

7. Exmark is the owner of the entire right, title, and interest in and to U.S. Patent No. 5,987,863 (“the ‘863 patent”) which duly and legally issued on November 23, 1999. A copy of the ‘863 patent is attached as Exhibit A.

8. Exmark has complied with the statutory requirement of placing a notice of the ‘863 patent on all mowers it manufactures and sells that use the patented invention and has given Briggs written notice of the infringement.

9. Briggs is making and selling mowers under the Ferris and Snapper brand names that are covered by the ‘863 patent and, by its actions relating to such mowers, including the sale, offer for sale and manufacture thereof, Briggs has infringed and continues to infringe the ‘863 patent and will continue to do so unless enjoined by this Court. The infringing mowers include, but are not limited to, mowers sold under the

designation Snapper Pro S200X, Ferris Comfort Control DD, and mowers having Briggs' iCD Cutting System.

10. Exmark has been damaged by Briggs' infringement of the '863 patent and will continue to be damaged in the future unless Briggs is enjoined from infringing the '863 patent.

11. Briggs' acts of infringement have been and continue to be willful, as Briggs knew or should have known of the '863 patent and that its manufacture and sale of the accused mowers would infringe the '863 patent, but acted despite an objectively high likelihood that such activities would infringe the '863 patent.

Count II
Claim for Patent Infringement of U.S. Patent No. 5,987,863 against Schiller

12. Paragraphs 1–11 are incorporated into this Count by reference.

13. Exmark has complied with the statutory requirement of placing a notice of the '863 patent on all mowers it manufactures and sells that use the patented invention and has given Schiller written notice of the infringement.

14. Schiller is making and selling mowers under the Bob-Cat and Bunton brand names that are covered by the '863 patent and, by its actions relating to such mowers, including the sale, offer for sale and manufacture thereof, Schiller has infringed and continues to infringe the '863 patent and will continue to do so unless enjoined by this Court. The infringing mowers include, but are not limited to, mowers sold under the designation Bob-Cat FastCat Pro and Bob-Cat Hydro Walk-Behind.

15. Exmark has been damaged by Schiller's infringement of the '863 patent and will continue to be damaged in the future unless Schiller is enjoined from infringing the '863 patent.

16. Schiller's acts of infringement have been and continue to be willful, as Schiller knew or should have known of the '863 patent and that its manufacture and sale of the accused mowers would infringe the '863 patent, but acted despite an objectively high likelihood that such activities would infringe the '863 patent.

Prayer for Relief

WHEREFORE, Exmark respectfully demands the following relief:

- a. a judgment that Defendants have infringed the '863 patent, and that Defendants' infringement was willful;
- b. both preliminary and permanent injunctions enjoining and restraining Defendants, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing the '863 patent;
- c. a judgment and order requiring Defendants to pay all appropriate damages, including prejudgment and post-judgment interest, under 35 U.S.C. § 284, and treble damages if any of the infringement is determined to be willful;
- d. a judgment and order requiring Defendants to pay the costs of this action, including all disbursements and attorney fees, if this case is exceptional as provided by 35 U.S.C. § 285; and
- e. such other and further relief as the Court deems just and proper.

Jury Demand and Request for Place of Trial

Exmark demands a trial by jury in Omaha, Nebraska, of all issues so triable.

EXMARK MANUFACTURING CO., INC.

By its attorneys,

Dated: August 12, 2010

s/ Joseph W. Winkels _____

J. Derek Vandenburg (admitted *pro hac vice*)

Joseph W. Winkels (admitted *pro hac vice*)

CARLSON, CASPERS, VANDENBURGH
& LINDQUIST, P.A.

225 South Sixth Street, Suite 3200

Minneapolis, MN 55402

Phone: 612-436-9600

Fax: 612-436-9605

dvandenburg@ccvl.com

jwinkels@ccvl.com

Jill Robb Ackerman (No. 17623)

BAIRD HOLM LLP

1500 Woodmen Tower

1700 Farnam Street

Omaha, NE 68102-2068

Phone: 402-636-8263

Fax: 402-344-0588

jrackerman@bairdholm.com