

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

HENNESSY INDUSTRIES, INC.,

Plaintiff,

vs.

**GREG SMITH EQUIPMENT SALES,
INC.,**

Defendant.

Civil Action No. _____

JUDGE _____

MAGISTRATE JUDGE _____

JURY DEMAND

COMPLAINT

Parties

1. Plaintiff, Hennessy Industries, Inc. ("Plaintiff"), is a corporation of the State of Delaware, and maintains its principal place of business at 1601 J.P. Hennessy Drive, LaVergne, Tennessee 37086.

2. Defendant, Greg Smith Equipment Sales, Inc. ("Defendant"), is a corporation of the State of Indiana, and maintains its principal place of business at 5800 Massachusetts Avenue, Indianapolis, Indiana 46218.

Jurisdiction and Venue

3. This is a suit for infringement of United States Patent No. 6,182,736 (the '736 patent) and involves machines for changing vehicle tires. A copy of the '736 patent is attached as Exhibit A hereto. Defendant has made, used, sold, offered for sale, and/or imported devices which directly and/or indirectly infringe the '736 patent ("accused devices").

4. The accused devices have, on information and belief, been offered for sale and/or sold in the United States. For example, Defendant advertises tire changing equipment including the accused devices on its website, www.gregsmiththeequipment.com. The website states:

Greg Smith Equipment Sales has enjoyed enormous growth in the past several years due in part to the exposure we receive on the Internet. We also advertise through a direct mail campaign and in many local and national trade publications. We exhibit in trade shows in the USA and in other countries.

In addition, the website has a "shopping cart" feature, encouraging and allowing customers to purchase the accused devices by interacting with the website. On information and belief, this includes customers in Tennessee and this District.

5. The action herein alleged arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* and, more particularly, 35 U.S.C. §§ 271 and 281-87.

6. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. Personal jurisdiction is invoked under the provisions of Tennessee Code §§ 20-2-201, 20-2-214, 20-2-223 and/or 20-2-225.

8. Venue is properly laid under the provisions of 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

Patent-in-Suit

9. The '736 patent, entitled "Helper Arm for a Rim Holding Tire Changer," was issued on February 6, 2001, to Charles L. Cunningham and David M. Carpenter as the inventors.

10. Charles L. Cunningham and David M. Carpenter have assigned all right, title, and interest in and to the '736 patent to Plaintiff.

Count I – Patent Infringement

11. The allegations of paragraphs 1-10 are incorporated by reference as if fully set forth herein.

12. Upon information and belief, Defendant has for a time past and continues to infringe the '736 patent by making, using selling, offering for sale and/or importing the accused devices to customers in the United States, including customers in Tennessee, either directly or through intermediaries.

13. One such accused device is referred to by Defendant as the Atlas TC205 No-Touch Tire Changer ("TC205 Tire Changer"). The cover page of the Operations Manual of the TC205 Tire Changer is attached as Exhibit B hereto. The TC205 Tire Changer is covered by one or more claims of the '736 patent.

14. The Defendant also sells one or more assist arm products that fall within the scope of the '736 patent, including but not limited to the Atlas Economy Bead Pressing Right Assist Arm ("BPRHA"). A page from Defendant's website advertising the BPRHA is attached as Exhibit C hereto. The BPRHA is covered by one or more claims of the '736 patent.

15. Defendant was notified of the '736 patent by correspondence from Plaintiff's counsel dated February 22, 2011. Defendant responded to such correspondence (and subsequent correspondence from Plaintiff's counsel), and is thus aware of the '736 patent and its claims.

16. Defendant has indirectly infringed the '736 patent by selling the accused devices to its customers, who used the accused devices in accordance with instructions provided to such customers by Defendant.

17. Because the accused devices are covered by one or more claims of the '736 patent, they have no substantial non-infringing uses. Moreover, the BPRHA is specifically advertised for use with Defendant's TC221 and TC229 tire changers of the swing-arm rim-holding type. Attaching the BPRHA to such changers as instructed by Defendant creates a tire changing apparatus which is covered by claims of the '736 patent, including claims 1 and 3. Defendant knows that the accused devices are especially made or especially adapted for use in an infringement of the '736 patent. Defendant has thus contributorily infringed the '736 patent under 35 U.S.C. § 271(c).

18. By its acts of selling the accused devices to its customers, Defendant specifically intends for such customers to use the accused devices in the manner instructed by Defendant. Defendant was aware of the '736 patent and knew that such customers' acts constituted infringement of the '736 patent. Defendant has thus induced infringement of the '736 patent under 35 U.S.C. § 271(b).

19. Upon information and belief, aforementioned acts of infringement of the '736 patent have been and are being willfully and deliberately committed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment:

- (a) Holding that Defendant has directly and indirectly infringed the '736 patent;
- (b) Preliminarily and permanently enjoining Defendant, its officers, agents, employees, representatives, and all others acting in concert therewith, from further infringement or contributory infringement of the '736 patent;

(c) Awarding Plaintiff damages adequate to compensate for such infringement, and in no event less than a reasonable royalty, and increasing such damages three (3) times by reason of the willful and deliberate nature of such infringement, together with interest and costs;

(d) Awarding Plaintiff its reasonable attorneys' fees in prosecuting this action; and

(e) Affording such further and other relief as this Court may deem just and proper.

PLAINTIFF DEMANDS A JURY TRIAL

Respectfully submitted,

LEWIS, KING, KRIEG & WALDROP, P.C.

By: /s/ John R. Tarpley

John R. Tarpley, BPR# 09661

424 Church Street, Suite 2500

Post Office Box 198615

Nashville, TN 37219-8615

(615) 256-1366

(615) 259-1389 (Fax)

Of Counsel:

Mark C. Dukes, Esq.

mark.dukes@nelsonmullins.com

Craig N. Killen, Esq.

craig.killen@nelsonmullins.com

Nelson Mullins Riley & Scarborough, LLP

1320 Main Street, Suite 1700

Columbia, SC 29201

(803) 799-2000

Fax (803) 255-9831

Attorneys for Plaintiff