

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

LakeSouth Holdings, LLC,

Plaintiff,

v.

Evergreen Enterprises, Inc. and
Evergreen Enterprises of Virginia, LLC,

Defendant.

CASE No.: 3:14-cv-2033

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff LakeSouth Holdings, LLC files this Original Complaint for patent infringement against Evergreen Enterprises of Virginia, LLC and alleges the following:

THE PARTIES

1. Plaintiff LakeSouth Holdings, LLC (“Plaintiff” or “LakeSouth”) is a Delaware limited liability company with its principal place of business located at 1460 Main Street, Suite 244, Southlake, Texas 76092.
2. Upon information and belief, Defendant Evergreen Enterprises, Inc. is a Virginia corporation with its principal place of business at 5915 Midlothian Turnpike, Richmond, Virginia 23225, and Defendant Evergreen Enterprises of Virginia, LLC is a Delaware limited liability company with its principal place of business at 5915 Midlothian Turnpike, Richmond, Virginia 23225 (collectively referred to as “Evergreen”).

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*
4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).
6. This Court has personal jurisdiction over Evergreen.
7. Upon information and belief, Evergreen has and continues to conduct business within the State of Texas and within the Northern District of Texas.
8. Upon information and belief, Evergreen ships, distributes, offers for sale, sells, and advertises (whether directly or through intermediaries such as retailers), its products in the State of Texas and the Northern District of Texas.
9. Upon information and belief, Evergreen has purposefully and voluntarily placed one or more of its infringing products into the stream of commerce with the expectation that the infringing products will be purchased and used by consumers in the Northern District of Texas. These infringing products have been and continue to be purchased and used by consumers in the Northern District of Texas.
10. Upon information and belief, Evergreen has caused LakeSouth's patents to be infringed within the State of Texas and within the Northern District of Texas.

THE '882 AND '521 PATENTS

11. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on over 40 U.S. patents.
12. Mr. Kuelbs is the sole inventor of U.S. Patent Nos. 6,901,882 ("the '882 Patent") and 7,017,521 ("the '521 Patent"), each entitled "Solar Powered Bird Feeder."
13. On June 7, 2005, the U.S. Patent and Trademark Office ("USPTO") duly and legally issued the '882 Patent, a copy of which is attached as Exhibit A.
14. On March 28, 2006, the USPTO duly and legally issued the '521 Patent, a copy of which is attached as Exhibit B.

15. LakeSouth holds all substantial rights to the '882 and '521 Patents.

EVERGREEN'S ACCUSED BIRD FEEDERS

16. Upon information and belief, Evergreen makes, uses, offers to sell, sells, and/or imports various outdoor bird feeders.

17. Evergreen makes, uses, offers to sell, sells, and/or imports solar powered bird feeders that include lights and a solar panel ("the Accused Bird Feeders") that infringe the '882 Patent and/or the '521 Patent. For example, Evergreen offers for sale and sells Accused Bird Feeders described as "Metal and Glass Solar Powered Birdfeeder," including at least SKUs 2BF198, 2BF200, 2BF203, 2BF204, 2BF924, 2BF928, and 2BF3826. Printouts of these Accused Bird Feeders are attached as Exhibit C.

18. The Accused Bird Feeders are also sold online through at least www.wayfair.com and www.walmart.com, printouts of which are attached as Exhibit D.

19. Further discovery may reveal additional infringing products and/or models.

20. Upon information and belief, Evergreen's Accused Bird Feeders are offered for sale and sold to residents within the Northern District of Texas.

21. In a letter dated May 23, 2014, LakeSouth informed Evergreen about several patents, and informed Evergreen that it was infringing the '882 and '521 Patents.

22. Evergreen has infringed and is still infringing the '882 and '521 Patents by making, using, offering to sell, selling, and/or importing the Accused Bird Feeders.

23. Evergreen's infringement has harmed and will continue to harm LakeSouth.

24. Evergreen will continue to infringe the '882 and '521 Patents unless enjoined by this Court.

EVERGREEN’S INFRINGEMENT IS ALSO HARMING LAKE SOUTH’S LICENSEE

25. LakeSouth has provided World Factory, Inc. (“World Factory”) a non-exclusive license to a number of patents, including the ’882 and ’521 Patents.
26. World Factory is a Texas corporation with its principal place of business located in the Northern District of Texas at 542 Silicon Drive, Suite 101, Southlake, Texas.
27. World Factory sells a variety of products, including outdoor furnishings, lawn decorations, outdoor recreation products, and solar powered bird feeders throughout the United States and within the Northern District of Texas.
28. Evergreen’s infringement is harming not only LakeSouth but also LakeSouth’s licensee, World Factory.
29. Evergreen’s infringement has harmed and will continue to harm World Factory unless enjoined by this Court.

COUNT I - INFRINGEMENT OF THE ’882 PATENT

30. LakeSouth repeats and realleges the allegations in paragraphs 1-29 as though fully set forth herein.
31. Evergreen has infringed, contributed to the infringement of, and/or induced infringement of the ’882 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the ’882 Patent including, but not limited to, the Accused Bird Feeders that include lights and a solar panel.
32. Evergreen has known about the ’882 Patent at least since it received LakeSouth’s May 23, 2014 letter.

33. Evergreen was aware that its actions would cause infringement of the '882 Patent and acted with intent to encourage direct infringement of the '882 Patent.
34. Evergreen's infringement of the '882 Patent has damaged and will continue to damage LakeSouth.
35. Evergreen's infringement of the '882 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

COUNT II - INFRINGEMENT OF THE '521 PATENT

36. LakeSouth repeats and realleges the allegations in paragraphs 1-35 as though fully set forth herein.
37. Evergreen has infringed, contributed to the infringement of, and/or induced infringement of the '521 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the '521 Patent including, but not limited to, the Accused Bird Feeders that include lights and a solar panel.
38. Evergreen has known about the '521 Patent at least since it received LakeSouth's May 23, 2014 letter.
39. Evergreen was aware that its actions would cause infringement of the '521 Patent and acted with intent to encourage direct infringement of the '521 Patent.
40. Evergreen's infringement of the '521 Patent has damaged and will continue to damage LakeSouth.
41. Evergreen's infringement of the '521 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

DEMAND FOR JURY TRIAL

42. LakeSouth hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

43. LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. Adjudge that Evergreen infringes the '882 and '521 Patents;
- B. Award LakeSouth damages in an amount adequate to compensate LakeSouth for Evergreen's infringement of the '882 and '521 Patents, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- C. Award LakeSouth pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs;
- D. Enter an order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- E. Enjoin Evergreen and all others in active concert with Evergreen from further infringement of the '882 and '521 Patents; and
- F. Award such other relief as the Court may deem appropriate and just under the circumstances.

June 4, 2014

Respectfully submitted,

/s/ Max Ciccarelli

Max Ciccarelli

Texas State Bar No. 00787242

max.ciccarelli@tklaw.com

Justin S. Cohen

Texas State Bar No. 24078356

justin.cohen@tklaw.com

THOMPSON & KNIGHT LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, TX 75201

Telephone: 214.969.1700

Facsimile: 214.969.1751

ATTORNEYS FOR PLAINTIFF

LAKE SOUTH HOLDINGS, LLC,