

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RHETECH INC,
a Michigan Corporation, and
THERMOCOLOR, L.L.C.
d/b/a RHETECH COLORS,
a Michigan Limited Liability
Company,

Case No: 09-
HON.

Plaintiffs,

v.

ROBERT JOYCE, an individual, and
INNOVATIVE PLASTICS & MOLDING
COMPANY, a Michigan Corporation,

Defendant.

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

By: Brian A. Nettleingham (P58966)
James M. Reid, IV (P69238)

Attorneys for Plaintiffs
28400 Northwestern Highway
Third Floor, Essex Centre
Southfield, Michigan 48034
(248) 354-4030

E-mail: ban@maddinhauser.com
jmr4@maddinhauser.com

GIFFORD, KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.

By: Mark D. Schneider (P55253)

Attorney for Plaintiff
2701 Troy Center Dr Ste 330
PO Box 7021
Troy, Michigan 48007
(248) 647-6000

E-mail: mschneider@patlaw.com

COMPLAINT

Plaintiffs RheTech, Inc. and Thermocolor, LLC (collectively "RheTech") state for their complaint the following:

INTRODUCTION

Plaintiffs were forced to file this action after defendant Robert Joyce, while employed by plaintiff RheTech, misappropriated a working draft of a utility patent application that RheTech was preparing for filing with the U.S. Patent and Trademark Office. The patent application related to a wood composite compound in which RheTech had invested considerable resources and money in developing. Joyce used the draft application to prepare and file his own, unauthorized application, claiming RheTech's wood composite compound as his own. In the course of doing so, and in violation of at least two agreements that he had signed with RheTech, Joyce disclosed confidential information and trade secrets belonging to RheTech. Plaintiffs brings this action to enjoin Joyce from further disclosure and misappropriation of their valuable intellectual property.

GENERAL ALLEGATIONS

1. RheTech, Inc. ("RheTech, Inc.") is a corporation formed under the laws of the State of Michigan and having its principal place of business in the State of Michigan.
2. Plaintiff Thermocolor, L.L.C. ("Thermocolor") is a limited liability company formed under the laws of the State of Michigan and having its principal place of business in the State of Ohio.
3. Robert Joyce is an individual who resides in Lambertville, Michigan.

4. Innovative Plastics & Molding, Inc. (“IPM”) is a Michigan corporation with its principal place of business located in Labertville, MI.

5. Upon information and belief, IPM is wholly owned and operated by Robert Joyce.

6. Plaintiff RheTech creates and manufactures resins that are used in manufacturing processes to create, among other things, plastic products.

7. Plaintiff Thermocolor manufactures color concentrates that are used in manufacturing processes to create, among other things, colored plastic products.

8. Defendant Robert Joyce signed an employment agreement with RheTech, Inc. on or about August 30, 2007. See Exhibit A, Employment Agreement. The Employment Agreement contemplated that the parties would also enter into a Marketing and Development Agreement.

9. After entering into the Employment Agreement, Robert Joyce executed the contemplated Marketing and Development Agreement on behalf of himself and defendant IPM. See Exhibit B, Employment and Marketing Agreement.

10. Under the Employment Agreement, Joyce was paid a salary and benefits as a RheTech, Inc. employee.

11. Although the Agreements contain provisions requiring that disputes between the parties be resolved through binding arbitration, the Agreements also provide that claims for injunctive and other equitable relief shall not be submitted to arbitration.

12. The Employment Agreement and Marketing and Development Agreement provide that the venue for resolution of all disputes shall be Oakland County, Michigan.

The Marketing of Joyce's '420 Patent under the Agreements

13. Robert Joyce is the owner of U.S. Patent No. 7,214,420, which was a patent for a "molded article", specifically, a spindle that could be molded from a wood plastic composite. The '420 patent does not disclose or claim the formulation of any wood plastic compound. See Exhibit C, Patent No. 7,214,420.

14. Under the Employment Agreement and Marketing and Development Agreement (collectively "the Agreements"), Joyce was to develop a market for his spindle. In short, he was to market the spindle and license its use to potential manufacturers.

15. Under the Agreements, RheTech was to be the exclusive supplier of compounds for any manufacturer who licensed Joyce's spindle. In addition to obtaining a licensing fee from the customer, Joyce was to receive a commission on sales of compounds made by RheTech under those licensing agreements.

16. Joyce failed to develop a market for his spindle during the term of his employment..

RheTech's Development of a New Wood Plastic Composite Compound

17. As part of and during his term of paid employment with RheTech, Joyce was directed by RheTech to participate in RheTech's efforts to invent new wood plastic compounds, and through that process Joyce gained information regarding RheTech's confidential and proprietary information.

18. During the term of Joyce's employment, RheTech dedicated significant resources, money, and personnel to developing a new wood composite compound that was eventually the subject of a provisional patent application with the U.S. Patent and Trademark Office on or about

January 15, 2008. Specifically, RheTech commissioned that an application be filed on its behalf for this new technology and directed Joyce to interface with counsel for RheTech to aid in the drafting of that application. See Exhibit D, Provisional Patent Application No. 61/021,234.

19. The provisional patent application was drafted in conjunction with other RheTech personnel and RheTech's legal counsel and entirely at RheTech's expense.

20. The wood composite compound that is the subject of the RheTech '234 provisional application is not related in any way to Joyce's '420 patent. Rather, the '234 application relates solely to the formulation of a compound that can be used in manufacturing processes, whereas Joyce's '420 patent relates solely to a molded article in the form of a spindle.

Breakdown of the Parties Relationship

21. At some point in time, the relationship between Joyce and RheTech began to deteriorate.

22. In January 2009, while Joyce remained a RheTech employee and without RheTech's consent or knowledge, Joyce used draft versions of a utility patent application stored on RheTech's computer network to create and file a utility patent application for RheTech's wood composite compound. See Exhibit E, United States Patent Application Publication No 2009/0182071, entitled Wood composite alloy composition having a compatibilizer that improves the ability to process and compress cellulosic fiber (also known as the "12/321,093 Application" or the "093" Application).

23. RheTech also filed its own utility patent application regarding its wood composite compound. See Exhibit F. RheTech's application has yet to be published by the United States Patent and Trademark Office.

24. On or about July 15, 2009, Joyce terminated his employment with RheTech. See Exhibit G, Email from Joyce.

25. Joyce has claimed that he is the sole owner of the rights to RheTech's wood composite compound. See Exhibit G and Exhibit H, Emails from Joyce.

26. Since terminating his employment relationship with RheTech, Joyce has refused to disclose his marketing efforts regarding certain RheTech customers.

27. Since terminating his employment relationship with RheTech, Joyce has continued to call on RheTech customers for his own benefit and to the detriment of RheTech.

The IPM / Joyce Website

28. On July 28, 2009, Joyce registered the Internet domain name WOODCOMPOSITESANDMOLDING.COM through the GoDaddy registration service. Exhibit I.

29. Sometime after Joyce registered the WOODCOMPOSITESANDMOLDING.COM domain name, a website was posted to that domain in the name of IPM. Exhibit J (hereinafter "the IPM website").

30. According to the IPM website, IPM is a "natural fiber wood composite technology development company." See Exhibit J. IPM is, therefore, a direct competitor of the Plaintiffs.

31. The IPM website includes a "Technology" section that includes advertisements for Fibretuff™ natural fibre reinforced composites. See Exhibit J.

32. "Fibretuff™ is a wood composite polyolefin concentrate in pellet form that can be mixed with a virgin or compounded polyolefin to create a hybrid alloy composition. The hybrid

composition can provide superior strength to weight performance ratios, excellent adhesive properties, and improved processing performance.” See Exhibit J.

33. The IPM website also includes a “Products” section that includes advertisements (including images) for parts that are claimed by Defendants to have been produced using IPM technology.

34. On information and belief, the “Technology” section of the IPM website includes four (4) images, including the following image:



35. The IPM website identifies the object shown in the image displayed in paragraph 34, *supra*, as “Fibretuff purging with cutter blade.”

36. On information and belief, the image displayed in paragraph 34, *supra*, is an image of purging material with a cutter blade that was created as a result of tests that were performed by Plaintiff’s personnel.

37. On information and belief, the image displayed in paragraph 34, *supra*, is an image of purging material with a cutter blade that was created as a result of tests in which Joyce participated while he was employed by Plaintiff RheTech.

38. On information and belief, the image displayed in paragraph 34, *supra*, is an image of certain purging material with a cutter blade that was not created as a result of work performed by IPM.

39. On information and belief, the material shown in the image of paragraph 34 is a proprietary wood composite material that was created during certain tests performed by Plaintiff's personnel.

40. On information and belief, the image displayed in paragraph 34, *supra*, and captioned "Fibretuff purging with cutter blade", is provided on the IPM website as a demonstration IPM's claim that the Fibretuff material has at least one of a "superior strength to weight performance," "excellent adhesive properties," or "improved processing performance".

Jurisdiction and Venue

41. Plaintiffs have alleged, see *infra*, a federal cause of action. Therefore, this Court has subject matter jurisdiction over this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331. This Court has subject matter jurisdiction over the various State law claims pursuant to 28 U.S.C. § 1367. Venue is proper in this District pursuant to 28 U.S.C. §1391(b).

COUNT I – FALSE ADVERTISING AND/OR FALSE DESIGNATION

42. Plaintiffs incorporate their previous allegations as though fully restated herein.

43. The Defendants use and display of an image of Plaintiffs' proprietary wood composite material, in interstate commerce via the IPM website, and the labeling of that image as Fibretuff material, constitutes a false or misleading statement of fact in violation of 15 U.S.C. § 1125(a)(1)(B)(false advertising) about the Defendant's product and/or Plaintiffs material, which statement actually or tends to deceive a substantial portion of the intended audience, and

which statement is material in that it will likely influence the deceived consumer's purchasing decisions, and which statement has harmed, and will continue to harm, the Plaintiffs.

44. In addition to, or as an alternative to, the allegations of Paragraph 43, the Defendants' use and display of an image of the Plaintiffs' proprietary wood composite material, in interstate commerce via the IPM website, and the labeling of that image as Fibretuff material is likely to confuse, mislead or deceive consumers, purchasers, and members of the general public in violation of 15 U.S.C. § 1125(a)(1)(A) as to the origin, source, sponsorship, or affiliation of the Defendant's Fibretuff material and the services being offered by the Defendants, and is also likely to cause such people to believe in error that the Defendant's Fibretuff material and its services have been authorized, sponsored, approved, endorsed or licensed by Plaintiffs or that Defendants are in some way affiliated with Plaintiffs.

45. Unless the foregoing action alleged actions of Defendants are enjoined, Plaintiffs and the public will continue to suffer injury.

COUNT II – MISAPPROPRIATION OF TRADE SECRETS

46. Plaintiffs incorporate their previous allegations as though fully restated herein.

47. The business and development of wood composite compounds is highly technical, and expensive experimentation and development are necessary to create a viable product.

48. Joyce, while an employee of RheTech, was privy to RheTech's trade secrets. These secrets included information not publicly known and which is the subject of RheTech's patent filing. RheTech maintains the information in secrecy without publication.

49. Despite provisions in the Agreements requiring that he keep confidential RheTech's trade secrets and not use them for his own benefit, Joyce misappropriated those trade

secrets for his own benefit by, among other things, filing an exclusive patent application in his name regarding RheTech's wood composite compound.

50. Joyce published certain confidential information belonging to RheTech in his utility patent application. For example, paragraphs 20 and 21 of Joyce's published patent application disclosed trade secret information belonging to RheTech related to the manufacture of a wood composite. The information disclosed in paragraphs 20 and 21 of Joyce's published patent application, and on information and belief additional trade secret information known to Joyce that could yet be published by him, derived independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. This information was also the subject of efforts by RheTech that were reasonable under the circumstances to maintain its secrecy.

51. Joyce necessarily misappropriated RheTech's trade secrets in filing the '093 patent application while an employee of RheTech. See Exhibit E. The misappropriation of RheTech's trade secrets by Joyce was inevitable owing to his intimate knowledge thereof.

52. A threat of further disclosure of RheTech's trade secrets exists as a probable future consequence of voluntary acts of Joyce.

53. As a result of Joyce's misappropriation of RheTech's trade secrets, RheTech has suffered and will continue to suffer damages and has no adequate remedy at law.

COUNT III – BREACH OF CONTRACT

54. Plaintiffs incorporate their previous allegations as though fully restated herein.

55. Under the Agreements, Joyce was required to, among other things:

- a. Refrain from soliciting RheTech, Inc.'s customers for a period of three years following termination of the Agreement;
- b. Keep RheTech, Inc.'s confidential information in confidence and to refrain from using said information for his own benefit;
- c. Provide information regarding his marketing efforts and sales calls on RheTech customers; and
- d. Return all confidential information, samples, and other things belonging to RheTech upon termination of his employment.

56. Under the Agreements, all of RheTech, Inc.'s confidential information remained the property of RheTech, Inc.

57. Joyce has violated the Agreements by, among other things:

- a. Filing a utility patent application for RheTech's wood composite compound;
- b. Continuing to market to RheTech customers;
- c. Using RheTech's confidential and trade secret information for his own benefit; and
- d. Disclosing RheTech's confidential and trade secret information to third parties.

58. As a result of Joyce's actions, RheTech continues to suffer damages and has no adequate remedy at law.

COUNT IV – QUIET TITLE TO INVENTION

59. Plaintiffs incorporate their previous allegations as though fully restated herein.

60. Defendant Joyce was hired by Plaintiffs for the purpose of inventing, and assisting with the invention of, new wood composite materials and processes, and specifically, the type of wood composite materials and processes now disclosed in the '093 application. Accordingly, Defendant Joyce had a duty to disclose to Plaintiffs any and all such inventions, and those inventions rightly belong to Plaintiffs – his employer.

61. Additional, or alternatively, while employed by Plaintiffs, Defendant Joyce set to experimenting with wood composite materials and processes with a view of making an invention, and accepted pay from Plaintiffs for such work. Accordingly, Defendant Joyce had a duty to disclose to Plaintiffs what he discovered in making the experiments, and what he accomplished by such experiments rightly belongs to Plaintiffs – his employer.

62. Plaintiffs have been harmed, and will continued to be harmed, by Defendant's claims of ownership to any wood composite materials and processes invented while Defendant Joyce was employed by Plaintiffs unless such claims are enjoined by this Court and Plaintiffs are declared the true and rightful owners of all right, title and interests in such inventions.

Relief Requested

WHEREFORE, Plaintiffs pray for the following relief:

1. A preliminary and permanent order enjoining Defendants, any employees and/or agents, and all others in privity and active participation therewith from disclosing and/or disseminating any of Plaintiffs' trade secrets or confidential information to any third parties specifically including the prevention of such trade secrets to be published as part of any further United States or foreign patent or published applications;

2. A permanent order enjoining Defendants, any employees and/or agents, and all others in privity and active participation therewith from displaying an image of any RheTech product or material;

3. That Defendants be preliminarily and permanently enjoined from continuing and/or undertaking any solicitation of RheTech customers;

4. That Defendants be ordered to account for any revenues earned through his misappropriation, publication and improper use of Plaintiffs' trade secrets;

5. An award of punitive damages as a result of Defendants' willful and malicious conduct.

6. That Defendants pay for the costs, including reasonable attorneys fees, for the expenses incurred by Plaintiffs' as a result of the enforcement of its rights through this action.

7. A declaration that all inventions by Defendants regarding wood plastic composite technologies and/or processes during the period of Defendant Joyce's employment with Plaintiff RheTech are the property of RheTech.

8. That the Court enter judgment in favor of Plaintiffs' providing for such other relief as this Court may see fit to grant.

Respectfully submitted,

**MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.**

/s/ Brian A. Nettleingham

By: Brian A. Nettleingham (P58966)

James M. Reid, IV (P69238)

Attorneys for Plaintiffs

28400 Northwestern Highway

Third Floor, Essex Centre

Southfield, Michigan 48034

(248) 354-4030

E-mail: ban@maddinhauser.com
jmr4@maddinhauser.com

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INDEX OF EXHIBITS

- A. Employment Agreement
- B. Employment and Marketing Agreement.
- C. Patent No. 7,214,420.
- D. Provisional Patent Application No. 61/021,234
- E. United States Patent Application Publication No 2009/0182071
- F. RheTech's application has yet to be published by the United States Patent and Trademark Office.
- G. July 15, 2009 Email from Robert Joyce.
- H. July 20, 2009 Email from Robert Joyce
- I. Internet domain name WOODCOMPOSITESANDMOLDING.COM through GoDaddy registration service.
- J. The IPM website