

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MAR 13 2007  
BY DAVID J. MALAND, CLERK  
DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

SMART PARTS INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
AJ INTERMEDIATE HOLDINGS, )  
LLC and AJ ACQUISITION I, LLC )  
d/b/a KEE ACTION SPORTS, )  
NATIONAL PAINTBALL SUPPLY )  
and PURSUIT MARKETING INC. )  
)  
Defendants. )

Civil Action No. 607CV119  
  
JURY

**COMPLAINT FOR PATENT INFRINGEMENT  
AND DEMAND FOR JURY TRIAL**

Plaintiff, Smart Parts, Inc. ("Smart Parts"), files this Original Complaint for Patent Infringement complaining of AJ Intermediate Holdings, LLC and AJ Acquisition I, LLC (collectively "AJ") d/b/a KEE Action Sports ("KEE"), d/b/a National Paintball Supply ("NPS") and also d/b/a Pursuit Marketing, Inc. ("PMI"), and would respectfully show the Court as follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*
2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

**PARTIES**

4. Plaintiff Smart Parts is a Pennsylvania corporation with its principal place of business at 100 Station Street, Loyahanna, Pennsylvania.

5. On information and belief, Defendant AJ Intermediate Holdings, LLC is a Delaware corporation with its principal place of business at 570 Mantua Blvd, Sewell, New Jersey.

6. On information and belief, Defendant AJ Acquisition I, LLC is a Delaware corporation with its principal place of business at 570 Mantua Blvd, Sewell, New Jersey.

7. On information and belief, Defendant AJ Acquisition I, LLC is doing business as KEE, NPS, and PMI and is a wholly owned subsidiary of AJ Intermediate Holdings, LLC.

8. On information and belief, AJ, KEE, NPS, and PMI are doing business and committing acts of infringement in this judicial district and elsewhere.

**THE PATENTS**

9. Smart Parts is the owner, by assignment, of United States Patent Nos. 6,474,326 (“the ’326 patent” attached as Exhibit 1), 6,637,421 (“the ’421 patent” attached as Exhibit 2), 6,644,295 (“the ’295 patent” attached as Exhibit 3), 7,044,119 (“the ’119 patent” attached as Exhibit 4), 7,185,646 (“the ’646 patent” attached as Exhibit 5), 6,823,857 (“the ’857 patent attached as Exhibit 6), and 5,228,427 (“the ’427 patent” attached as Exhibit 7).

10. The ’326 patent, titled “Pneumatically Operated Projectile Launching Device,” was duly and legally issued on November 5, 2002.

11. The ’421 patent, titled “Pneumatically Operated Projectile Launching Device,” was duly and legally issued on October 28, 2003.

12. The '295 patent, titled "Pneumatic Assembly for a Paintball Gun," was duly and legally issued on November 11, 2003.

13. The '119 patent, titled "Pneumatic Assembly for a Paintball Gun" was duly and legally issued on May 16, 2006.

14. The '646 patent, titled "Pneumatic Assembly for a Paintball Gun" was duly and legally issued on March 6, 2007.

15. The '857 patent, titled "Barrel Assembly with Removable Barrel Insert for Pneumatic Paintball Gun," was duly and legally issued on November 30, 2004.

16. The '427 patent, titled "Improved Barrel for Paintball Gun," was duly and legally issued on July 20, 1993.

17. The '326, '421, '295, '119, '646, '857, and '427 patents (the "Smart Parts Patents") are valid and enforceable.

18. Smart Parts is the sole owner of the Smart Parts Patents and has the right to sue for infringement of any and all of them.

#### **DEFENDANTS' INFRINGING ACTIVITY**

19. AJ, KEE, NPS, and PMI are in the business of, among other things, manufacturing, distributing, offering for sale and selling paintball guns, called "markers" in the industry, as well as parts and accessories for markers, along with protective gear and clothing associated with paintball sports. AJ, KEE and NPS have offered paintball markers for sale in the United States and in this district, including at least the Empire Invert Mini, Indian Creek Design Freestyle, PMI Pimp Kit, and First Endeavor Paintball Quest models. AJ, KEE, NPS, and PMI also have sold at least one of the Invert Mini, Pimp Kit, and Quest model paintball markers in the

United States and in this District. AJ, KEE, NPS, and PMI have further offered for sale and sold parts and accessories for markers in this District, including at least the Revolver Barrel Kit.

20. AJ's, KEE's, NPS's, and PMI's paintball markers and related products are offered for sale, distributed, used, and sold nationwide in the United States, both to retail outlets and distributors.

### COUNT 1

#### **(Infringement of U.S. Patent No. 5,228,427)**

21. The allegations of paragraphs 1 through 20 above are incorporated herein by reference.

22. AJ, KEE and/or NPS have made, distributed, used, offered for sale and/or sold barrels for markers, in this District and elsewhere in the United States, including at least the Revolver Barrel Kit that directly infringe one or more claims of the '427 patent.

23. On information and belief, AJ, KEE and NPS had actual knowledge of the '427 patent.

24. On information and belief, AJ's, KEE's and NPS's infringement of the '427 patent has been willful.

25. AJ's, KEE's and NPS's infringement has damaged Smart Parts in an amount to be proven at trial.

26. AJ's, KEE's and NPS's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE and NPS are enjoined from such activity during the pendency of this action and permanently thereafter.

**COUNT II**

**(Infringement of U.S. Patent No. 6,823,857)**

27. The allegations of paragraphs 1 through 26 above are incorporated herein by reference.

28. AJ, KEE and NPS have made, distributed, used, offered for sale and/or sold barrels for paintball markers in this District and elsewhere in the United States, including at least the Revolver Barrel Kit, that directly infringe one or more claims of the '857 patent.

29. On information and belief, AJ, KEE and NPS had actual knowledge of the '857 patent.

30. On information and belief, AJ's, KEE's and NPS's infringement of the '857 patent has been willful.

31. AJ's, KEE's and NPS's infringement has damaged Smart Parts in an amount to be proven at trial.

32. AJ's, KEE's and NPS's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE and NPS are enjoined from such activity during the pendency of this action and permanently thereafter.

**COUNT III**

**(Infringement of U.S. Patent No. 6,474,326)**

33. The allegations of paragraphs 1 through 32 above are incorporated herein by reference.

34. AJ, KEE, NPS, and PMI have made, distributed, used, offered for sale and/or sold paintball markers in this District and elsewhere in the United States, including at least the Empire

Invert Mini and PMI Pimp Kit paintball markers, that each directly infringe one or more claims of the '326 patent

35. AJ, KEE, NPS, and PMI had actual knowledge of the '326 patent.

36. AJ's, KEE's, NPS's, and PMI's infringement of the '326 patent has been willful.

37. AJ's, KEE's, NPS's, and PMI's infringement has damaged Smart Parts in an amount to be proven at trial.

38. AJ's, KEE's, NPS's, and PMI's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE, NPS, and PMI are enjoined from such activity during the pendency of this action and permanently thereafter.

#### COUNT IV

##### **(Infringement of U.S. Patent No. 6,637,421)**

39. The allegations of paragraphs 1 through 38 above are incorporated herein by reference.

40. AJ, KEE, NPS, and PMI have made, distributed, used, offered for sale and/or sold paintball markers in this District and elsewhere in the United States, including at least the Empire Invert Mini and PMI Pimp Kit paintball markers, that each directly infringe one or more claims of the '421 patent

41. On information and belief, AJ, KEE, NPS, and PMI had actual knowledge of the '421 patent.

42. On information and belief, AJ's, KEE's, NPS's, and PMI's infringement of the '421 patent has been willful.

43. AJ's, KEE's, NPS's, and PMI's infringement has damaged Smart Parts in an amount to be proven at trial.

44. AJ's, KEE's, NPS's, and PMI's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE, NPS, and PMI are enjoined from such activity during the pendency of this action and permanently thereafter.

#### COUNT V

#### (Infringement of U.S. Patent No. 6,644,295)

45. The allegations of paragraphs 1 through 44 above are incorporated herein by reference.

46. AJ, KEE and NPS have made, distributed, used, offered for sale and/or sold paintball markers in this District and elsewhere in the United States, including at least the Empire Invert Mini and Indian Creek Design Freestyle paintball markers, that each directly infringe one or more claims of the '295 patent

47. On information and belief, AJ, KEE and NPS had actual knowledge of the '295 patent.

48. On information and belief, AJ's, KEE's and NPS's infringement of the '295 patent has been willful.

49. AJ's, KEE's and NPS's infringement has damaged Smart Parts in an amount to be proven at trial.

50. AJ's, KEE's and NPS's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE and NPS are enjoined from such activity during the pendency of this action and permanently thereafter.

**COUNT VI**

**(Infringement of U.S. Patent No. 7,044,119)**

51. The allegations of paragraphs 1 through 50 above are incorporated herein by reference.

52. AJ, KEE and NPS have sold and offered to sell paintball markers in this District and elsewhere in the United States, including at least the First Endeavor Paintball Quest paintball marker, that directly infringe one or more claims of the '119 patent.

53. On information and belief, AJ, KEE and NPS had actual knowledge of the '119 patent.

54. On information and belief, AJ's, KEE's and NPS's infringement of the '119 patent has been willful.

55. AJ's, KEE's and NPS's infringement has damaged Smart Parts in an amount to be proven at trial.

56. AJ's, KEE's and NPS's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE and NPS are enjoined from such activity during the pendency of this action and permanently thereafter.

**COUNT VII**

**(Infringement of U.S. Patent No. 7,185,646)**

57. The allegations of paragraphs 1 through 56 above are incorporated herein by reference.

58. AJ, KEE and NPS have sold and offered to sell paintball markers in this District and elsewhere in the United States, including at least the First Endeavor Paintball Quest paintball marker, that directly infringe one or more claims of the '646 patent.

59. AJ's, KEE's and NPS's infringement of the '646 patent has been willful.

60. AJ's, KEE's and NPS's infringement has damaged Smart Parts in an amount to be proven at trial.

61. AJ's, KEE's and NPS's infringement has caused irreparable injury to Smart Parts and Smart Parts will continue to suffer irreparable injury unless AJ, KEE and NPS are enjoined from such activity during the pendency of this action and permanently thereafter.

**PRAYER**

WHEREFORE, Plaintiff Smart Parts prays for relief as follows:

A. A finding that AJ, KEE, NPS, and/or PMI have infringed at least one claim of each of Smart Parts Patents and for judgment in favor of Smart Parts and against AJ, KEE, NPS, and PMI;

B. An award of damages, together with interest and costs, adequate to compensate for the infringement by AJ, KEE, NPS, and PMI of the Smart Parts Patents in an amount to be proven at trial, but in no event less than a reasonable royalty, along with an accounting of the extent of the infringement and damages arising therefrom;

C. A preliminary and permanent injunction, enjoining AJ, KEE, NPS, and PMI, its officers, directors, agents, servants, employees, parent companies and/or organizations, subsidiaries, affiliates, and all others acting for, with, by, through, under, or in concert with AJ, KEE, NPS, or PMI from infringing, inducing others to infringe, or contributing to the infringement of the Smart Parts Patents;

D. An injunction requiring AJ, KEE, NPS, and PMI to deliver to the Court any and all products in its possession, custody, or control that infringe the Smart Parts Patents;

E. A finding that the present case is exceptional, including a finding that AJ's, KEE's, NPS's, and PMI's infringement is and has been willful, and awards of plaintiff's costs of suit, reasonable attorneys' fees in accordance with 35 U.S.C. § 285, and increased damages in accordance with 35 U.S.C. § 284;

F. An award of prejudgment and post judgment interest and costs incurred in this action;

G. Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Federal Rules of Civil Procedure 38(b), Smart Parts demands a trial by jury as to all issues so triable in this action.

Dated: March 13, 2007

Respectfully Submitted,

OF COUNSEL:

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