

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TONERHEAD, INC.,)	
)	
Plaintiff,)	
v.)	Case No. 1:10-CV-02420
)	
INKTEC ZONE AMERICA)	
CORPORATION, RETAIL)	Honorable Wayne R. Andersen
INKJET SOLUTIONS, INC.,)	
PHOENIX INK CORPORATION,)	Magistrate Judge Jeffrey Cole
COSTCO WHOLESALE)	
CORPORATION,)	
JEWEL-OSCO, INC.AND)	
OFFICEMAX INCORPORATED,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff, Tonerhead, Inc., for its amended complaint against defendants, InkTec Zone America Corporation, Retail Inkjet Solutions, Inc., Phoenix Ink Corporation, Costco Wholesale Corporation, Jewel-Osco, Inc. and OfficeMax Incorporated, alleges as follows:

1. This is an action for infringement of United States Letters Patent No. 7,089,973 ("the '973 patent") and United States Letters Patent No. 7,628,181 ("the '181 patent"). Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1338(a) and venue lies in this District by virtue of 28 U.S.C. §§ 1391 and

1400(b).

2. Plaintiff, Tonerhead, Inc., ("Tonerhead") is a corporation organized and existing under the laws of the State of Illinois and has its principal place of business at 1809 South Route 31, McHenry, Illinois 60050.

3. Defendant, InkTec Zone America Corporation ("InkTec"), is, on information and belief, a corporation organized and existing under the laws of the State of Delaware and has a place of business at 22 McGrath Hwy., Suite 210, Sommerville, Massachusetts 02143. On information and belief, InkTec is doing business in this District.

4. Defendant, Retail Inkjet Solutions, Inc. ("RIS"), is, on information and belief, a corporation organized and existing under the laws of the State of Delaware, and has a place of business at 2445 Impala Drive, Carlsbad, CA 92010. On information and belief, RIS is doing business in this District.

5. Defendant, Phoenix Ink Corporation ("Phoenix Ink"), is, on information and belief, a corporation organized and existing under the laws of the State of Texas, and has a place of business at 5284 Paylor Lane, Sarasota, Florida 34240. On information and belief, Phoenix Ink is doing business in this District.

6. Defendant, Costco Wholesale Corporation ("Costco"), is, on information and belief, a company organized and existing under the laws of the State of Washington, and has a place of business at 999 Lake Drive, Issaquah, Washington 98027. On information and belief, Costco is doing business in this District.

7. Defendant, Jewel-Osco, Inc. ("Jewel-Osco"), is, on information and belief, a company organized and existing under the laws of the State of Delaware, and has a place of business at 150 Pierce Road, Itasca, Illinois 60143. On information and belief, Jewel-Osco is doing business in this District.

8. Defendant, OfficeMax Incorporated, ("OfficeMax"), is, on information and belief, a company organized and existing under the laws of the State of Delaware, and has a place of business at 263 Shuman Boulevard, Naperville, IL 60563. On information and belief, OfficeMax is doing business in this District.

9. On August 15, 2006, United States Letters Patent No. 7,089,973 was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Apparatus for Refilling Inkjet Cartridges and Methods Thereof". A true and correct copy of the '973 patent is attached as Exhibit A hereto. Tonerhead is the owner of the entire, right, title and interest in

the '973 patent and has the right to bring suit thereon.

10. On December 8, 2009, United States Letters Patent No. 7,628,181 was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Apparatus for Refilling Inkjet Cartridges and Methods Thereof". A true and correct copy of the '181 patent is attached as Exhibit B hereto. Tonerhead is the owner of the entire, right, title and interest in the '181 patent and has the right to bring suit thereon.

11. InkTec, RIS and Costco, on information and belief, have infringed, either directly and/or through acts of contributory infringement and/or acts of inducement of infringement, the '973 patent in this District and elsewhere by making, using, offering for sale and/or selling the invention of the '973 patent and/or by inducing others to use the invention of the '973 patent.

12. InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax, on information and belief, have infringed, either directly and/or through acts of contributory infringement and/or acts of inducement of infringement, the '181 patent in this District and elsewhere by making, using, offering for sale and/or selling the invention of the '181 patent and/or by inducing others to use the invention of the '181 patent.

13. The wrongful acts of InkTec, RIS and Costco respecting the '973 patent were undertaken without authority and without license from Tonerhead. On information and belief, InkTec, RIS and Costco had actual knowledge of the '973 patent and their acts of infringement have been willful and wanton in blatant disregard for the intellectual property rights of Tonerhead.

14. The wrongful acts of InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax respecting the '181 patent were undertaken without authority and without license from Tonerhead. On information and belief, InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax had actual knowledge of the '181 patent and their acts of infringement have been willful and wanton in blatant disregard for the intellectual property rights of Tonerhead.

15. The wrongful acts of InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax as alleged herein have occurred, and will continue to occur, in this Judicial District and throughout the United States.

16. Tonerhead has suffered damage by reason of the acts of infringement by InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and/or OfficeMax and will suffer additional and irreparable damage unless InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax are enjoined by this Court from continuing their acts of infringement.

WHEREFORE, Tonerhead requests that this Court enter a judgment in favor of Tonerhead and against InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax and award to Tonerhead the following relief:

- A. Ordering, adjudging and decreeing that InkTec, RIS and Costco have infringed the '973 patent in violation of 35 U.S.C. § 271;
- B. Ordering, adjudging and decreeing that InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax have infringed the '181 patent in violation of 35 U.S.C. § 271;
- C. Ordering, adjudging and decreeing that the acts of infringement and inducement of infringement by InkTec, RIS and Costco of the '973 patent were committed willfully and knowingly;
- D. Ordering, adjudging and decreeing that the acts of infringement and inducement of infringement by InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax of the '181 patent were committed willfully and knowingly;
- E. Enjoining, both preliminarily and permanently, InkTec, RIS, and Costco and each of their parents, principals, officers, directors, agents, affiliates, servants, attorneys, employees and

all others in privity with them from infringing the '973 patent;

- F. Enjoining, both preliminarily and permanently, InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax and each of their parents, principals, officers, directors, agents, affiliates, servants, attorneys, employees and all others in privity with them from infringing the '181 patent;
- G. Awarding to Tonerhead damages for infringement of the '973 patent, together with prejudgment interest on the amount awarded;
- H. Awarding to Tonerhead damages for infringement of the '181 patent, together with prejudgment interest on the amount awarded;
- I. Awarding to Tonerhead three times its damages to compensate Tonerhead under 35 U.S.C. § 284;
- J. Ordering, adjudging and decreeing that the acts of infringement of InkTec, RIS, Phoenix Ink, Costco, Jewel-Osco and OfficeMax as herein alleged warrant a finding that this is an exceptional case and awarding to Tonerhead its reasonable

attorneys' fees under 35 U.S.C. § 285;

- K. Awarding to Tonerhead its costs incurred in the prosecution of this action; and
- L. Awarding to Tonerhead such other and further relief as the Court may deem just and proper.

JURY DEMAND

Tonerhead demands trial by jury of all issues in this action so triable.

Respectfully submitted,

TONERHEAD

/s/ Keith V. Rockey

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