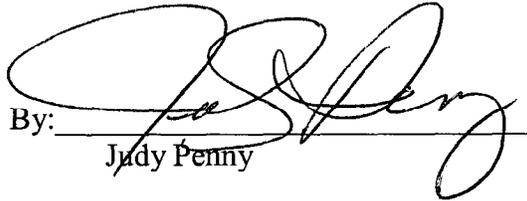




**CERTIFICATE OF SERVICE**

I certify that on 5<sup>th</sup> day of March 2003, a true copy of the foregoing Motion to Suspend was served upon the following via First Class Mail:

Sean M. Casey  
Sean M. Casey Co., LPA  
50 West Broad Street, Suite 1102  
1100 LeVeque Tower  
Columbus, Ohio 43215-5906

By:   
Judy Penny

**FILED**

02 JUL -3 AM 11:33

CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
TOLEDO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

PEARPOINT LIMITED,  
Pearpoint House  
47 Woolmore Way  
Bordon, Hampshire GBX GU35 9QE  
United Kingdom

Plaintiff,

v.

SRECO-FLEXIBLE, INC.,  
3434 South Dixie Highway  
Lima, Ohio 45824

Defendant.

Civil Action No.:

**3:02CV7335**

JUDGE JAMES G. CARR

COMPLAINT FOR DAMAGES AND  
INJUNCTION FOR TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION

JURY TRIAL DEMANDED

**COMPLAINT**

The plaintiff, Pearpoint Limited, by its attorneys, as its complaint against the defendant, Sreco-Flexible, Inc. alleges as follows:

## **PARTIES AND JURISDICTION**

1. The plaintiff, Pearpoint Limited, is a United Kingdom corporation with its principal place of business at Pearpoint House, 47 Woolmer Way, Bordon, Hampshire GBX GU35 9QE, United Kingdom.

2. Upon information and belief, defendant, Sreco-Flexible, Inc, is an Ohio corporation with its principal office at 3434 South Dixie Highway, Lima, Ohio 45804.

3. This is an action for trademark infringement and for related claims of unfair competition under the Lanham Act, 15 U.S.C. §§1114(1) and 1125(a). This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1332, 1338(a)-(b) and 1367(a). Venue is proper in this district under 28 U.S.C. §§1391 and 1400(a).

## **COUNT I: TRADEMARK INFRINGEMENT**

4. The plaintiff is the owner of a family of "FLEXI" trademarks for use in association with its video pipeline inspection products. In addition to its FLEXI-CAM mark, its family of marks includes FLEXIPROBE, FLEXISCAN, FLEXIVIEW, FLEXIDATA and FLEXILOGGER. The plaintiff began using the FLEXIPROBE trademark in 1985. The plaintiff's products bearing one or more of its "FLEXI" marks have been distributed, sold, and offered for sale throughout the nation including the Northern District of Ohio.

5. The plaintiff is the owner of the following U.S. Patent and Trademark Office registrations and application for its "FLEXI" trademarks:

FLEXISCAN, Registration No. 1,619,545 for scanning TV cameras for inspection and surveillances in International Class 9;

FLEXIPROBE (Stylized), Registration No. 1,468,060 for inspection systems for inspecting elongated utility pipes and conduits such as underground sewer, water and gas pipes or electrical services conduits, the system particularly comprising a flexible rod incorporating electrical conductors, a TV camera carried at one end of the rod and a control monitoring unit connected to the other end of the rod in International Class 9;

FLEXIVIEW, Registration No. 1,959,578 for television cameras, particularly waterproof pan-and-tilt color closed circuit television pipeline-inspection cameras including built-in display for indication of camera head position on video screen monitor in International Class 9;

FLEXIDATA, Registration No. 2,363,497 for miniature TV camera and ancillary apparatus, namely, video monitors and electrical connectors, and software for use in pipeline surveys in International Class 9;

FLEXIPROBE ELS, Registration No. 2,249,090 for television cameras, namely, miniature television cameras for use in pipeline and tunnel surveys, in conduit and sewer inspections, and in surveillance operations; closed circuit television systems, namely, monitors, control units and cables; parts and fittings for all the aforesaid goods in International Class 9; pipeline and tunnel inspection prior to renovation and repair, and renovation and repair of pipelines, particularly conduits, sewers, and tunnels in International Class 37; and surveying, namely, surveying pipelines, particularly conduits, sewers, and tunnels, prior to renovation and repair, pipeline and tunnel surveying prior to renovation and repair, computer programming for others, and updating of computer software in International Class 42;

FLEXILOGGER, Registration No. 2,542,052 for digital video recorders, miniature TV cameras and ancillary apparatus, namely, video monitors and electrical connectors; software for conducting pipeline surveys in International Class 9; and

FLEXI-CAM, Application Serial No. 76-399109 for video pipeline inspection systems, namely, cameras, monitors, controllers, cables and parts therefor in International Class 9.

The registrations are currently valid and in full force and effect.

6. Upon information and belief, defendant is using FLEXI-CAM in the United States including this District in association with video pipeline inspection systems.

7. In 1995 plaintiff accused defendant of infringing plaintiff's rights in the trademark FLEXISCAN by using the confusingly similar trademark FLEXICAM. At that time, defendant represented that it would "begin to phase out its use of FLEXICAM" and that the "matter is resolved." In addition to representing that it would phase out its use of FLEXICAM, defendant

also represented that confusion was unlikely because (according to defendant) the parties' products were substantially different.

8. In February 2002, defendant sent plaintiff a letter demanding that plaintiff stop using its FLEXI-CAM trademark on the ground that it is confusingly similar to defendant's FLEXICAM trademark and that the parties' respective products are "highly similar."

9. By the acts alleged herein, defendant has infringed the plaintiff's federally registered trademarks in violation of Section 32(1) of the Lanham Act (15 U.S.C. §1114(1)). The defendants have thereby caused and are causing plaintiff serious and irreparable damage for which there is no adequate remedy at law and defendants' acts will, unless enjoined by this Court, continue to damage plaintiff.

## COUNT II

### FEDERAL UNFAIR COMPETITION

10. The plaintiff hereby repeats, and incorporates by reference, the allegations set forth in paragraphs 1-9.

11. By the aforesaid acts, the defendant has falsely designated the origin, quality and nature of its goods and business and has falsely described and represented same, causing likelihood of confusion and constituting unfair competition in violation of Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)). The defendant has thereby caused, is causing, and will continue to cause plaintiff serious and irreparable damage for which there is no adequate remedy at law, and the defendant's acts will, unless enjoined by this Court, continue to damage plaintiff.

WHEREFORE, plaintiff requests judgment as follows:

A. That defendant, along with its officers, agents, servants, employees, attorneys, confederates, and all other persons in active concert or participation with defendant to whom notice of the injunction is given by personal service or otherwise, be enjoined, at first preliminarily and thereafter permanently, from making any use of the trademark FLEXICAM, in any manner whatsoever;

B. That defendant be ordered to deliver up to the plaintiff for destruction all materials which bear the trademark FLEXICAM;

C. That defendant be ordered to recall all goods, advertisements and promotional materials which bear or display the trademark FLEXICAM from their present locations, including, but not limited to, locations owned by others;

D. That defendant be ordered to account for and pay their profits, plaintiff's damages, and the costs of the action and that the amount of damages for infringement of plaintiff's trademarks be increased to a sum not exceeding treble the amount thereof, pursuant to 15 U.S.C. §1117, in view of the willful and intentional nature of such infringement.

E. That defendant pay plaintiff's attorneys' fees, costs, and disbursements incurred in this action in view of the exceptional nature of this case due to the willful and intentional nature of the infringement.

F. Such other and further relief as the Court deems just.

Date:

*July 2, 2002*



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Attorney for Plaintiff Pearpoint Limited

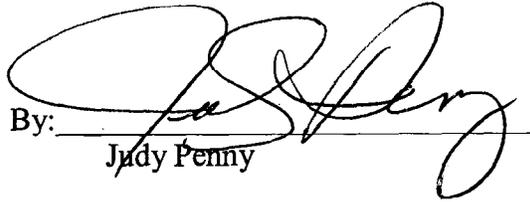
G:\CL\data\Ejs5052\87401\01002\Sreco-Flexible Complaint Final.doc



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Pearpoint House  
47 Woolmore Way  
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United Kingdom

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3434 South Dixie Highway  
Lima, Ohio 45824

Defendant.

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**3:02CV7335**

**JUDGE JAMES G. CARR**

COMPLAINT FOR DAMAGES AND  
INJUNCTION FOR TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION

JURY TRIAL DEMANDED

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2. Upon information and belief, defendant, Sreco-Flexible, Inc, is an Ohio corporation with its principal office at 3434 South Dixie Highway, Lima, Ohio 45804.

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### COUNT I: TRADEMARK INFRINGEMENT

4. The plaintiff is the owner of a family of "FLEXI" trademarks for use in association with its video pipeline inspection products. In addition to its FLEXI-CAM mark, its family of marks includes FLEXIPROBE, FLEXISCAN, FLEXIVIEW, FLEXIDATA and FLEXILOGGER. The plaintiff began using the FLEXIPROBE trademark in 1985. The plaintiff's products bearing one or more of its "FLEXI" marks have been distributed, sold, and offered for sale throughout the nation including the Northern District of Ohio.

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FLEXI-CAM, Application Serial No. 76-399109 for video pipeline inspection systems, namely, cameras, monitors, controllers, cables and parts therefor in International Class 9.

The registrations are currently valid and in full force and effect.

6. Upon information and belief, defendant is using FLEXI-CAM in the United States including this District in association with video pipeline inspection systems.

7. In 1995 plaintiff accused defendant of infringing plaintiff's rights in the trademark FLEXISCAN by using the confusingly similar trademark FLEXICAM. At that time, defendant represented that it would "begin to phase out its use of FLEXICAM" and that the "matter is resolved." In addition to representing that it would phase out its use of FLEXICAM, defendant

also represented that confusion was unlikely because (according to defendant) the parties' products were substantially different.

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9. By the acts alleged herein, defendant has infringed the plaintiff's federally registered trademarks in violation of Section 32(1) of the Lanham Act (15 U.S.C. §1114(1)). The defendants have thereby caused and are causing plaintiff serious and irreparable damage for which there is no adequate remedy at law and defendants' acts will, unless enjoined by this Court, continue to damage plaintiff.

## COUNT II

### FEDERAL UNFAIR COMPETITION

10. The plaintiff hereby repeats, and incorporates by reference, the allegations set forth in paragraphs 1-9.

11. By the aforesaid acts, the defendant has falsely designated the origin, quality and nature of its goods and business and has falsely described and represented same, causing likelihood of confusion and constituting unfair competition in violation of Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)). The defendant has thereby caused, is causing, and will continue to cause plaintiff serious and irreparable damage for which there is no adequate remedy at law, and the defendant's acts will, unless enjoined by this Court, continue to damage plaintiff.

WHEREFORE, plaintiff requests judgment as follows:

A. That defendant, along with its officers, agents, servants, employees, attorneys, confederates, and all other persons in active concert or participation with defendant to whom notice of the injunction is given by personal service or otherwise, be enjoined, at first preliminarily and thereafter permanently, from making any use of the trademark FLEXICAM, in any manner whatsoever;

B. That defendant be ordered to deliver up to the plaintiff for destruction all materials which bear the trademark FLEXICAM;

C. That defendant be ordered to recall all goods, advertisements and promotional materials which bear or display the trademark FLEXICAM from their present locations, including, but not limited to, locations owned by others;

D. That defendant be ordered to account for and pay their profits, plaintiff's damages, and the costs of the action and that the amount of damages for infringement of plaintiff's trademarks be increased to a sum not exceeding treble the amount thereof, pursuant to 15 U.S.C. §1117, in view of the willful and intentional nature of such infringement.

E. That defendant pay plaintiff's attorneys' fees, costs, and disbursements incurred in this action in view of the exceptional nature of this case due to the willful and intentional nature of the infringement.

F. Such other and further relief as the Court deems just.

Date:

*July 2, 2002*



Bruce O. Baumgartner (0025701)  
Eric J. Steiner (0072725)  
BAKER & HOSTETLER LLP  
3200 National City Center  
1900 E. 9th Street  
Cleveland, Ohio 44114-3485  
Telephone: (216) 621-0200  
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Attorneys for Plaintiff Pearpoint Limited

John H. Weber  
Baker & Hostetler LLP  
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Washington, D.C. 20036-5304  
Tel. 202.861.1500  
Fax. 202.861.1783  
Attorney for Plaintiff Pearpoint Limited

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD



p	_____	)
	SRECO-FLEXIBLE, INC.	)
		)
	Opposer,	)
		)
	v.	)
		)
	PEARPOINT LIMITED	)
		)
	Applicant.	)
	_____	)

03-05-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

Opposition No. 154,688  
Serial No. 76/339,109  
Mark: FLEXI-CAM  
Published: October 29, 2002

**MOTION TO SUSPEND**

Pursuant to Section 2.117 of the Trademark Rule of Practice, Applicant, Pearpoint Limited, hereby moves to suspend the opposition until disposition of Civil Action No. 3:02CV7335 pending in the U.S. District Court for the Northern District of Ohio, Western Division.

Pearpoint Limited filed the civil action on July 3, 2002, well in advance of Opposer's Notice of Opposition, seeking damages and to permanently enjoin Sreco-Flexible, Inc. from using the trademark FLEXI-CAM. Copy of the complaint is attached hereto. The final determination of the civil suit will directly affect the resolution of the issue of likelihood of confusion which is the subject of this opposition pending before Trademark Trial and Appeal Board. Furthermore, Applicant will notify the Board within twenty days after the disposition of the civil action so that this case may be called up for appropriate action.

Respectfully submitted,  
PEARPOINT LIMITED

Date: March 5, 2003

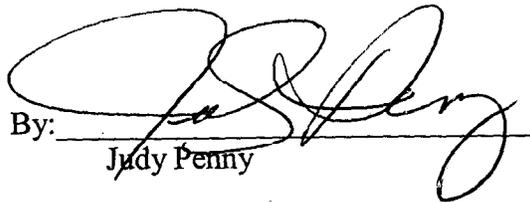
By: *KH*  
Kenneth H. Oh  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
(202) 861-1716 (Telephone)  
(202) 861-1783 (Facsimile)  
Attorney for Applicant

JHW/ko  
Enclosure

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By:   
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