

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

FILED

AUG 16 2010

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

PROCONGPS, INC.
2035 Lakeside Centre Way Suite 125
Knoxville, Tennessee 37922

and

PROCON, INC.
2035 Lakeside Centre Way Suite 125
Knoxville, Tennessee 37922

Plaintiffs,

v.

ATLANTA AUTO TRACKER, INC. d/b/a
ELITETRAK
134 Woodstock Square Avenue
Suite 410
Woodstock, GA 30189

Defendant.

No. 3:10-CV-349

Varlan / Guyton

COMPLAINT

Come now the Plaintiffs, ProconGPS, Inc. and PROCON, Inc., and state as follows for their claims against the Defendant, Atlanta Auto Tracker, Inc. d/b/a EliteTrak:

1. ProconGPS, Inc. ("ProconGPS") is a Tennessee corporation, having its principal place of business at 2035 Lakeside Centre Way Suite 125, Knoxville, Knox County, Tennessee 37922.

2. PROCON, Inc. ("PROCON") is a Tennessee corporation, having its principal place of business at 2035 Lakeside Centre Way Suite 125, Knoxville, Knox County, Tennessee 37922.

3. PROCON has granted ProconGPS, and ProconGPS operates under, a license to certain intellectual property owned by PROCON, including but not limited to U.S. Patent No.

7,102,510.

4. Atlanta Auto Tracker, Inc. d/b/a EliteTrak ("EliteTrak") is a Georgia corporation and may be served with process upon its registered agent, Christopher M. Ellison, 134 Woodstock Square Avenue, Suite 410, Woodstock, GA 30189.

5. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the federal patent laws. This court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000 and this action is between citizens of different states.

6. This court has personal jurisdiction because ProconGPS and EliteTrak agreed to this Court's jurisdiction in the contract at issue in this cause. Additionally, upon information and belief, this Court has personal jurisdiction over EliteTrak based on EliteTrak's contacts with this district including, but not limited to, EliteTrak's conduct of business in this district, EliteTrak's meeting in Knoxville, TN with representatives from ProconGPS on or about July 12, 2010, and EliteTrak's commission of acts of infringement of the patent sued upon in this district by at least the use, sale, offering for sale, manufacture, assembly, and/or distribution of infringing products in, to, and/or into this district.

7. Venue is proper in this District because ProconGPS and EliteTrak agreed to venue in this court in the contract at issue in this cause. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 based on EliteTrak's conduct of business in this district and commission of acts of infringement of the patent sued upon in this district by at least the use, sale, offering for sale, manufacture, assembly, and/or distribution of infringing products in, to, and/or into this district.

8. ProconGPS is in the business of selling GPS tracking products and services.

9. ProconGPS sells its GPS tracking products and services (“ProconGPS Products and Services”) to marketers (“ProconGPS Marketers”).

10. Generally, ProconGPS enters into a Master Marketing Agreement with each ProconGPS Marketer to govern the relationship.

11. The ProconGPS Marketers sell ProconGPS Products and Services to end user customers.

12. On December 24, 2009, ProconGPS and EliteTrak entered into a Master Marketing Agreement.

13. On February 5, 2010, ProconGPS and EliteTrak entered into a Master Marketing Agreement (“Agreement”), which superseded all prior agreements. A true and correct copy of the Agreement is attached hereto as Exhibit A and is specifically incorporated by reference.

14. Neither ProconGPS nor EliteTrak have terminated the Agreement and the Agreement remains in full force and effect.

15. Pursuant to the Agreement, ProconGPS authorized EliteTrak to market, sell and distribute ProconGPS’s Products and Services.

16. Pursuant to Section 5 of the Agreement, EliteTrak agreed to “(a) use its best efforts to sell, market and promote Products and otherwise perform its obligations under this Agreement; (b) conduct its business in a businesslike, professional, and lawful manner, and in the best interests of [ProconGPS]...(e) inform [ProconGPS] of all material matters relating to the sale and distribution of Products and/or Services...and (j) not provide any services similar to the Services or other services to be provided to End Users by [ProconGPS].”

17. Pursuant to Section 15 of the Agreement, EliteTrak agreed that “[d]uring the Term of this Agreement, neither [EliteTrak] nor any of its principals or employees, whether directly or

indirectly, will engage in, or have any ownership or financial interest in, or act as sales representative or distributor for, any person or entity engaged in, the sale of any products, services or product lines which are in any way similar in design, function or intended use (market position) to the Products or Services, or which otherwise are competitive with the Products or Services, in [ProconGPS's] sole and absolute judgment."

18. Pursuant to Section 22(g) of the Agreement, EliteTrak agreed that "a violation of Sections 12, 15, and 24 would cause immediate harm to [ProconGPS] and that damages for such harm would be difficult to calculate. [EliteTrak] agrees that [ProconGPS] may seek an injunction, temporary, permanent or otherwise, restraining order or such other equitable relief as may be available to prevent or restrain [EliteTrak's] breach of these Sections."

19. During the term of the Agreement, EliteTrak set up a website at <http://elitetrak.com> where it offered/offers to sell products and services that are competitive with ProconGPS Products and Services.

20. Upon information and belief, EliteTrak has sold and continues to sell products and services ("EliteTrak Products and Services") that are competitive with ProconGPS Products and Services.

21. Upon information and belief, EliteTrak has solicited other ProconGPS Marketers to sell EliteTrak Products and Services, thereby causing such ProconGPS Marketers to breach their Master Marketing Agreements with ProconGPS.

22. Upon information and belief, on or about July 21, 2010, EliteTrak sold EliteTrak Products and Services to A Plus Auto Sales.

23. Upon information and belief, EliteTrak sold EliteTrak Products and Services to Wolfco Enterprises.

24. Wolfco Enterprises is a ProconGPS Marketer and there is a Master Marketing Agreement between Wolfco Enterprises and ProconGPS.

25. On October 14, 2008, United States Patent No. 7,102,510, entitled "Asset Location Tracking System," (the '510 patent) was duly and legally issued by the United States Patent Office to Brian Boling and Ron Bishop. A copy of the '510 patent is attached hereto as Exhibit B. The entire right title and interest to the '510 patent has been assigned to PROCON. PROCON is the sole owner and possessor of all rights pertaining to the '510 patent, together with rights of action for infringement thereof.

26. EliteTrak has no license, authorization, consent, or permission from PROCON or any other party having any interest in or related to the '510 patent to manufacture, use, offer to sell, or sell any product embodying the subject matter of any claim of the '510 Patent, or to engage in any other activity that would, in the absence of any license, authorization, permission, or consent, infringe upon or in any way violate any right or interest of Plaintiffs in or relating to the '510 patent.

27. Upon information and belief, EliteTrak is and has been infringing and/or otherwise violating Plaintiffs' rights with respect to one or more of the claims of the '510 patent by, among other things, manufacturing, using, offering for sale, and/or selling in this district and elsewhere throughout the United States products and/or services which embody the subject matter of at least one claim of the '510 patent, and will continue to do so unless and until enjoined by this Court.

28. EliteTrak has, with full knowledge of the '510 patent, commenced and/or continued infringement of and/or otherwise acted in violation of Plaintiffs' rights with respect to one or more of the claims of the '510 patent in willful disregard of Plaintiffs' rights thereunder.

29. Upon information and belief, EliteTrak has, with full knowledge of the '510 patent, actively induced others to infringe one or more claims of the '510 patent. Also, with knowledge or reason to know of the '510 patent, EliteTrak has contributed to the infringement thereof by, among other things, supplying one or more material components or parts of a combination which infringed or infringes upon at least one claim of the '510 patent, knowing the same to be especially made or adapted for use in an infringement of the '510 patent and not as a staple item of commerce suitable for substantial non-infringing uses.

30. EliteTrak has harmed Plaintiffs' business, business relationships, good will, profits and customer relations, has caused irreparable harm to Plaintiffs and has caused Plaintiffs to suffer monetary damages.

COUNT I
(Breach of Contract)

31. EliteTrak's offer to sell and sales of EliteTrak Products and Services to A Plus Auto Sales and Wolfco Enterprises constitute a material and continuing breach of the Agreement.

32. Upon information and belief, EliteTrak has sold and continues to sell EliteTrak Products and Services to other customers not yet discovered by ProconGPS, which can be proven at trial following discovery and which constitutes a material and continuing breach of the Agreement.

33. EliteTrak's failure to (1) use its best efforts to sell, market and promote Products and otherwise perform their obligations under the Agreement; (2) conduct its business in a businesslike, professional, and lawful manner, and in the best interests of ProconGPS; (3) inform ProconGPS of all material matters relating to the sale and distribution of Products; and (4) not provide any services similar to the services provided by ProconGPS constitute a material and continuing breach of the Agreement.

34. As a direct, proximate, and foreseeable result of EliteTrak's breach of the Agreement, ProconGPS has suffered and is continuing to suffer irreparable harm to its business, good will, and customer relations as well as monetary damages.

COUNT II
(Tortious Interference with Business Relationships)

35. ProconGPS has an existing business relationship with Wolfco Enterprises and A Plus Auto Sales and had existing business relationships with some or all of the individuals or entities who bought EliteTrak Products and Services from EliteTrak. The individuals or entities who had an existing business relationship with ProconGPS and who bought EliteTrak Products and Services from EliteTrak are hereinafter referred to as the "ProconGPS Customers."

36. EliteTrak knew of the business relationships between ProconGPS and the ProconGPS Customers.

37. EliteTrak intended to cause the breach or termination of the business relationship between ProconGPS and the ProconGPS Customers.

38. EliteTrak used improper means to cause the breach or termination of the business relationship between ProconGPS and the ProconGPS Customers when EliteTrak breached the Agreement by offering to sell and selling EliteTrak Products and Services.

39. As a direct, proximate, and foreseeable result of EliteTrak's tortious interference, ProconGPS has suffered and is continuing to suffer irreparable harm to its business, good will, and customer relations as well as monetary damages.

40. Upon information and belief, EliteTrak has tortiously interfered with ProconGPS's other business relationships, which can be proven at trial following discovery.

COUNT III
(Inducement to Breach a Contract)

41. On February 6, 2010, ProconGPS and Wolfco Enterprises entered into a Master Marketing Agreement (“Wolfco Agreement”), which was similar to the EliteTrak Master Marketing Agreement.

42. EliteTrak was aware of the Wolfco Agreement because EliteTrak was also a ProconGPS Marketer and knew that ProconGPS Marketers had Marketing Agreements with ProconGPS.

43. EliteTrak intended to induce a breach of the Wolfco Agreement when it solicited Wolfco Enterprises to sell EliteTrak Products and Services.

44. EliteTrak maliciously induced a breach of the Wolfco Agreement when it solicited Wolfco Enterprises to sell EliteTrak Products and Services because EliteTrak willfully violated the EliteTrak Master Marketing Agreement, willfully interfered with the business relationship between Wolfco Enterprises and ProconGPS, and willfully induced Wolfco Enterprises to breach the Wolfco Agreement.

45. As a direct, proximate, and foreseeable result of EliteTrak’s inducement, Wolfco Enterprises breached the Wolfco Agreement and ProconGPS has suffered and is continuing to suffer irreparable harm to its business, good will, and customer relations as well as monetary damages.

46. Because EliteTrak induced Wolfco Enterprises to breach the Wolfco Agreement, ProconGPS is entitled to treble damages pursuant to Tenn. Code Ann. § 47-50-109.

COUNT IV
(Patent Infringement)

47. EliteTrak has been and is now infringing and/or otherwise acting in violation of

Plaintiffs' rights with respect to the '510 Patent in violation of 35 U.S.C. § 271(a) by, among other things, making, selling, offering to sell, and/or using in the United States, including in this district, products and/or services covered by at least one of the claims of the '510 Patent.

48. EliteTrak has been and is now actively inducing infringement of at least one of the claims of the '510 Patent by others in violation of 35 U.S.C. §§ 271(b) and 271(f).

49. EliteTrak has been and is now contributing to infringement of at least one of the claims of the '510 Patent by others in violation of 35 U.S.C. § 271(c).

50. The acts of EliteTrak complained of herein have been and are now being done willfully with knowledge of, or reason to know, that they violate Plaintiffs' rights under and related to the '510 patent including, but not limited to, infringement of the '510 Patent.

51. The acts of EliteTrak complained of herein have caused and are presently causing irreparable harm, damage, and injury to Plaintiffs for which Plaintiffs have no adequate remedy at law, and such acts will continue to cause such irreparable harm, damage, and injury to Plaintiffs unless and until the same are enjoined and restrained by this court.

WHEREFORE, PREMISES CONSIDERED, THE PLAINTIFFS PRAY:

1. That this Court enter judgment against EliteTrak for breaching the terms of the Agreement, for tortiously interfering with ProconGPS's business relationships, for inducing a breach of contract and for patent infringement and award damages in an amount to be determined at trial, but not less than **\$2,500,000.00** plus costs and discretionary costs.

2. That this Court award treble damages for the Inducement to Breach a Contract claim pursuant to Tenn. Code Ann. § 47-50-109.

3. That a preliminary and permanent injunction be granted against EliteTrak enjoining it from and against (1) any and all further and/or continued infringement, contributory

infringement, and active inducement of infringement of the claims of the '510 patent, (2) selling EliteTrak Products and Services that are competitive with ProconGPS's Products and Services, until termination of the Agreement, and (3) soliciting ProconGPS's Marketers to sell EliteTrak Products and Services.

4. An accounting for damages to Plaintiffs resulting from EliteTrak's infringement, contributory infringement, active inducement of infringement, and any/all other compensable violations of Plaintiffs' rights pertaining to the '510 patent, together with a trebling of all such damages because of the knowing, willful and wanton nature of EliteTrak's conduct and the exceptional nature of this case pursuant to 35 U.S.C. § 285.

5. An assessment of interest on all damages.

6. That this Court award Plaintiffs their attorneys' fees, costs and expenses in this action.

7. Such other, further, and additional relief as this Court may deem reasonable and just.

RESPECTFULLY SUBMITTED, this 16th day of August, 2010.

By: 

s/Ronald T. Hill

Ronald T. Hill, Esq., BPR# 011283

EGERTON, McAFEE, ARMISTEAD

& DAVIS, P.C.

P.O. Box 2047

Knoxville, Tennessee 37901-2047

(865) 546-0500

Counsel for ProconGPS, Inc. and PROCON, Inc.

VERIFICATION

STATE OF Tennessee)
COUNTY OF KNOX)

I, Tim Welch, as CEO for ProconGPS, Inc., make oath that the foregoing statements are true and correct to the best of my knowledge and belief, and that those statements made upon information and belief, I verily believe to be true.

PROCONGPS, INC.

By: [Signature]

Title: IS: CEO

Sworn to and subscribed before me this
16th day of August, 2010.

[Signature]
Notary Public

My commission expires: MY COMMISSION EXPIRES:
October 5, 2010



STATE OF Tennessee)
COUNTY OF KNOX)

I, Brian Boling, as President for PROCON, Inc., make oath that the foregoing statements are true and correct to the best of my knowledge and belief, and that those statements made upon information and belief, I verily believe to be true.

PROCON, INC.

By: [Signature]

Title: President

Sworn to and subscribed before me this
16th day of August, 2010.

[Signature]
Notary Public

My commission expires: MY COMMISSION EXPIRES:
October 5, 2010

