

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

THE CHAMBERLAIN GROUP, INC.,	)	Civil Action No. 02 C 6376
	)	
Plaintiff,	)	Judge Rebecca R. Pallmeyer
	)	
v.	)	Magistrate Judge Edward A. Bobrick
	)	
SKYLINK TECHNOLOGIES, INC.,	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF  
CHAMBERLAIN'S MOTION FOR SUMMARY JUDGMENT (PUBLIC VERSION)<sup>1</sup>**

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<sup>1</sup>This memorandum contains confidential information, which will be redacted from the public version of this memorandum. Chamberlain is moving for leave to file the non-public version of this memorandum.

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Plaintiff, The Chamberlain Group, Inc. ("Chamberlain"), has moved for summary judgment of copyright infringement that Defendant, Skylink Technologies, Inc. ("Skylink"), has violated the Digital Millennium Copyright Act, 17 U.S.C. § 1201<sup>2</sup>.

## I. BACKGROUND

Chamberlain is a Connecticut corporation having a principal place of business in Elmhurst, Illinois. Chamberlain manufactures and sells remote control garage door opener systems (GDOs). GDOs typically include hand-held or visor mounted, portable transmitters and a stationary garage door opening motor with a receiver including a processing unit and an AM receiver. To open or close a garage door, a user presses a button on the transmitter to send a radio frequency (RF) signal to the AM receiver. The AM receiver relays the signal to the processing unit that directs the door motor to open or close the garage door.

To prevent signals of foreign transmitters from opening the garage door, GDOs use coded signals. A unique code thus links each transmitter to its own system, and a GDO's processing unit verifies that the signal code comes from its own transmitter before activating the opening motor.

Some time ago, burglars began to use devices known as "code grabbers" to capture and record the coded signals being transmitted by the transmitters in order to play them back later and illegally open the garage door. To provide better security, especially as to code grabbers, Chamberlain developed a rolling code system that scrambles the coded signals transmitted by its transmitters by a computer program in a microprocessor in the transmitter, and descrambles the transmitted signal by a computer program in a microprocessor in the processing unit of the receiver.

Chamberlain is the owner of the copyright on the transmitter computer program registered as No. TX5-533-065 (Ex. A), and of the copyright on the receiver computer program registered as No. TX5-549-995 (Ex. B). The computer programs are used to control the operation of Chamberlain's GDOs employing rolling code technology, including its SECURITY+™ models. (Ex. C, Fitzgibbon Decl. at ¶ 4.) The SECURITY+™ models are sold under the brand names Chamberlain, Lift-Master, and Sears Craftsman.

Skylink is a foreign corporation having a principal place of business in Mississauga, Ontario, and is part of The Skylink Group, which is headquartered in Hong Kong. Skylink imports its Model

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<sup>2</sup> In the Amended Complaint, Chamberlain also alleges infringement of U.S. Patent Nos. RE. 35,364, RE. 36,703 and 4,502,105, and false advertising. This motion does not address these claims.

39 transmitters and sells them for use with GDOs, including Chamberlain's GDOs employing the rolling code technology.

## **II. THE TECHNOLOGY OF THE COPYRIGHTED COMPUTER PROGRAM**

The transmitter under control of the transmitter computer program transmits a digital encoded message containing two parts: 1) a fixed identification number (the "identification code") and 2) a variable number (the "rolling code"). The rolling code changes with each actuation of the transmitter and increases by three. The computer program in the transmitter encrypts the identification code and rolling code by a scrambling algorithm that scrambles the binary digits representing the identification code and the rolling code. (Ex. B, Fitzgibbon Decl. at ¶ 3.)

In the receiver, Chamberlain's rolling code computer program enables the microprocessor to unscramble the encrypted signal received from the transmitter to provide the identification code and the rolling code. When in program mode, the computer program in the microprocessor causes the identification code and rolling code to be stored in memory. Thus, the receiver "learns" the code of the transmitter in order to include it in the list of authorized transmitters kept in the receiver's memory. (Ex. C, Fitzgibbon Decl. at ¶ 4.)

After the receiver learns the transmitter identification code, the homeowner returns the GDO to operate mode. When the homeowner next operates the transmitter, the computer program causes it to generate the next rolling code in sequence and send it with the identification code to the receiver. The computer program in the receiver includes an access control or protective measure which determines whether the transmitter is authorized. In this connection, the computer program determines whether the newly-received rolling code is identical to the previously-received rolling code, or is an immediately preceding rolling code ("the rear window"). If the newly-received rolling code is identical or within the rear window, the receiver computer program ignores the transmission and does not operate the GDO. If the newly-received rolling code is

in advance of the previously-received rolling code ("the forward window"), then the receiver computer program accepts the new rolling code as authorized and operates the GDO. (Ex. C, Fitzgibbon Decl. at ¶ 6.)

The protective measure included in this receiver computer program prevents unauthorized operation of a GDO by burglars who surreptitiously use "code grabbers," to intercept the radio

transmissions. Where a GDO operates using only a fixed identification code *i.e.*, without a rolling code, then the code grabber can record and play back the transmitted fixed code to operate the GDO without the consent or knowledge of the homeowner. On the other hand, where a GDO operates using the rolling code computer program in the transmitter, the code grabber cannot operate the GDO because when he or she plays back the transmitted code, he or she transmits a rolling code that likely is in the rear window, *i.e.*, is one of the immediately preceding rolling codes of the most recently received rolling code. Since the code grabber plays back a rolling code in the rear window, it will not operate the GDO, as discussed above. (Ex. C, Fitzgibbon Decl. at ¶ 7.)

Thus, the protective measure in Chamberlain's receiver rolling code computer program controls access to Chamberlain's copyrighted computer program in the receiver that operates Chamberlain's GDOs. The computer program does not execute if an improper rolling code is received from an unauthorized transmitter. Once an authorized rolling code transmission is received, the computer program sends instructions to the microprocessor for operating the GDO.

Chamberlain's GDOs from time to time need to resynchronize the rolling codes. This is needed, for example, where an authorized transmitter has been depressed numerous times while out of range of the receiver, *i.e.*, where the next rolling code transmission is outside the forward window as discussed above. If the transmitter and receiver are not resynchronized in this circumstance, the GDO will not operate and the user may be locked out of his garage. (Ex. C, Fitzgibbon Decl. at ¶ 11.)

### **III. SKYLINK'S MODEL 39 TRANSMITTER CIRCUMVENTS CHAMBERLAIN'S PROTECTIVE MEASURE**

Skylink's Model 39 transmitters are designed to circumvent the protective measure in the copyrighted receiver rolling code computer program. The Skylink transmitter is designed to send a signal that mimics the Chamberlain resynchronization procedure and thereby circumvents Chamberlain's protective measure.

The transmission of these three codes with each press of the transmitter button will either (1) cause the Chamberlain GDO to operate in response to the first fixed code; or (2) cause the GDO to resynchronize and operate in response to the second and third fixed codes (Ex. C, Fitzgibbon Decl. at ¶¶ 13-15.) Thus, the Skylink transmitter circumvents the protective measure of Chamberlain's copyrighted rolling code computer program in the receiver wherein the homeowner can gain unauthorized access to such computer program.

Skylink's transmission, using Skylink's Model 39 transmitter, of the same three codes, circumvents Chamberlain's rolling code technology, thereby eliminating the important protective measure that prevents burglars with a code grabber from gaining unauthorized access to garages of homeowners who have purchased Chamberlain's garage door openers with the copyrighted software. Such homeowners, who purchase Skylink's Model 39 transmitters, are unaware of the elimination of this protective measure and rely on the security of the rolling code technology of Chamberlain's garage door openers to prevent unauthorized access by such burglars. Skylink is endangering the property and safety of its unsuspecting customers.

### **IV. SKYLINK'S SALE OF ITS MODEL 39 UNIVERSAL TRANSMITTER IS DESTROYING CHAMBERLAIN'S MARKET FOR UNIVERSAL TRANSMITTERS AND CHAMBERLAIN'S SALES OF CLICKER® UNIVERSAL TRANSMITTERS**

Consumers normally buy Chamberlain's GDOs with one or more transmitters. However, a substantial number of consumers also buy extra transmitters at a later date. For those consumers, Chamberlain offers its standard transmitters as a stand alone item. Since 1998, Chamberlain has sold

a line of universal transmitters under the name CLICKER® for use either as additional transmitters with Chamberlain's GDOs or as additional transmitters for GDOs made by other manufacturers. (Ex. C, Fitzgibbon Decl. at ¶ 8.)

In 2001, Chamberlain began selling an improved CLICKER® transmitter. The improved CLICKER® universal transmitter sends a fixed identification code and a rolling code that is compatible with Chamberlain's rolling code algorithm. The CLICKER® also operates non-rolling code GDOs made by other manufacturers. Unlike Skylink's accused Model 39 universal transmitter, Chamberlain's CLICKER® universal transmitter does not circumvent security measures for controlling access to the copyrighted rolling code software of GDOs manufactured by others. Thus, for example, the CLICKER® does not circumvent the encryption algorithm that is used as a security measure for Genie's GDOs, and therefore, does not operate Genie's Intellicode™ rolling code software. (Ex. C, Fitzgibbon Decl. at ¶ 9.)

Chamberlain's CLICKER® product line includes both a universal transmitter and a universal keypad.<sup>3</sup> Chamberlain spent nearly \_\_\_\_\_ in total investment and costs to make its CLICKER® products compatible with its rolling code technology. These investments and costs include: capital; internal development cost; prototype tooling and parts; packaging costs; maintenance costs; advertising and artwork costs; and marketing, warranty, and distribution costs. The CLICKER® has enjoyed commercial success, with U.S. net sales to retailers from 1998 to the present totaling about \_\_\_\_\_ (Ex. D, Gregory Decl. at ¶ 4.)

A significant portion of Chamberlain's universal transmitter sales has been to Lowe's Home Improvement Warehouse ("Lowe's"). In 2001, Chamberlain received approximately \_\_\_\_\_ from net sales of its CLICKER® transmitters and keypads to Lowe's stores. (*Id.* at ¶ 5.) The innovation of the CLICKER® products to include operation with Chamberlain's rolling code technology helped to entrench Chamberlain as the primary supplier of universal transmitters and keypads to Lowe's. (*Id.* at ¶ 6.)

Chamberlain has similarly been entrenched as the primary supplier of universal transmitters and keypads to other major retailers. Chamberlain sells CLICKER® universal transmitters and

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<sup>3</sup> The keypad operates on the same principles as the transmitter, but is generally mounted near the garage door and requires entry of a personal identification code.



keypads to Home Depot. Home Depot does not carry the universal transmitters and keypads of other manufacturers. (*Id.* at ¶ 7.)

Skylink recently began importing and selling to Lowe's its Model 39 universal transmitter, sold as "Skylink Universal Garage Door Remote Control" for circumventing Chamberlain's protective measure and gaining access to Chamberlain's copyright computer program. (Ex. E.)

Skylink's sale of its imported universal transmitters is threatening to destroy Chamberlain's market for its universal transmitters at significant retail stores, including Lowe's and Home Depot. In July or August of 2002, Lowe's stopped purchasing Chamberlain's CLICKER® products. Instead, Lowe's began purchasing and selling Skylink's universal transmitter and intends to purchase Skylink's universal keypad. (Ex. D, Gregory Decl. at ¶¶ 8, 10.) Further, Skylink has contacted Home Depot about its Model 39 universal transmitter. Skylink has represented that it has a product that works with Chamberlain's rolling code technology. (Ex. D, Gregory Decl. at ¶ 12.) Accordingly, Chamberlain's CLICKER® sales to Home Depot are threatened.

#### **V. SUMMARY JUDGMENT IS WARRANTED**

##### **A. The Law Of Summary Judgment**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). All reasonable factual inferences are drawn in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). "For the grant of summary judgment, there must be no material fact in dispute, or no reasonable version of material fact upon which the non-movant could prevail." *Roger W. Brown, Ph.D. v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001).

##### **B. The Digital Millennium Copyright Act**

The Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201(a)(2), provides the following three part test for determining when the manufacture, distribution or other provision of a product constitutes a violation:

No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component or part thereof, that—

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

A product satisfying any one of these three independent bases for liability is prohibited. Nimmer on Copyrights, § 12A.03[B]; Section-by-Section Analysis of H.R. 2281 as passed by The United States House of Representatives on August 4, 1998 at pp. 9-10 (Ex. F); *Sony Computer Entertainment American, Inc. v. Gamemasters*, 87 F.Supp. 2d. 976, 987 (N.D. Cal. 1999).

Certain terms used in the above three part test are defined in paragraph 17 U.S.C. § 1201(a)(3):

(A) to "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate or otherwise impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

**C. The Skylink Model 39 Universal Transmitter Violates The Digital Millennium Copyright Act**

Skylink's Model 39 universal transmitters illegally circumvent the protective measure controlling access to Chamberlain's receiver computer programs and violate The Digital Millennium Copyright Act.

Chamberlain's protective measure, the rolling code software, "effectively controls access to a work," as defined in § 1201(a)(3)(A). The rolling code software in the course of its operation, requires the application of information, *i.e.*, a particular rolling code and identification code, with

the authority of the copyright owner, Chamberlain, to gain access to the copyrighted computer program.

Skylink's Model 39 universal transmitters "circumvent a technological measure" because they avoid, bypass, deactivate or otherwise impair Chamberlain's protective measure without the authority of Chamberlain, the owner of the copyrights in the receiver of the GDOs, as defined in § 1201(a)(3)(B). As discussed above, Chamberlain's rolling code system controls access to the GDOs by restricting access to authorized transmitters that transmit a previously-learned identification code and a rolling code in the forward window of the previously-transmitted rolling code. This system was designed to prevent unauthorized access by code grabbers or by unauthorized users. Skylink's transmitter completely circumvents this technological measure for protecting access to Chamberlain's copyrighted rolling code software, and completely defeats the purpose of Chamberlain's rolling code system.

Skylink's Model 39 universal transmitters therefore violate 17 U.S.C. § 1201(a)(2)(A) because they are designed and produced, when set to operate a Chamberlain rolling code GDO, for the purpose of circumventing Chamberlain's protective measure that controls access to Chamberlain's copyrighted rolling code computer programs which, in turn, activate the motors in Chamberlain's GDOs.

Skylink's importation and offer to the public of its Model 39 universal transmitters also violates the other two statutory tests for liability under the DMCA. First, Skylink's universal transmitters, when set to operate Chamberlain's rolling code GDOs, have no other purpose or use other than to circumvent Chamberlain's technological protective measure. Thus, Skylink's Model 39 universal transmitters violate 17 U.S.C. § 1201(a)(2)(B).

Further, Skylink's Model 39 transmitters are marketed for use in circumventing Chamberlain's technological protective measures. In its advertisements, Skylink specifically promotes its universal transmitters as additional transmitters to be used with Chamberlain's rolling code GDO systems and markets its transmitters for use with Chamberlain's rolling code GDOs. (Exs. E. F.) Accordingly, Skylink markets its Model 39 universal transmitters for use in circumventing Chamberlain's rolling code technology in violation of 17 U.S.C. § 1201(a)(2)(C).

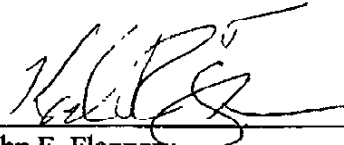
**D. Chamberlain Has Been And Is Being Injured By Skylink's Trafficking**

As demonstrated above in Section IV, Chamberlain has been and is being actually injured by Skylink's importation and sale of its Model 39 universal transmitters. Therefore, pursuant to 17 U.S.C. § 1203, Chamberlain had the right to bring this action and to obtain a permanent injunction to prevent Skylink's importation and sale of its Model 39 universal receiver.

**VL CONCLUSION**

For the above reasons, Chamberlain's motion for summary judgment should be granted. This Court should enjoin Skylink's importation and sale of its Model 39 universal transmitters, or any similar transmitter that circumvents Chamberlain's protective measure.

Date: December 3, 2002



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