

JON FALLON, ESQ. (JF2851)
MANDELBAUM SALSBURG P.C.
ATTORNEYS FOR PLAINTIFF
155 PROSPECT AVENUE
WEST ORANGE, NEW JERSEY 07052
973.736.4600 (MAIN OFFICE)
732.637.9733 (DIRECT)
jfallon@msgld.com (EMAIL)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X
ML DESIGN GROUP, LLC;

Plaintiff,

v.

**YOUNG MANUFACTURING COMPANY,
INC.;**
ROBERT YOUNG, an individual;
JOHN SMITH, an individual; and
ABC COMPANIES;

Defendants.
-----X

Civil Action No.: _____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff ML Design Group, LLC (hereinafter “ML Design Group”), by and through its counsel, Jon Fallon, Esq., of Mandelbaum Salsburg, P.C., complain against Young Manufacturing Company, Inc. (hereinafter “Young”), and ABC Companies, and alleges upon knowledge as to itself and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. This is an action for (1) Patent Infringement under 35 U.S.C. § 271(a), (2) Trade Dress Infringement under 15 U.S.C. § 1125 (a), (3) Unfair Competition under 15 U.S.C. § 1125 (a), (4) Unfair Competition under New Jersey Common Law, (5) Tortious Interference with Prospective Economic Advantage under New Jersey Common Law, and (6) misappropriation of intellectual property under New Jersey Common Law,

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over all causes of actions set forth herein based upon 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and 1338(b), and pursuant to the supplemental jurisdiction of this Court for all non-federal causes of action under 28 U.S.C. § 1367.
3. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*, (a) Defendant Young having numerous business relations within the state of New Jersey and conducting regular and continuous business transactions therewith, giving it the requisite minimum contacts with the state required to

be subject to jurisdiction therein; (b) commission of tortious acts by all Defendants within the State of New Jersey and within this Judicial District; and (c) regular and continuous transaction of business, including the tortious acts complained of herein, within the State of New Jersey and within this Judicial District.

4. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and (c).

THE PARTIES TO THE COMPLAINT

5. Plaintiff ML Design Group is a Florida Limited Liability Company with its principal place of business at 6796 S.W. 62nd Avenue, South Miami, Florida, 33143
6. Defendant Young is believed to be a Kentucky Corporation, having a principal place of business at 521 South Main Street, Beaver Dam, Kentucky, 42320.
7. Defendant Robert Young is an individual and President of Young, controlling its operations, and having a place of business at 521 South Main Street, Beaver Dam, Kentucky, 42320.
8. Defendant John Smith is a fictitious person whose present identity and address is unknown who has also violated Plaintiffs' rights as set forth herein, or who assisted, conspired, or otherwise cooperated with the other Defendants in the acts complained of herein.

9. Defendants ABC Companies are fictitious entities whose present identity and address is unknown, who have also violated Plaintiffs' rights as set forth herein, or who assisted, conspired, or otherwise cooperated with the other Defendants in the acts complained of herein.

BACKGROUND

10. On May 1, 2007, Michael Lopez, an individual and a principal of ML Design Group (hereinafter "Lopez"), filed a provisional patent application with the United States Patent and Trademark Office ("USPTO"), entitled "Step Re-Tread System and Apparatus," which was granted United States Application Serial No. 60/927,047 (the "'047 application"). One year later, on May 1, 2008, Lopez filed a non-provisional patent application claiming priority to the '047 application, which received application serial no 12/113,313 (the "'313 application"). During the prosecution of the '313 application, on October 28, 2009, Lopez filed a related design patent application covering the aesthetic appearance of the useful article described in the '313 application, which was granted application serial no. 29/346,161 (the "'161 application"). On September 6, 2011, the '161 application issued as United States Design Patent No. D644,743 (the "'743 patent"), a copy of which is attached hereto as *Exhibit A*.
11. ML Design Group is the exclusive owner, by assignment, of the '743 patent and has the right to sue and recover damages for infringement thereof.

12. ML Design Group with and through its commonly-owned affiliate company, Newtread Industries, LLC (“NewTread”), properly marks all patented products in accordance with 35 U.S.C. § 287, where appropriate, which are sold under the NewTread System brand.
13. At least as early as September 2008, NewTread has been advertising and disclosing its novel and unique stair retreading systems and method, for example, as shown in a YouTube video (“NewTread’s Video”) posted on September 10, 2008, a screen shot of which is attached hereto as *Exhibit B*.
14. Defendant Young is a manufacturer and distributor of wood products, primarily, stair treads, risers, door sills, door frames, and the like. Young offers a complete lumber and sawmilling division, providing a variety of types of lumber and sawmilling-related products and services.
15. Defendant Young manufactures, sells and distributes a product line of stair tread and risers under the brand RETROTREAD, and has done so since May 2009. The copy of the basic instruction manual for the RETROTREAD stair treads and risers is attached hereto as *Exhibit C*.
16. Defendant Robert Young is responsible for many of the day-to-day decisions of Young and is the purported inventor of Young’s RETROTREAD stair treads and risers. According to an affidavit filed by Robert Young at the USPTO in connection with his patent applications, discussed *infra*, Robert Young purportedly invented the RETROTREAD stair tread and riser products in early-to-mid 2009, at least six months after NewTread’s Video

- was publicly available and findable via any search engine. A copy of the affidavit filed by Robert Young is attached hereto as *Exhibit D*.
17. Despite NewTread's Video and products being commercially available well over one year prior to any purported invention date by Robert Young of the RETROTREAD stair tread and riser products, Robert Young filed a provisional patent application on December 4, 2009 covering the RETROTREAD stair tread and riser products, which was granted application serial no. 61/266,598 (the "'598 application"). On March 27, 2012, Robert Young was issued U.S. Patent No. 8,141,321 (the "'321 patent") on an application claiming priority to the '598 application. A copy of the '321 patent is attached hereto as *Exhibit E*. On June 12, 2012, Robert Young was also issued U.S. Design Patent No. D661,816 (the "'816 patent"), covering the aesthetic appearance of the RETROTREAD stair treads. A copy of the '816 patent is attached hereto as *Exhibit F*. None of the '313 application, the '161 application, or the '743 patent were cited during the prosecution of either the '321 patent or the '816 patent.
 18. Upon learning of the RETROTREAD stair treads and risers, as well as the '321 patent and the '816 patent in early 2012, ML Design Group sought to obtain Young's RETROTREAD stair tread and riser products for analysis.
 19. After receiving such products, ML Design Group analyzed the RETROTREAD products, in view of the claim of its '743 patent, and found the product to infringe the claim of the '743 patent. Accordingly, hereinafter,

each of the RETROTREAD products shall collectively be referenced as the “Infringing Products.”

FIRST CAUSE OF ACTION

PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(a)

20. Paragraphs 1 through 19 are realleged and incorporated herein by reference.
21. The claim of the ‘743 patent is presumed valid pursuant to 35 U.S.C. § 282, and is valid.
22. Defendants Young and Robert Young, in violation of 35 U.S.C. § 271(a), have infringed and is currently infringing, contributorily infringing and/or inducing a third party to infringe, the claim of the ‘743 patent, either literally or under the Doctrine of Equivalents, by causing to be made, using, offering to sell, selling and/or importing into the United States, without license or authority, within this Judicial District and elsewhere, the Infringing Products, which are covered by the ‘743 patent, and/or contributing towards and/or inducing a third party to do the same.
23. Defendants Young and Robert Young intentionally caused to be made, used, offered to sell, sold and/or imported into the United States the Infringing Products, with actual knowledge, and/or knowledge imputed to it, that such products embody the claim of the ‘743 patent.
24. Defendants Young and Robert Young have infringed, and upon information and belief, will continue to infringe, the claims of the ‘743 patent by the use,

manufacture, offer for sale, sale, and/or importation of the Infringing Products.

25. As a result of the Defendants' actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

SECOND CAUSE OF ACTION

TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.
27. ML Design Group has expended significant resources promoting its NewTread products covered by its '743 patent, and the exclusive rights to the such aesthetic appearance covered by the claims therein. In view of the associated *niche* market, most persons and businesses in the stair retreading industry are aware of ML Design Group's patented aesthetic appearance and its rights under the '743 patent. Accordingly, the aesthetic appearance of ML Design Group's patented products have an inherently distinctive trade dress, or in the alternative, an acquired distinctive trade dress, in the relevant marketplace.
28. The Defendants' use of the Infringing Products, through sale, offering for sale, and the like, is likely to deceive relevant consumers in the stair retreading industry as to the Defendants' affiliation with ML Design Group,

- or as to a sponsorship or an approval of the Infringing Products by ML Design Group.
29. The Defendants will, if not preliminarily and permanently enjoined by the Court, continue its acts of trade dress infringement as set forth in the Lanham Act, thereby deceiving the public, trading on the exclusive rights granted to ML Design Group by virtue of its trade dress rights.
30. As a result of the Defendants' collective actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.
32. ML Design Group has expended significant resources promoting its NewTread products covered by its '743 patent, and the exclusive rights to the such aesthetic appearance covered by the claims therein. In view of the associated *niche* market, most persons and businesses in the stair retreading industry are aware of ML Design Group's patented aesthetic appearance and its rights under the '743 patent. .
33. The Defendants collective actions regarding the Infringing Products, as described herein, are likely to have misled, and will continue to mislead many persons in the stair retreading industry to believe the Defendants have

- received permission, license, or other consent from ML Design Group to make, use, sell, offer for sale, or import into the United States, the Infringing Products.
34. The Defendants' use of the Infringing Products, through sale, offering for sale, and the like, is likely to deceive relevant consumers in the stair retreading industry as to the Defendants' affiliation with ML Design Group, or as to a sponsorship or an approval of the Infringing Products by ML Design Group.
35. The Defendants will, if not preliminary and permanently enjoined by the Court, continue its acts of unfair competition as set forth in the Lanham Act, thereby deceiving the public, trading on the exclusive rights granted to ML Design Group in the form of the '329 patent, and causing ML Design Group immediate and irreparable harm, damage and injury.
36. As a result of the Defendants' collective actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION UNDER NEW JERSEY COMMON LAW

37. Paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. The aforementioned collective acts of the Defendants constitute unfair competition and unfair business practices contrary to the common laws of New Jersey.
39. The Defendants will, if not preliminarily and permanently enjoined by the Court, continue its acts of unfair competition as defined by the common laws of New Jersey, thereby deceiving the public, trading on the exclusive rights granted to ML Design Group in the form of the '743 patent, and causing ML Design Group immediate and irreparable harm, damage and injury.
40. As a result of the Defendants' collective actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

FIFTH CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.
42. The '743 patent grants ML Design Group the right to exclude others from making, using, selling, offering for sale, or selling the claimed invention throughout the United States or importing the claimed invention into the United States pursuant to 35 U.S.C. § 154.
43. ML Design Group enjoys a protectable right in the form of a United States Patent, and the claimed invention recited by the claim of the '743 patent,

- which provides ML Design Group a reasonable expectation of an economic advantage to the entirety of a marketplace covered by such claims.
44. Any prospective consumers seeking to purchase a product or device embodying the claims of the '743 patent would need permission, consent or license from ML Design Group to acquire such a product; and accordingly, ML Design Group has a reasonable expectation of economic advantage from any person seeking to acquire a product embodying the claim of the '743 patent.
45. The Defendants, as a result of their collective actions set forth herein, have interfered with ML Design Group's protectable right in the claimed invention, and more specifically, they have disrupted ML Design Group's enjoyment of its exclusive rights under the '743 patent.
46. The Defendants' collective actions were committed with malice, willfulness and the intent to interfere with ML Design Group's exclusive rights under the '743 patent, without reasonable and lawful justification or excuse.
47. But for the Defendants' collective actions, ML Design Group had more than a reasonable expectation, in view of its monopolistic rights under the '743 patent, that every prospective consumer who showed interest in acquiring the technology associated with Infringing Devices from the Defendants would have acquired ML Design Group's patented device(s) instead.

48. The Defendants' collective actions constitute a statutory violation under 35 U.S.C. § 271, and as such, transgress generally accepted standards of common morality and law.
49. The Defendants will, if not preliminary and permanently enjoined by the Court, continue to tortuously interfere with ML Design Group's prospective economic advantage as granted by the '743 patent, and causing ML Design Group immediate and irreparable harm, damage and injury.
50. As a result of the Defendants' collective actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

SIXTH CAUSE OF ACTION

MISSAPPROPRIATION OF INTELLECTUAL PROPERTY

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.
52. The aforementioned collective acts of the Defendants constitute misappropriation of intellectual property under New Jersey Common Law.
53. In particular, upon information and belief, Defendant Robert Young had first-hand knowledge of ML Design Group's NewTread System products via, *inter alia*, NewTread's Video which clearly portrays the products and installation methods.
54. Rather than contacting either ML Design Group or NewTread, Defendant Robert Young elected to attempt to lay claim to ML Design Group's patented

technology by filing his own patent application in December 2009. Defendant Robert Young failed to notify the USPTO of ML Design Group's '313 application, '161 application or the '743 patent, despite having actual knowledge of their existence.

55. Upon issuance of Defendant Robert Young's '321 patent and the '816 patent, Defendant Robert Young misappropriated at least a substantial portion of the intellectual property owned by ML Design Group.

56. The Defendants will, if not enjoined by the Court, continue to harm ML Design Group by the misappropriation of proprietary materials in the form of intellectual property, and causing ML Design Group immediate and irreparable harm, damage and injury.

57. As a result of the Defendants' collective actions, ML Design Group has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against each of the defendants as follows:

- A. a permanent injunction restraining Defendants, their respective officers, agents, servants, employees, attorneys, and those in active concert or participation with them, or any of them who receive actual notice of the order by personal service or otherwise, from:

1. making, using, selling, offering for sale, or importing into the United States, the Infringing Products; and
 2. assisting or inducing others to make, use, sell, offer for sale, or import into the United States, the Infringing Products;
- B. an award of damages for Defendants' acts of liability under 35 U.S.C. § 271, in accordance 35 U.S.C. § 284, and in particular, an award of damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the Infringing Products, together with interest and costs as fixed by the Court;
- C. an award of increased damages under 35 U.S.C. § 284, including three times the amount found or assessed in paragraph (B) above;
- D. an award of damages inclusive of any actual damages suffered by Plaintiff as a result of Defendants' liability stated hereinabove, including arising out of Defendants' liability arising out of Counts I - VI, and other Counts that may be added at a later date once additional information is obtained;
- E. an award of damages from Defendants for their liability under § 43(a) of the Lanham Act, including any profits made by Defendants in connection with its unlawful activity, any damages sustained by Plaintiff as a result of Defendants' unlawful activity, and any costs incurred with pursuing this Action, including Court costs, attorney's fees, and additional costs related thereto, pursuant to 15 U.S.C. § 1117(a);

- F. an award of all damages incurred, directly or indirectly, as a result of Defendants' unlawful acts set forth herein, said damages to be trebled at the discretion of the Court pursuant to N.J.S.A. 56:4-2;
- G. a determination by the Court that Defendants' unlawful actions set forth herein are exceptional, warranting an award of damages to Plaintiffs for all reasonable attorney's fees incurred by Plaintiffs, pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117(a);
- H. an award of prejudgment and post-judgment interest and costs of suit;
- I. an award of punitive damages in an amount to be determined by the Court, but not less than \$25,000,000.00, for Defendants' deliberate and willful acts;
- J. an award of actual and compensatory damages in an amount not presently known, but to be computed during the pendency of this action; and
- K. an award of any such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Date: September 19, 2012

By: /s/ Jon Fallon /

JON FALLON, ESQ. (JF2851)
MANDELBAUM SALSBURG P.C.
ATTORNEYS FOR PLAINTIFF
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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiff nor plaintiff's attorney is aware of any other action pending in any court, or any pending arbitration or administrative proceeding, to which this matter is subject.

Respectfully submitted,

Date: September 19, 2012

By: /s/ Jon Fallon /

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 7.1

The undersigned hereby certifies, pursuant to Local Civil Rule 7.1, that with respect to the matter in controversy herein, Plaintiff does not have any parent corporation, nor have any publicly held corporation owning 10% or more of its stock.

Respectfully submitted,

Date: September 19, 2012

By: /s/ Jon Fallon /

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