

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DINESOL PLASTICS, INC. 195 East Park Avenue Niles, Ohio 44446 Plaintiff,)	
v.)	Civil Action No.
AVON PLASTICS, INC. d/b/a MASTER MARK PLASTIC PRODUCTS One Master Mark Drive Albany, Minnesota 56307 Defendant.)	 Jury Trial Demanded
)	

COMPLAINT

The plaintiff, Dinesol Plastics, Inc. (“Dinesol”), for its complaint against defendant, Avon Plastics, Inc., d/b/a Master Mark Plastic Products (“Master Mark”), alleges as follows:

THE PARTIES

1. The plaintiff, Dinesol, is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 195 East Park Avenue, Niles, Ohio 44446.

2. On information and belief, the defendant, Master Mark, is a corporation organized under the laws of the State of Minnesota, having a principal place of business at One Master Mark Drive, Albany, Minnesota 56307, and having sold its outdoor landscape and garden products through retail outlets for resale to the general public in the Northern District of Ohio, including Menards® retail stores.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.

4. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, and 1338(a).

5. This Court may exercise personal jurisdiction over Master Mark based upon its contacts with this forum, including, at least, regularly and intentionally doing business with and through retail outlets here, including Menards[®].

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

GENERAL ALLEGATIONS – THE DINESOL DESIGN PATENTS

7. For many years, Dinesol has engaged in the development, manufacture, and sale of a wide array of outdoor landscape and garden products.

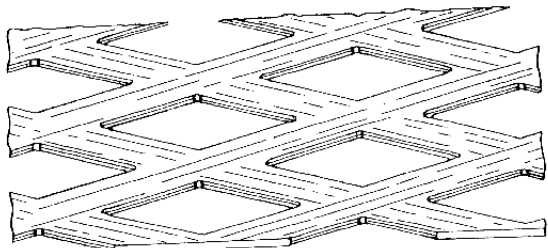
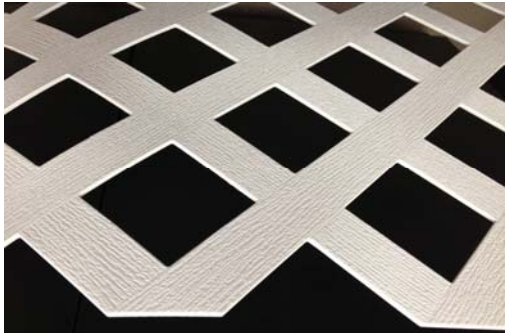
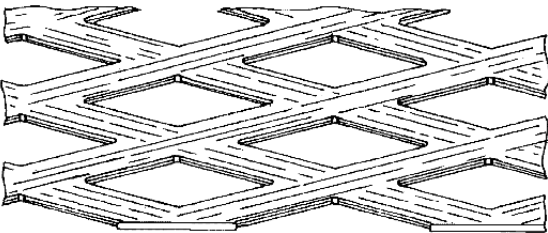

8. Dinesol has taken steps to protect its innovative designs, including its outdoor decorative-lattice designs. In particular, Dinesol owns various United States design patents relating to its lattice designs. Relevant to this dispute, Dinesol is the owner of all right, title, and interest to each of the United States design patents identified in Table 1 (hereafter, the “Dinesol Design Patents”). A copy of each Dinesol Design Patent is attached to this Complaint as indicated in Table 1.

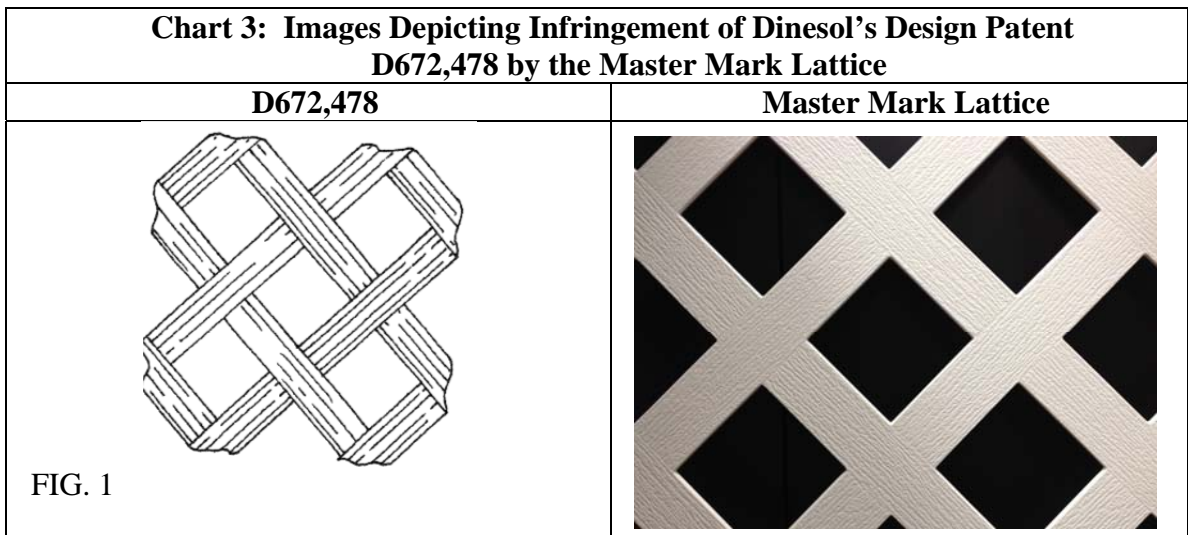
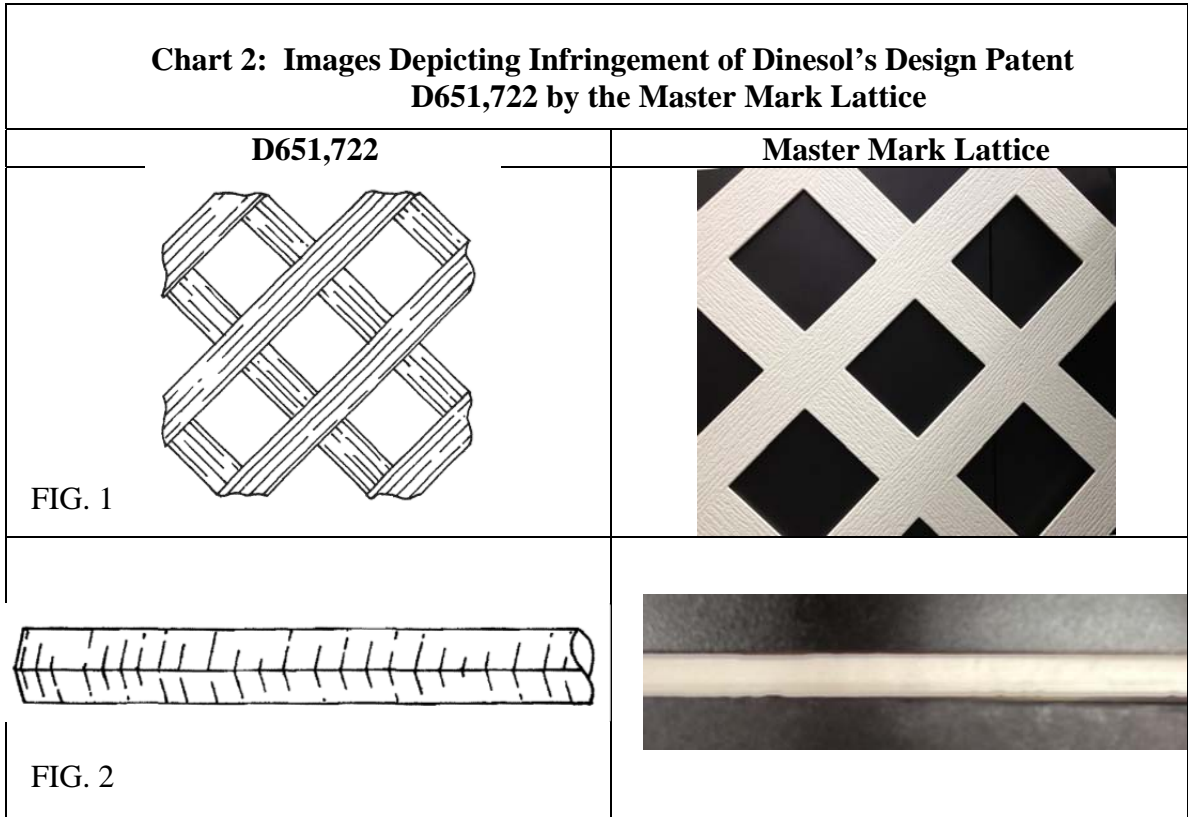
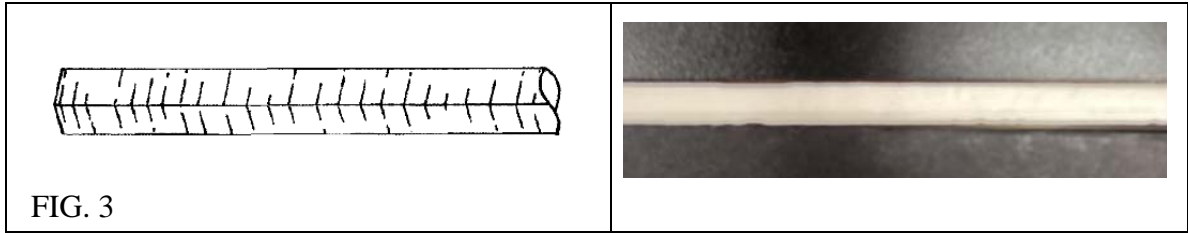
Table 1: Dinesol Design Patents		
United States Design Patent Number	Issue Date of Patent	Complaint Exhibit
D624,201 ('201 patent)	September 21, 2010	A
D651,722 ('722 patent)	January 3, 2012	B
D672,478 ('478 patent)	December 11, 2012	C

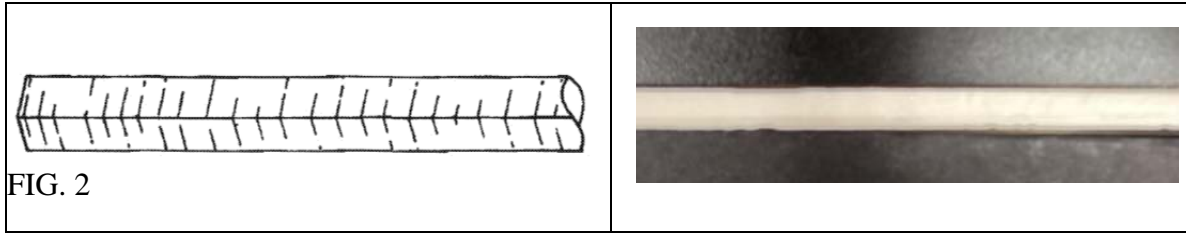
GENERAL ALLEGATIONS – DEFENDANT’S INFRINGING ACTIVITIES

9. Without Dinesol’s authorization, Master Mark has offered for sale and sold in the United States decorative-lattice having designs that are covered by the Dinesol Design Patents (hereafter, the “Infringing Lattice”). Upon information and belief, Master Mark knowingly and intentionally continues to sell the Infringing Lattice as a copy of Dinesol’s lattice.

10. Charts 1, 2 and 3 below demonstrate Master Mark’s infringement by comparing images of the Infringing Lattice sold by Master Mark with figures from the Dinesol Design Patents.

Chart 1: Images Depicting Infringement of Dinesol’s Design Patent D624,201 by the Master Mark Lattice	
D624,201	Master Mark Lattice
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	





11. Defendant Master Mark has infringed and continues to infringe the Dinesol Design Patents within the meaning of 35 U.S.C. §271(a), at least by making, selling and offering to sell the Infringing Lattice without Dinesol’s authorization or license.

12. Dinesol has sold and is currently selling its decorative-lattice bearing the design claimed in the ‘201, ‘702 and ‘478 patents.

COUNT 1: PATENT INFRINGEMENT

13. Dinesol re-alleges each and every allegation set forth in paragraphs 1 through 12 above, inclusive, and incorporates them by reference herein.

14. Master Mark has made, offered to sell, and sold into the United States, including the State of Ohio, and still is making, offering to sell, and selling herein decorative-lattice having designs that infringe one or more of the Dinesol Design Patents without Dinesol’s authorization.

15. Moreover, Master Mark has made, offered to sell, and sold into the United States, including the State of Ohio, and still is making, offering to sell, and selling herein decorative-lattice having designs that an ordinary observer, familiar with the prior art designs, would be deceived into believing is the same as one or more of the Dinesol Design Patents.

16. On information and belief, Master Mark’s infringement is intentional and

willful, making this an exceptional case.

17. Dinesol has been and will continue to be irreparably harmed by Master Mark's infringement of the Dinesol Design Patents.

JURY DEMAND

Dinesol demands a trial by jury.

RELIEF SOUGHT

WHEREFORE, Dinesol respectfully prays for:

- A. Judgment that Defendant Master Mark infringed the Dinesol Design Patents in violation of 35 U.S.C. § 271(a);
- B. An injunction against further infringement of the Dinesol Design Patents by Defendant Master Mark, its agents, servants, employees, officers, and all others controlled by them;
- C. An award of damages adequate to compensate Dinesol for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Defendant's willful patent infringement, or an award of Master Mark's profits from its infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;
- D. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest; and
- E. Such other and further relief as this Court deems just and proper.

Date: July 25, 2013

Respectfully submitted,

/Robert J. Herberger/

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