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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p><b>BROWNING</b>, a Utah corporation,  Plaintiff,  vs.  <b>STURM RUGER &amp; CO., INC.</b>, a New Hampshire corporation,  Defendant.</p>	<p><b>AMENDED COMPLAINT</b>  Case No. 1:13-cv-00013-CW  Judge Clark Waddoups  <b>Jury Demanded</b></p>
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Plaintiff Browning, by and through counsel alleges and complains against Defendant Sturm Ruger & Company, Inc. as follows:

**THE PARTIES**

1. Plaintiff Browning (“Browning” or “Plaintiff”) is a Utah corporation having its principal place of business at One Browning Place, Morgan, Utah 84050. Plaintiff designs,

develops, manufactures, and sells firearms and related products throughout the United States, including this judicial district.

2. Upon information and belief, Defendant Sturm Ruger & Company, Inc. (“Ruger” or “Defendant”) is a New Hampshire corporation having a place of business at 1 Lacey Place, Southport, Connecticut 06890. Upon information and belief, Defendant makes and sells firearms and related products throughout the United States, including this judicial district.

### **JURISDICTION AND VENUE**

3. This action is for patent infringement under 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Defendant due to its infringing activities in the State of Utah, including the sale, offering for sale, and/or advertising of infringing firearms in Utah.

5. Venue is proper in the District of Utah pursuant to 28 U.S.C. § 1391.

### **GENERAL ALLEGATIONS**

6. Browning engineer Marcus A. Heath invented a novel, improved firearm magazine that provides improved protection for the cartridges within the magazine and improved, centered loading of the cartridges in-line with the bolt of the rifle.

7. Browning protected Mr. Heath’s magazine invention by applying for a United States patent. On April 17, 2012, in recognition of the novelty and utility of Mr. Heath’s invention, the United States Patent and Trademark Office granted Browning’s application and issued U.S. Patent No. 8,156,675 (“the ‘675 patent”) to Browning. The ‘675 patent is a valid and enforceable patent. A copy of the ‘675 patent is attached as Exhibit A.

8. After issuance of the '675 patent, Ruger informally asserted that the '675 patent was invalid based upon the Blaser R93 rifle ("the Blaser Rifle"). In a continuation patent application that was pending at the time of the Ruger invalidity assertion, Browning made the Blaser Rifle of record. On July 16, 2013, that patent application issued as U.S. Patent No. 8,484,875 ("the '875 patent"). A copy of the '875 patent is attached as Exhibit B.

9. Browning incorporated Mr. Heath's magazine design described and claimed in the '675 and '875 patents in its X-Bolt rifle.

10. Dwight Potter, a Browning engineer at the time, was part of the development team for Browning's X-Bolt rifle. Mr. Potter provided design input for the X-Bolt rifle, was privy to all design documents relating to the X-Bolt, and knew everything about the proprietary and confidential technical specifications, manufacturing, and operation of the X-Bolt.

11. Mr. Potter began working for Browning in the 1990s. While employed with Browning, Mr. Potter agreed to maintain the confidentiality of Browning's trade secrets and proprietary information. While employed with Browning, Mr. Potter was advised concerning the company's policy to maintain the confidentiality of Browning's trade secret and proprietary information and received specific instructions in respect to the same. Mr. Potter knew that all of his work concerning the design and development of any product was confidential and proprietary trade secret information not to be disclosed to anyone outside of Browning.

12. In 2009, following his extensive development work on the X-Bolt rifle, Mr. Potter left Browning's employment.

13. Thereafter, Mr. Potter began working as an engineer for Ruger.

14. On information and belief, Mr. Potter assisted Ruger in developing its American Rifle, which incorporates design features Mr. Potter acquired through his work on Browning's X-Bolt, including Mr. Heath's improved magazine design.

15. Ruger's American Rifle includes the invention claimed in both the '675 and '875 patents.

16. On information and belief, Ruger knew that the information Mr. Potter was using to design the American Rifle was the confidential, trade secret information of Browning relating to the X-Bolt.

17. But for Ruger's misappropriation of Browning's confidential and proprietary information, including its trade secret information, Ruger either could not have produced the infringing American Rifle, or it would have taken a substantial period of time for it to do so, likely precluding any introduction of the American Rifle prior to issuance of the '675 and '875 patents.

18. At the January 2012 SHOT Show in Las Vegas, Nevada, Ruger introduced its new American Rifle.

19. On information and belief, the cartridge magazine in Ruger's American Rifle is a virtual copy of the magazine described and claimed in the '675 and '875 patents.

20. Ruger's American Rifle infringes one or more claims in each of Browning's '675 and '875 patents.

21. At no time has Browning given Ruger permission, license, or authorization to use Browning's patented firearm magazine technology.

22. Ruger's manufacture, use, sale, and offer for sale of its American Rifle has injured, is injuring, and will continue to cause irreparable injury to Browning and Browning's valuable patent rights and market share if not enjoined by this Court.

**FIRST CAUSE OF ACTION**  
**(PATENT INFRINGEMENT UNDER 35 U.S.C. § 271)**

23. Browning re-alleges and incorporates by this reference the preceding allegations of this Complaint.

24. Ruger's actions as described above, and specifically Ruger's unauthorized manufacture, use, sale, and offer to sell of the Ruger American Rifle, constitute direct infringement of the '675 patent and the '875 patent under 35 U.S.C. § 271(a).

25. Any further manufacturing, sales, offers for sale, or uses by Ruger of the Ruger American Rifle will demonstrate a deliberate and conscious decision to infringe the '675 patent and the '875 patent or, at the very least, a reckless disregard of Browning's patent rights.

26. Browning is entitled to an injunction prohibiting Ruger from further making, using, selling, or offering to sell the Ruger American Rifle without permission or license from Browning under 35 U.S.C. § 283.

27. Browning is entitled to recover all damages caused by Ruger's infringement under 35 U.S.C. § 284.

28. Ruger is continuing to manufacture, use, offer to sell, and/or sell the Ruger American Rifle following its notice of the '675 and '875 patent claims entitles Browning to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

**SECOND CAUSE OF ACTION**  
**(MISAPPROPRIATION OF TRADE SECRETS, UTAH CODE § 13-24-1, ET SEQ.)**

29. Browning re-alleges and incorporates by this reference the preceding allegations of this Complaint.

30. Browning invests significant resources and employs reasonable steps to protect and maintain secret the technical designs and specifications of its firearm products, including the X-Bolt rifle.

31. The design and specifications, methods of manufacture, and operation of Browning's X-Bolt rifle are confidential and not reasonably accessible to Browning's competitor's, including Ruger, through public and legitimate sources.

32. Ruger's use of the information Mr. Potter provided concerning Browning's X-Bolt rifle to design the American Rifle constitutes trade secret misappropriation under Utah Code § 13-24-1, *et seq.*

33. Browning is entitled to recover from Ruger all monetary damages sustained as a result of Ruger's misappropriation, including the actual loss caused by the misappropriation and the unjust enrichment to Ruger stemming from the wrongful acquisition and use of Browning's trade secrets.

34. Based on information and belief, and in view of the foregoing allegations, Ruger's misappropriation of Browning's trade secrets was willful and malicious. Accordingly, Browning should be granted exemplary damages up to twice the amount of compensatory and unjust enrichment damages awarded under Utah Code § 13-24-4(2) and should be awarded its reasonable attorneys' fees pursuant to Utah Code § 13-24-5.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that:

- a. the Court preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, selling, or offering to sell the Ruger American Rifle, from infringing the '675 and '875 patents, and from using any of Browning's trade secret information;
- b. the Court enter judgment against Defendant for infringement of the '675 and '875 patents under 35 U.S.C. § 271;
- c. the Court order that Defendant account to Plaintiff for all sales, revenues, and profits derived from the sale of the Ruger American Rifle, and that Defendants pay to Plaintiff all compensatory damages to which Plaintiff is entitled by law, including without limitation lost profits, reasonable royalties, price erosion damages, and convoyed sales damages;
- d. the Court award Plaintiff three times the damages found in accordance with subparagraph (c) above pursuant to 35 U.S.C. § 284;
- e. the Court award Plaintiff, against Defendant, the costs and reasonable attorneys' fees and expenses incurred in this action pursuant to 35 U.S.C. § 285 and the equity powers of the Court;
- f. the Court award Plaintiff prejudgment interest against Defendant on all sums allowed by law; and
- g. the Court award Plaintiff such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Browning demands that all claims or causes of action raised in this Complaint be tried by a jury to the fullest extent possible under the United States Constitution.

DATED this 2nd day of August, 2013.

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