

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

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Continuum Footspas, LLC  
a Wisconsin limited liability company,

Plaintiff,

v.

Lexor, Inc.  
a Maryland Corporation,

Defendant.

JURY TRIAL DEMANDED

Case No. 1:13-cv-05021

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**FIRST AMENDED COMPLAINT**

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Plaintiff Continuum Footspas, LLC, by its attorneys, Ryan Kromholz & Manion, S.C. by Melissa S. Hockersmith and Joseph A. Kromholz and Staes & Scallan, P.C. by Andrew Staes and Stephen Scallan, for its complaint against Defendant Lexor, Inc. alleges as follows:

**THE PARTIES**

1. Continuum Footspas, LLC (“Continuum”) is a limited liability company organized under the laws of the State of Wisconsin.

2. Continuum has its principal place of business at 2236 S. 162nd Street, New Berlin, Wisconsin 53151.

3. Continuum is engaged in the business of manufacturing, marketing, and selling, *inter alia*, pedicure spas.

4. On information and belief, Lexor, Inc. (“Lexor”) is a Maryland corporation having its office and principal place of business at 3035 Washington Blvd. Baltimore, Maryland 21230.

5. Lexor is engaged in the business of manufacturing, marketing, and selling salon supplies, including pedicure spas.

### **JURISDICTION AND VENUE**

6. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 271 et seq. and is a complaint for patent infringement. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

7. Lexor has made, used, sold, offered to sell, imported or caused to be sold infringing pedicure spas throughout the United States, including in this jurisdiction.

8. The Court has personal jurisdiction over Lexor under, *inter alia*, 735 ILCS 5/2-209, because the infringing pedicure spas have been offered for sale in this district.

9. Venue in this district is proper pursuant to 28 U.S.C. §§1391(b)(1) and (c)(2) because Lexor resides in this district and is subject to personal jurisdiction in this district.

10. Venue in this district is also proper pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1400(b) because the offer to sell the infringing pedicure spas occurred in this judicial district.

### **FACTUAL BACKGROUND AND NATURE OF THE CASE**

11. Continuum is the owner by assignment of U.S. Patent No. D626,360 (“the ‘360 Patent”, a copy of which is attached as Exhibit 1. A copy of the assignment is attached as Exhibit 2).

12. Continuum has the sole right to license others to manufacture, import, use, offer to sell, and sell products claimed in the ‘360 Patent.

13. The ‘360 Patent claims a base for a pedicure spa having a wood-grained arch.

14. Lexor is not licensed to manufacture, import, use, offer to sell, or sell products claimed in the ‘360 Patent.

15. Lexor advertises a line of pedicure spas under the Prive’ name. (Exhibit 3) The Prive’ pedicure spas include a wood-grained arch.

16. Lexor advertises the Prive' pedicure spa on its website at [www.lexor.com/Prive](http://www.lexor.com/Prive). Upon information and belief the Prive' pedicure spa is being offered for sale.

17. In late July 2012 Continuum became aware that Lexor was demonstrating a pedicure chair with a curved base ("Accused Product") at one or more trade shows. (Exhibit 4, Second Declaration of Joseph Galati, ¶2.) At that time, a representative of Lexor indicated that the Accused Product had not yet been sold. (Ex. 4, ¶3.)

18. The pedicure spas shown in Exhibit 3 and advertised under the Prive' name are the same or substantially the same as the pedicure spas shown in Exhibits A to the Second Declaration of Joseph J. Galati attached hereto as Exhibit 4.

19. On or about June 1, 2013 Continuum observed Lexor demonstrating the Accused Product at a trade show in Orlando, Florida. (Exhibit 5, Declaration of Anthony J. Galati, ¶2.)

#### **COUNT I – DESIGN PATENT INFRINGEMENT**

20. Continuum re-alleges and incorporates by reference paragraphs 1-19 of the Complaint.

21. Lexor's Prive' pedicure spas embody a design that is confusingly similar to the ornamental design shown in the '360 Patent.

22. The pedicure spas shown in Exhibit 3, Exhibit A to the Second Declaration of Joseph J. Galati, and Exhibit A to the Declaration of Anthony J. Galati embody a design that is confusingly similar to the ornamental design shown in the '360 Patent.

23. Lexor has infringed the '360 Patent by making, using, offering to sell, selling and/or importing into the United States pedicure spas having designs that infringe the '360 Patent without Continuum's permission.

24. Continuum has been and will continue to be irreparably harmed by Lexor's infringement of the '135 Patent.

WHEREFORE, Continuum prays for relief as follows:

- A. For a decree adjudging that United States Letters Patent No. D626,360 has been infringed by Defendant and that Plaintiff have been damaged by said infringement.
- B. For an injunction permanently enjoining Defendant, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the decree of this Court by personal service or otherwise, from directly or indirectly infringing the claim of United States Letters Patent No. D569,135.
- C. For an accounting and damages against Defendant, according to proof at the time of trial, for all damages suffered by Plaintiff by reason of the infringement by Defendant of United States Letters Patent No. D569,135 in an amount not less than a reasonable royalty, together with interest and costs, pursuant to 35 USC § 284.
- D. For damages in an amount equal to three times the amount of damages found or assessed to compensate Plaintiff for any act of infringement by a Defendant that is determined to be a willful, deliberate and intentional act, pursuant to 35 USC § 284.
- E. That Plaintiff has such other and further relief as the circumstances of the case may require or as this Court deems just and proper.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Continuum, hereby demands and requests a trial by jury of all claims and issues so triable.

Date: 9/25/2013

Respectfully submitted,

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