

Plaintiff Wilson Electronics, Inc., for its complaint against Defendants Barjan Products, L.L.C., and Aries Manufacturing, Inc. (collectively "Defendants") allege as follows:

THE PARTIES

1. Plaintiff Wilson Electronics, Inc. ("Wilson") is a Utah corporation having its principal place of business at 3301 E. Deseret Dr., St. George, Utah 84790.

2. On information and belief, Defendant Barjan Products, L.L.C. ("Barjan"), is a limited liability company, having its principal place of business in Rock Island, Illinois.

3. On information and belief, Defendant Aries Manufacturing, Inc. ("Aries") is an Illinois corporation, having its principal place of business in Libertyville, Illinois.

4. On information and belief, Wilson further alleges that any and all acts hereinafter ascribed to either Defendant were done with the permission, consent, knowledge and active inducement on the part of the other Defendant, who acted as a co-conspirator and/or agent in the performance of the acts hereinafter more particularly described.

SUBJECT MATTER JURISDICTION

5. This is a civil action by Wilson against Defendants for damages and injunctive relief for their infringement of Wilson's patent and trade dress arising under the Patent and Trademark laws of the United States, specifically, 35 U.S.C. § 271 *et. seq.* and 15 U.S.C. § 1125(a) *et. seq.* This action is also for trademark infringement and unfair competition under Utah common law.

6. Jurisdiction of this Court is founded upon 25 U.S.C. §§ 1331 and 1338(a) and (b), and 1367(a).

PERSONAL JURISDICTION AND VENUE

7. This Court has personal jurisdiction over the Defendants. The claims set forth herein arise out of Defendants' actions that took place, *inter alia*, in Utah and in this Judicial District. Further, the actions complained of herein are causing harm to

Wilson in this Judicial District.

8. Upon information and belief, Defendants have transacted business, contracted to supply infringing goods and have otherwise purposely availed themselves of the privileges and benefits of the laws of the state of Utah and therefore are subject to the jurisdiction of this Court pursuant to § 78-27-24, Utah Code Ann.

9. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(a) and (b) and 1400(b).

GENERAL ALLEGATIONS

10. The Wilson product at issue in this action is the Wilson Cellular Truck Antenna ("WCTA").

11. Wilson is the owner of United States Design Patent, Patent No. U.S. D 457,518 (the "'518 Patent") a copy of which is attached hereto as Exh. 1. The '518 Patent protects the unique distinctive and nonfunctional design of Wilson's cellar antenna.

12. For over 30 years, the name Wilson has been associated with high-quality antenna design. Millions of dollars have been spent on advertising the Wilson name. Wilson and its predecessor Wilson companies have been industry leaders in the area of antenna design for the trucking industry.

13. The Wilson Cellular Trucker Antenna ("WCTA") has a unique and distinctive trade dress including an elongated mounting mast, with a frustoconical member attached thereto and supporting a smaller antenna with a cylindrical member. A series of arms extend radially from the mast. Black and chrome colors are used on the WCTA. These features are referred to hereinafter as the "Antenna Trade Dress." The Antenna Trade Dress appears in the photograph attached as Exh. 2.

14. Barjan is a distributor for certain Wilson products and has had a long-standing relationship with Wilson.

15. Notwithstanding that relationship, Barjan has started to sell a cellular

antenna known as the "Barjan Cellular Truck Antenna," Model No. 304-1100 (hereinafter the "Barjan Antenna"), which is being manufactured and/or imported and sold to Barjan by Aries, and which infringes upon Wilson's rights in the WCTA.

CLAIM I

Patent Infringement

16. Wilson realleges each and every allegation as set forth in Paragraphs 1 through 15, inclusive, and incorporates them by this reference herein.

17. This is a claim by Wilson against Defendants for infringing the '518 Patent.

18. The '518 Patent was duly and legally issued on May 21, 2002 to Wilson. Wilson has been and is the owner of all right, title and interest in and to the '518 Patent by virtue of an assignment.

19. Wilson has the exclusive right to exclude others from making, using, or selling the design in the '518 Patent throughout the United States and the right to sue for infringement in its own name.

20. On information and belief, Wilson alleges that Defendants are directly infringing upon the '518 Patent by making, using, selling and offering for sale in this Judicial District the Barjan Antenna embodying the inventions of the '518 Patent and will continue to do so unless enjoined by this Court.

21. On information and belief, Wilson alleges that the infringement of Defendants as alleged hereinabove has been done willfully, wantonly and in bad faith.

22. As a direct and proximate result of the infringement as alleged hereinabove, Wilson has suffered damages in the form of lost profits and lost sales.

23. On information and belief, Wilson alleges that Defendants will, unless preliminarily and permanently enjoined, continue to engage in the aforementioned acts and conduct, to Wilson's further and continuing damage. Such continuing acts of infringement committed by Defendants will, unless enjoined, cause irreparable harm in that Wilson will have no adequate remedy at law to compel Defendants to cease such

acts. Wilson will be compelled to prosecute a multiplicity of actions, one each time Defendants commit such acts, and in each such action it will be extremely difficult to ascertain the amount of compensation that will afford Wilson adequate relief.

CLAIM II

Violation of the Lanham Act § 43(a)

24. Wilson realleges each and every allegation as set forth in Paragraphs 1 through 23, inclusive, and incorporates them by this reference herein.

25. This claim arises out of Defendants' infringement of Wilson's trade dress and false designations of origin in violation of § 43(a) of the Lanham Act.

26. Wilson was the first to use the Antenna Trade Dress. As a result of the sales by Wilson of the WCTA, the Wilson Trade Dress has become extensively known and Wilson has become identified in the trucking market and the public mind as the source of the products with the Wilson Trade Dress.

27. Wilson has expended substantial time, energy, and money in developing, advertising and marketing its products and, as a result thereof, the Wilson Trade Dress has acquired a prominent and valuable position in the truck accessory business and has created consumer trust and confidence in the Wilson products. The product trade dress symbolizes a great and valuable good will and reputation for quality.

28. The Barjan Antenna uses a product trade dress that is confusingly similar, if not completely identical, to the Antenna Trade Dress.

29. The Barjan Antenna appropriates the Antenna Trade Dress because the product is identical in all material respects to the WCTA.

30. On information and belief, Wilson alleges that Defendants have been well aware of the Antenna Trade Dress. Knowing the widespread recognition of the Antenna Trade Dress, and with intent to exploit that recognition, Defendants have caused to be manufactured, distributed, offered for sale and/or sold products containing the Antenna Trade Dress.

31. Defendants' conduct is likely to cause confusion, mistake, or deception of the public as to the source of Defendants' products.

32. Defendants have committed and continue to commit these acts with full knowledge that such actions constitute unlawful infringement of the Wilson product trade dress in violation of § 43(a) of the Lanham Act.

33. By their actions as aforesaid, Defendants' activities are likely to result in the substitution of the Barjan Antenna for the Wilson Antenna by purchasers seeking to buy Wilson's antenna, thereby causing damage to Wilson.

34. Furthermore, by using the product trade dress and the infringing trade dress, Defendants have also competed unfairly with Wilson in violation of § 43(a) of the Lanham Act.

35. On information and belief, Wilson alleges that Defendants will, unless preliminarily and permanently enjoined, continue to engage in the aforementioned acts and conduct, to Wilson's further and continuing damage. Such continuing acts of infringement committed by Defendants will, unless enjoined, cause irreparable harm in that Wilson will have no adequate remedy at law to compel Defendants to cease such acts. Wilson will be compelled to prosecute a multiplicity of actions, one each time Defendants commit such acts, and in each such action it will be extremely difficult to ascertain the amount of compensation that will afford Wilson adequate relief.

CLAIM III

Utah Common Law Trademark Infringement

36. Wilson realleges each and every allegation as set forth in Paragraphs 1 through 35, inclusive, and incorporates them by reference herein.

37. By its actions as alleged herein above, Defendants' conduct constitutes trademark infringement of the type proscribed by Utah common law and has damaged Wilson.

38. On information and belief, Wilson alleges that Defendants will, unless

preliminarily and permanently enjoined, continue to engage in the aforementioned acts and conduct, to Wilson's further and continuing damage. Such continuing acts of infringement committed by Defendants will, unless enjoined, cause irreparable harm in that Wilson will have no adequate remedy at law to compel Defendants to cease such acts. Wilson will be compelled to prosecute a multiplicity of actions, one each time Defendants commit such acts, and in each such action it will be extremely difficult to ascertain the amount of compensation that will afford Wilson adequate relief.

39. By engaging in the acts complained herein, Defendants have been guilty of wrongful, malicious and/or intentionally fraudulent conduct, or conduct that manifests a knowing and/or reckless indifference toward and a disregard of the rights of Wilson, within the meaning of Utah Statute 78-18-1 (2001), thereby entitling Wilson to an award of punitive damages.

CLAIM IV

Utah Common Law Unfair Competition

40. Wilson realleges each and every allegation as set forth in Paragraphs 1 through 39, inclusive, and incorporates them by this reference herein.

41. By its actions as alleged above, Defendants' conduct constitutes unfair competition of a type proscribed by Utah common law.

42. Wilson has suffered harm and will continue to suffer irreparable harm and cannot be adequately compensated by law as a result of Defendants' activities. Wilson is entitled to temporary, preliminary and permanent injunctions restraining Defendants, their officers, agents, and employees, and all persons acting in concert with them, from engaging in such further acts of unfair competition, and to damages to be determined at trial.

43. By engaging in the acts complained of herein, Defendants have been guilty of willful, malicious and/or intentionally fraudulent conduct, or conduct that manifests a knowing and/or reckless indifference toward and a disregard of the rights of

Wilson, within the meaning of Utah Code Ann. § 78-18-1 (2001), thereby entitling Wilson to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Wilson prays for Judgment against Defendants as follows:

1. That Wilson be adjudged to be the owner of the '518 Patent and all rights of recovery thereunder;
2. That the '518 Patent be adjudged to be good and valid at law and infringed by Defendants;
3. That Wilson be adjudged to be the owner of the Antenna Trade Dress;
4. That the Court adjudge that Defendants' acts, jointly and severally, constitute infringements upon the Antenna Trade Dress, and engaged in acts of false designation of origin, federal unfair competition, state statutory and common law unfair competition and state common law trademark infringement, all of which have damaged and will continue to damage Wilson;
5. That an accounting be had of the damages to Wilson resulting from the acts of patent and trade dress infringement and common law trademark infringement of Defendants and that an increase of three times the amount be assessed against Defendants with interest by reason of Defendants' intentional and willful acts;
6. That an accounting be had of Defendants' profits arising from the conduct complained of herein and that an increase of three times the amount be assessed against Defendants with interest by reason of Defendants' intentional and willful acts;
7. That this case be declared exceptional pursuant to 35 U.S.C. § 285 and that Wilson be awarded its attorney's fees pursuant thereto;
8. That Defendants' trade dress infringement be declared willful and that Wilson be awarded its attorney's fees as provided in 15 U.S.C. § 1117 of the Lanham Act;
9. For preliminary and permanent injunctive relief enjoining Defendants, their

officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them from: (a) using on or in connection with any product or services, or the manufacture, importation, exportation, sale, offer for sale, distribution, advertising, promotion, labeling or packaging of any product or service, or from using for any commercial purposes whatsoever: (1) any product falling within the scope of the '518 Patent and the Antenna Trade Dress; (2) any product substantially similar to the invention of the '518 Patent or employing a trade dress that colorably imitates or is substantially similar to the Antenna Trade Dress; and/or (3) any false designation of origin or false description or representation or any other thing calculated or likely to cause confusion, mistake or deception in the minds of the trade or public or to deceive the trade or public into believing that Defendants' business and products are in any way associated or affiliated with or related to Wilson's products; and/or (b) engaging in other acts of infringement and actively inducing others to infringe the '518 Patent and the Antenna Trade Dress;

10. That Defendants be ordered to deliver up for destruction all infringing products in its possession;

11. That Defendants be directed to recall from any and all channels of distribution any products and/or sales, advertising or promotional material distributed by Defendants bearing any trade dress, designation, representation or description in violation of the injunction herein, including an offer to reimburse each and every customer for the full cost thereof, including shipping and interest;

12. That Defendants be ordered to pay costs and fees under Utah Code Ann. § 13-11a-4;

13. That Defendants be ordered to pay punitive damages pursuant to Utah Code Ann. § 78-18-1;

14. For an award of Wilson's costs of this action; and
15. For such further relief as the Court deems Wilson may be entitled to in law and in equity.

DATED this 17TH day of December, 2002.


Robyn L. Phillips
L. David Griffin
WORKMAN, NYDEGGER & SEELEY

Attorneys for Plaintiff
WILSON ELECTRONICS, INC.

Exhibits/
Attachments
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Please see the
case file.