

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

_____)	
SOP SERVICES, INC., and)	
BEAR ARCHERY, INC.)	
)	
Plaintiffs,)	Civil Action No. 3:14-cv-97
)	
v.)	
)	DEMAND FOR JURY TRIAL
AMERICAN ARCHERY, LLC.)	
)	
_____)	
Defendant.)	

**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT
AND JURY DEMAND**

Plaintiffs, SOP Services, Inc. and Bear Archery, Inc. (collectively hereinafter “Bear Archery”), complain of Defendant, American Archery, LLC (hereinafter “American Archery”), and allege as follows:

PARTIES

1. Plaintiff, SOP Services, Inc. is a corporation organized under the laws of the State of Nevada and has a principal place of business at 2325-B Renaissance Drive, Suite 10, Las Vegas, Nevada 89119.

2. Plaintiff, Bear Archery, Inc., is a corporation organized under the laws of the State of Florida, and has a principal place of business at P.O. Box 889, 817 Maxwell Avenue, Evansville, IN 47706.

3. Bear Archery is in the business of researching, developing, designing, manufacturing, and selling archery products. The scope of its business includes traditional archery bows, compound bows, bow sights, arrow rests, arrows and arrow components, archery targets, and various other archery accessories.

4. On information and belief, Defendant American Archery is a limited liability company organized under the laws of the State of Georgia, and has a principal place of business at 1175 Buford Hwy NE, Suite 104, Suwanee, Georgia 30024.

JURISDICTION AND VENUE

5. This case arises under the patent laws of the United States, Title 35, United States Code, including, among others, section 271 entitled, “Infringement of Patent.”

6. This case also arises under the trademark laws of the United States, namely Section 39 of the Trademark Act of 1946, 15 U.S.C. §§ 1121 (the “Lanham Act”).

7. This Court has jurisdiction of this Action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 35 U.S.C. § 281.

8. Venue in this district is proper pursuant to the provisions of Title 28, United States Code, Section 1391.

9. This Court has personal jurisdiction over American Archery because it regularly does business in Indiana, including purchasing archery products and accessories from Bear Archery. On information and belief, the Court also has personal jurisdiction over American Archery because it has sold and shipped infringing products into Indiana, including shipments into this judicial district.

BACKGROUND FACTS

Bear Archery’s Products

10. The articles that are the subject of this complaint are arrow rests for mounting to archery bows.

11. An arrow rest is a separate component that is attached to a bow in order to support an arrow before it is fired. One of the challenges of designing an arrow rest is providing

sufficient support to securely hold the arrow in its desired position prior firing, but to also avoid impeding the fletching of the arrow as it is fired. There are several different kinds of arrow rests, each having their own advantages and disadvantages. A drop-away rest is designed to support the shaft of the arrow prior to firing and subsequently fall downward as the arrow is fired to avoid contacting the fletching. Although these can be designed so that the arrow makes no contact with the rest after being fired, they require complex mechanisms which increase the risk of malfunction or breaking and require precise adjustment, which if not correct, results in decreased accuracy.

12. The product at issue is a full capture arrow rest. Bear Archery's Whisker Biscuit® full capture arrow rest uses a ring of inward pointing bristles to completely contain the shaft of the arrow while it is at rest. When the arrow is fired, it easily passes through the bristles on its way to the target. This type of arrow rest provides greater stability than a drop-away rest.

13. An improved full capture arrow rest has an opening in the ring of bristles that allows the arrow to be inserted into the rest at any point along the length of the arrow rather than having to start by inserting the entire arrow into the rest.

Bear Archery's Patents

U.S. Patent RE38,096

14. On April 29, 2003, United States Patent No. RE38,096 (hereinafter "the '096 Patent") was duly and legally reissued for an invention titled "Arrow Rest." The '096 Patent was initially granted as U.S. Patent 5,896,849 on April 27, 1999, but was reissued as a result of reissue application number 09/470,600 filed on December 22, 1999. A true and accurate copy of the '096 Patent is attached hereto as Exhibit A.

15. The '096 Patent discloses a novel arrow rest for guiding and supporting an arrow on an archery bow. Some archery bows include a shelf near the middle of the bow upon which the arrow may rest if no arrow rest is attached. This creates the disadvantage of the arrow contacting the bow as it is fired. Most compound bows require the use of a separately mounted arrow rest.

16. The arrow rest shown in the '096 Patent includes a circular shaped disc which is attached to the bow. A coil brush is attached to the inside of the disc containing inwardly directed bristles that are resilient yet strong enough to withstand an arrow passing through without breaking. The arrow rest shown in the '096 Patent forms a full circle around the arrow giving complete radial support, thereby reducing the chance that the arrow falls off the rest while the user is moving or setting up a shot.

17. Another benefit seen in the '096 Patent is that the fletching of the arrow are not required to be oriented in a specific direction to avoid damage when the arrow is shot. Prior arrow rests had openings that required a specific orientation of the arrow. The fletching on the arrow would have to be positioned at the correct angles so that they would fit through these openings when the arrow was fired to avoid being deflected and/or damaged. With the arrow rest described in the '096 Patent, any type of arrow may be shot at any angular orientation without damaging the fletching of the arrow.

U.S. Patent 6,978,775

18. On December 27, 2005, United States Patent No. 6,978,775 (hereinafter "the '775 Patent") was duly and legally issued for an invention titled "Arrow Rest System and Method." A true and accurate copy of the '775 Patent is attached hereto as Exhibit B.

19. The '775 Patent discloses certain improvements to circular full capture arrow rests. Prior circular arrow rests provide radial support to an arrow that is loaded into a bow, but due to the circular shape, the tip of the arrow must be pushed through the rest before being fired. This not only takes time that that may cause a hunter to lose his or her chance at a clean shot, but the friction between the rest and the arrow can cause problems for certain types of arrows. For example, putting the tip of the arrow through the rest could cause an arrow with an expanding mechanical broadhead to expand while it is being loaded.

20. The '775 Patent addresses these issues by including a slot in the circular frame of the arrow rest. The slot allows the arrow to be side loaded into the arrow rest instead of having to have its tip and front portion threaded through the arrow rest. Bristles from a brush are attached along the remaining inner circumference the frame. The bristles extend inward with a length that is short enough to leave a small opening through which the shaft of the arrow passes.

21. The entire right, title and interest in the '096 Patent and the '775 Patent (collectively "the Patents-In-Suit") is owned by SOP Services, Inc.

22. SOP Services has granted Bear Archery an exclusive license to the Patents-In-Suit, including the right of enforcement.

23. Bear Archery presently manufactures and sells full capture arrow rests covered by the Patents-In-Suit under the brand Trophy Ridge®.

24. Bear Archery has complied with the patent marking requirements of 35 U.S.C. 287 for products manufactured and sold by Bear Archery covered by the Patents-In-Suit.

Bear Archery's Trademark

25. Since at least 1999 and continuously to date, Bear Archery and its predecessor, coined, adopted and used in interstate commerce the WHISKER BISCUIT mark in connection with its arrow rest products.

26. Bear Archery has used the WHISKER BISCUIT mark continuously, notoriously and extensively with respect to and in association with its products since their original introduction and further has marked its materials with the appropriate "TM" or "®" legends.

27. Bear Archery has expended a substantial amount of money and effort in advertising and promoting the WHISKER BISCUIT mark. Bear Archery's WHISKER BISCUIT mark is well known and consumers have come to know, rely upon, and recognize the WHISKER BISCUIT mark as identifying Bear Archery's innovative arrow rest products. As a result of Bear Archery's substantial promotional, advertising, publicity, and public relations activities, the WHISKER BISCUIT mark has acquired substantial goodwill and is a valuable commercial asset.

28. Bear Archery's WHISKER BISCUIT mark is inherently distinctive, serving to identify and indicate the source of Bear Archery's products to the consuming public, and to distinguish Bear Archery products from those of others.

29. The WHISKER BISCUIT arrow rests have been extremely commercially successful and are recognized as "the world's most-used arrow rest."

30. The WHISKER BISCUIT mark is famous.

31. Bear Archery is the owner of United States Registration No. 2,501,255 issued October 30, 2001 for the mark WHISKER BISCUIT ARROW REST® for archery equipment,

namely, arrow rest devices (the “‘255 Registration”). A true and accurate copy of the ‘255 Registration is attached as Exhibit C.

32. Bear Archery is also the owner of United States Registration No. 3,312,392 issued October 16, 2007 for the mark WHISKER BISCUIT® for archery equipment, namely, arrow rest components in the nature of replacement synthetic bristle brushes for encircling an arrow shaft and holding it in alignment (the “‘392 Registration”). A true and accurate copy of the ‘392 Registration is attached as Exhibit D.

33. Bear Archery presently manufactures and sells full capture arrow rests which are advertised and sold as Whisker Biscuit® arrow rests under the ‘255 Registration and the ‘392 Registration (collectively the “Asserted Trademarks”).

INFRINGEMENT OF THE PATENTS-IN-SUIT

34. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 through 33.

35. American Archery is in the business of selling hunting products and accessories, including archery products.

36. American Archery has previously and currently purchases archery products from Bear Archery, including genuine Whisker Biscuit® arrow rests, for subsequent sale.

37. American Archery had and currently has knowledge of the Patents-In-Suit as the genuine Whisker Biscuit® arrow rests which it regularly purchases from Bear Archery, are marked with the Patents-In-Suit.

38. American Archery purchased a number of counterfeit full capture arrows rests which infringe the Patents-In-Suit (the “Counterfeit Rests”). On information and belief, American Archery purchased the Counterfeit Rests from a manufacturer located in China.

39. American Archery began selling the Counterfeit Rests in the United States, both through its website (located at www.americanarcherysupply.com) and through online auction sites.

40. A copy of a several representative online auctions posted at least as early as March 17, 2014 by American Archery offering “more than 10” of the Counterfeit Rests is attached hereto as Exhibit E.

41. The auction listing shown in Exhibit E confirms that American Archery sold at least 74 of the counterfeit rests through this these auction listings.

42. The auction listings shown in Exhibit E each state that the product “does not have the Trophy Ridge logo on it.”

43. At least one of the auction listings shown in Exhibit E also states, with reference to the Counterfeit Rests, that “We use this product on every bow we sell.”

44. Upon being notified of the existence of the Counterfeit Rests in the market, Bear Archery has repeatedly obtained the removal of numerous auction listings placed by American Archery on eBay.com. The listings shown in Exhibit E and many others were removed by eBay following a request submitted by Bear Archery under eBay’s Verified Right’s Owner (VeRO) program. Pursuant to the terms of eBay’s VeRO Program, eBay provided notice of this action and the counterfeit basis of the removal to American Archery.

45. Despite being on notice of Bear Archery’s assertion of its rights, American Archery continues to post additional eBay listings for the Counterfeit Rests, using at least the “american-archery” and “shereesales” usernames. American Archery also continues to offer for sale and sells the Counterfeit Rests via its website.

46. A copy of American Archery's website, taken on July 1, 2014, showing an exemplary "Ready to Shoot" (RTS) package, including one of the Counterfeit Rests, offered for sale and sold by American Archery is attached hereto as Exhibit F.

47. When consumers purchase such a RTS package from American Archery, they are expecting to receive a genuine Bear Archery Whisker Biscuit® arrow rest as part of the pre-assembled bow. However, the bow they receive includes a pre-installed Counterfeit Rest which is not a genuine authorized Whisker Biscuit® rest from Bear Archery.

48. On information and belief, Defendant has acted willfully, intentionally and deliberately in derogation of Plaintiffs' rights in the Patents-In-Suit.

49. Plaintiffs have been damaged by Defendant's infringement and will suffer irreparable injury unless Defendant is permanently enjoined by this Court.

TRADEMARK INFRINGEMENT AND COUNTERFEITING

50. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 49.

51. American Archery had and currently has knowledge of Asserted Trademarks as it regularly purchases genuine Whisker Biscuit® arrow rests, which are marked with the "®" from Bear Archery.

52. The representative online auctions of Exhibit E each show the Counterfeit Rests sold by American Archery being identified as a "Whisker Biscuit" arrow rest in both the title and accompanying description.

53. American Archery has purchased, imported, offered to sell, sold and continues to purchase, import, offer to sell and sell the Counterfeit Rests.

54. The representative webpage of Exhibit F shows the Counterfeit Rests included within the RTS packages sold by American Archery being identified as a “Whisker Biscuit” arrow rest. Upon visiting American Archery’s website shown in Exhibit F, the voice of American Archery’s owner Russell Reeves plays automatically and also describes the RTS package as including “a Whisker Biscuit Arrow Rest.”

55. When consumers purchase such a RTS package from American Archery, they expect to receive a genuine Bear Archery Whisker Biscuit arrow rest as part of the pre-assembled bow. However, the bow they receive comes with a pre-installed Counterfeit Rest which is not a genuine authorized Whisker Biscuit® rest from Bear Archery.

56. American Archery’s passing off of knock-off archery rests as genuine “Whisker Biscuit” products is likely to cause confusion or mistake or to deceive consumers into believing that American Archery’s knock-off products are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Bear Archery.

57. The acts of American Archery complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement and counterfeiting in violation of Section 32 and 43(a) of the Lanham Act, 15 U.S.C. § 1114 *et seq.* and the common law.

FALSE AND DECEPTIVE LABELING AND UNFAIR COMPETITION

58. Bear Archery incorporates by reference the averments contained in paragraphs 1 through 57.

59. American Archery’s actions constitute false and deceptive labeling and unfair competition in violation of the Lanham Act 15 U.S.C. §1125 and the common law.

RELIEF

WHEREFORE, Bear Archery prays for judgment as follows:

A. A judgment of infringement of the Patents-In-Suit be entered in favor of Plaintiffs against Defendant.

B. A judgment that the use of the “WHISKER BISCUIT” mark in Defendant’s commercial advertising, marketing, and/or promotion and sales in the United States constitutes and creates a likelihood of confusion, mistake, or deception among relevant consumers and therefore infringes Plaintiff’s Asserted Trademarks.

C. A judgment that Defendant has engaged in counterfeiting with respect to Plaintiffs’ Asserted Trademarks.

D. An order permanently restraining Defendant or any of its subsidiaries, employees, agents or servants thereof, from further acts of infringement of the Patents-In-Suit.

E. An order permanently restraining Defendant or any subsidiaries, employees, agents or servants thereof, from engaging in any form of misleading advertising of products or services bearing or resembling the “WHISKER BISCUIT” mark which have caused actual confusion, mistake or deception of the public or the likelihood thereof as being similar thereto or therewith.

F. An order that all infringing devices in the possession of, or subject to control by Defendant or any employees, agents or servants thereof, infringing on any claim of the Patents-In-Suit or the Asserted Trademarks, and all labels, signs, prints, packages, wrappers, receptacles, and advertisements be delivered up and destroyed or altered to eliminate any possibility any further infringement.

G. An award of damages not less than a reasonable royalty, adequate to compensate Plaintiffs for Defendant's acts of infringement under 35 U.S.C. §284.

H. An award to Plaintiffs of treble Defendant's profits under 15 U.S.C. § 1117(a) and (b).

I. An award to Plaintiffs of statutory damages for counterfeiting up to \$2,000,000, as the Court considers just, pursuant to 15 U.S.C. § 1117(c).

J. An order declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and 15 U.S.C. 1117 as a result of Defendant's knowing and willful infringement of the Patents-In-Suit and the Asserted Trademarks, and awarding Plaintiffs their attorneys' fees incurred in bringing this action.

K. An order that the amounts awarded to Plaintiffs as damages or profits be increased by the maximum amount allowed under 35 U.S.C. §284 and 15 U.S.C. 1117.

L. An award of Plaintiffs' damages, statutory damages, costs, attorney's fees and/or expenses associated with this action and also including Defendant's wrongful profits from or associated with its patent and or trademark infringements and other violations of Plaintiffs' rights.

M. An order granting all other relief found necessary, just and proper under the circumstances, including monetary damages to which Plaintiffs may be entitled.

JURY DEMAND

Plaintiffs request a jury for all issues so triable.

Respectfully submitted,

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