

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

ECCO Sko A/S, and ECCO USA, Inc.

Plaintiffs,

v.

CONAL INTERNATIONAL TRADING,
INC.

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, ECCO Sko A/S and ECCO USA, Inc. (collectively “ECCO”), do hereby, through their attorneys, allege as follows:

THE PARTIES

1. Plaintiff ECCO Sko A/S (hereinafter “ECCO Sko”), is a corporation organized and existing under the laws of Denmark, with a principal place of business at Industrivej 5 Bredebro, Denmark DK-6261.

2. Plaintiff ECCO USA, Inc. (hereinafter “ECCO USA”), is a corporation organized and existing under the laws of New Hampshire, with a principal place of business at 16 Delta Dr. Londonderry, New Hampshire 03053.

3. Upon information and belief, Defendant Conal International Trading, Inc. (hereinafter “Conal”) is a corporation organized under the laws of California, with its principal place of business at 17559 Rowland St, City Of Industry, CA 91748.

JURISDICTION

4. This is a civil action for patent infringement under the patent laws of the United States, Title 35 U.S.C. §§ *et seq.*, trade dress infringement under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, trade dress infringement under New Hampshire common law, and violation of the New Hampshire Consumer and Protection Act RSA 358-A. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over the New Hampshire statutory and common law claims.

5. This Court has personal jurisdiction over Defendant, and Defendant comes within the scope of the New Hampshire long-arm statute, N.H. REV. STAT. § 510:4, because, upon information and belief and among other things, Defendant is transacting business within this judicial district, and has committed tortious acts causing injury within this judicial district, including acts of infringement which are in part the subject matter of this Complaint.

VENUE

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

BACKGROUND FACTS

7. Plaintiff ECCO Sko is a Danish shoe manufacturer and retailer founded in 1963. Today, ECCO shoes are sold worldwide and are well known for their high quality, reliability, comfort and style. ECCO USA was established in or around 1990, and since then the United States has grown into the single largest market for ECCO shoes.

8. ECCO has enjoyed extraordinary success in designing, developing and marketing its innovative footwear. ECCO has spent large sums of money in designing its distinctive, uniquely-marked, high-quality footwear and all footwear are manufactured under strict quality controls.

9. ECCO Sko is the owner by assignment of United States Patent No. 8,490,303 entitled “Sole for a golf shoe,” issued on July 23, 2013 (“the ‘303 patent”). ECCO USA is the exclusive licensee of the ‘303 patent in the United States and its territories. A true and correct copy of the ‘303 patent is attached hereto as Exhibit A.

10. Conal infringes and will continue to infringe the ‘303 patent by, among other activities, making, using, selling or offering to sell its product know as Comfort Golf shoes.

11. ECCO has suffered injury from Conal’s acts of patent infringement, and ECCO is entitled to recover damages adequate to compensate it for such infringement.

12. On information and belief, Conal has made, used, sold, and/or offered to sell the Comfort Golf shoes despite having knowledge of the ‘303 patent and its infringement, and despite an objectively high likelihood that its actions constitute infringement of a valid patent. Conal knew or should have known of this objectively high risk. Accordingly, Conal’s acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

13. Since 2010, ECCO has manufactured and sold an innovative and highly successful line of golf shoes known as Golf Street shoes.

14. ECCO is the owner of the trade dress in its Golf Street shoes, including, but not limited to, the distinctive array of dots on the outer side of the shoe, the contrast stripe, the placement and arrangement of the aeration holes, the parallel angled arrangement of these elements, and other features including the combination of the individual elements as shown below (hereinafter “the ECCO trade dress”).

Golf Street Concrete/White EvoLexi	Golf Street Licorice/Coffe/Fanta
	
	

15. As shown above, ECCO's Golf Street shoe design represents a novel and striking ornamental configuration for a shoe.

16. ECCO has invested considerable money in advertising and promoting its Golf Street shoes. The advertisements and promotions included the ECCO trade dress.

17. ECCO's Golf Street shoes have been widely praised in the popular media as well as within the golf industry. See Exhibit B.

18. As a result of ECCO's enormous investment in the design, development, advertising and marketing of its distinctively designed footwear bearing the ECCO trade dress, ECCO's shoes embodying this trade dress are inherently distinctive and/or have become recognizable to the consuming public as ECCO's products.

19. The ECCO trade dress has achieved secondary meaning in the marketplace as an indicator of ECCO as the source of shoes bearing this trade dress.

20. As shown below, at least several models of Conal's Comfort Golf shoes infringe ECCO's valuable trade dress by causing consumers to confuse those Conal Comfort Golf shoes with the authentic ECCO Golf Street shoe.

ECCO Golf Street	Conal Comfort Golf shoe
	
	

21. Conal Comfort Golf shoes are so visually similar to the ECCO Golf Street shoes shown above that the sale thereof is likely to, and is intended to, cause confusion among purchasers and deceive the public into purchasing the Conal Comfort Golf shoes while believing they are the product of, or associated with, ECCO.

22. Upon information and belief, the Conal Comfort Golf shoes are inferior in quality to ECCO shoes, and the sale thereof has and will continue to damage and dilute the goodwill that ECCO has developed in connection with the sale of its legitimate, high-quality footwear.

23. The unlawful activities of Conal result in irreparable harm and injury to ECCO. Among other harms, these activities deprive ECCO of its absolute right to determine the manner in which its image is presented to the general public through merchandising, deceive the public as to the origin and sponsorship of the Conal Comfort Golf shoes, and wrongfully trade upon ECCO's reputation and exclusive rights in its trade dress.

24. By misappropriating and using the ECCO trade dress, Conal has misrepresented and falsely described the origin and source of at least the Conal Comfort Golf shoes so as to deliberately create a likelihood of confusion and deceive the public into believing the Conal Comfort Golf shoes are manufactured, distributed, sold, authorized by, or associated with ECCO, all to Conal's profit and ECCO's irreparable damage and injury.

25. Given the similarity between the overall commercial impression of ECCO Golf Street shoes and the infringing Conal Comfort Golf shoes, the sale by Conal of its infringing shoes constitutes false designations of origin and false descriptions and representations to the consuming public.

26. ECCO has suffered injury by Conal's infringement of ECCO's trade dress, including harm to ECCO's good will and reputation in the golf marketplace.

COUNT I
(Infringement of U.S. Patent No. 8,490,303)

27. ECCO repeats and realleges paragraphs 1-26, above, as though fully set forth herein.

28. Conal infringes and will continue to infringe one or more of the claims of the '303 patent by, among other activities, offering to sell or selling its Comfort Golf shoes.

29. Conal has also infringed the '303 patent by contributing to the infringement of the '303 patent by others and/or by inducing others to infringe the '303 patent.

30. Upon information and belief, Conal's continued infringement of the '303 patent, whether direct, contributory, and/or by inducement, has been and continues to be knowing, willful, and objectively reckless.

31. ECCO has been irreparably harmed to an extent not yet determined by Conal's infringement, and will continue to be irreparably harmed in the future unless Conal is enjoined from its activities by this Court.

COUNT II
(Infringement of ECCO's Trade Dress Under
§ 43(a) of the Lanham Act (15 U.S.C. § 1125(a))

32. ECCO repeats and realleges paragraphs 1-31, above, as though fully set forth herein.

33. Conal infringes and will continue to infringe ECCO's Golf Street trade dress by, among other activities, offering to sell or selling its golf shoes under § 43(a) of the federal Lanham Act. 15 U.S.C. § 1125(a)

34. As shown above, Conal's slavish copying of the ECCO trade dress will cause consumers to mistakenly identify Conal's shoes as sponsored by or otherwise affiliated with ECCO Golf Street shoes.

35. ECCO has been irreparably harmed to an extent not yet determined by Conal's infringement, and will continue to be irreparably harmed in the future unless Conal is enjoined from its activities by this Court.

COUNT III
**(Infringement of ECCO's Trade Dress Under
New Hampshire Common Law)**

36. ECCO repeats and realleges paragraphs 1-35, above, as though fully set forth herein.

37. Conal infringes and will continue to infringe ECCO's Golf Street trade dress by, among other activities, offering to sell or selling its golf shoes under the common law of the State of New Hampshire.

38. As shown above, Conal's slavish copying of the ECCO trade dress will cause consumers to mistakenly identify Conal's shoes as sponsored by or otherwise affiliated with ECCO Golf Street shoes.

39. ECCO has been irreparably harmed to an extent not yet determined by Conal's infringement, and will continue to be irreparably harmed in the future unless Conal is enjoined from its activities by this Court.

COUNT IV
(Violation of the New Hampshire Consumer Protection Act RSA 358-A)

40. ECCO repeats and realleges paragraphs 1-39, above, as though fully set forth herein.

41. Conal has violated Section 358-A:2 by, among other activities, offering to sell or selling its golf shoes in the State of New Hampshire.

42. As shown above, Conal's slavish copying of the ECCO trade dress will cause consumers to mistakenly identify Conal's shoes as sponsored by or otherwise affiliated with ECCO Golf Street shoes.

43. ECCO has been irreparably harmed to an extent not yet determined by Conal's infringement, and will continue to be irreparably harmed in the future unless Conal is enjoined from its activities by this Court.

PRAYER FOR RELIEF

WHEREFORE, ECCO respectfully asks this Court to enter judgment against Conal and against its respective subsidiaries, successors, parents, affiliates, officers, directors, agents, servants and employees, and all persons in active concert or participation with Conal, granting the following relief:

- A. The entry of judgment in favor of ECCO and against Conal;
- B. A permanent injunction prohibiting further infringement of the '303 patent;
- C. An award of damages adequate to compensate ECCO for the patent infringement that has occurred, but in no event less than a reasonable royalty for the use made of the inventions of the '303 patent as provided in 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- D. Award ECCO treble damages as provided in 35 U.S.C. § 284;
- E. Find that this case is exceptional and award ECCO its costs in this action together with reasonable attorneys' fees as provided in 35 U.S.C. § 285;
- F. A permanent injunction prohibiting further infringement of ECCO's trade dress;
- G. An award of damages adequate to compensate ECCO for Conal's infringement of the ECCO trade dress as provided in 15 U.S.C. § 1117(a);
- H. Award ECCO treble damages and its attorney's fees as provided in 15 U.S.C. § 1117(a);
- I. An award of punitive damages for Conal's infringement of the ECCO trade dress;

- J. Find that Conal has violated the New Hampshire Consumer Protection Act RSA 358-A;
- K. A permanent injunction prohibiting further violation of the New Hampshire Consumer Protection Act RSA 358-A;
- L. Award ECCO treble damages and its attorney's fees as provided in Section 358-A:10; and
- M. Such other relief to which ECCO is entitled under law, and any other and further relief that this Court or a jury may deem just and proper.

DEMAND FOR JURY TRIAL

ECCO demands a trial by jury on all issues so triable.

Respectfully submitted,
ECCO SKO A/S, AND ECCO USA, INC.

By and Through Their Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: December 5, 2014

By: /s/ William B. Pribis
William B. Pribis (NH Bar #11348)
pribisw@cwbp.com
Two Capital Plaza, 5th Floor
P.O. Box 1137
Concord, NH 03302-1137
Tel: (603) 224-7761
Fax: (603) 224-6457

Of Counsel:

Steven M. Coyle (ct21039)
scoyle@cantorcolburn.com
Andrew C. Ryan (ct21565)
ryan@cantorcolburn.com
CANTOR COLBURN LLP
20 Church Street, 22nd Floor
Hartford, CT 06103
Tel: (860) 286-2929
Fax: (860) 286-0115