

U.S. DISTRICT COURT  
WESTERN DIST ARKANSAS  
FILED

FEB 09 2015

CHRIS R. JOHNSON, Clerk  
By  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

DENOVO BRANDS, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MAHCO, INC., )  
 )  
 Defendant. )

Case No: 15-5041 TLB

**COMPLAINT**  
**INJUNCTIVE RELIEF AND JURY TRIAL REQUESTED**

Plaintiff, DENOVO BRANDS, LLC, by and through its attorneys, Friday, Eldredge & Clark, LLP, for its Complaint against Defendant, MAHCO, INC , alleges and states as follows:

**THE PARTIES**

1. DENOVO Brands, LLC ("**DENOVO**") is an Arkansas limited liability company with its principal place of business being located in Bentonville, Benton County, Arkansas.
2. MAHCO, Inc. ("**MAHCO**") is an Arkansas Corporation with its principal place of business being located in Bentonville, Benton County, Arkansas.

**JURISDICTION**

3. This is an action for willful patent infringement arising under the patent statute 35 U.S.C. § 271 *et seq.*; trademark infringement, unfair competition and false description under

the Lanham Act 15 U.S.C. § 1125(a); unfair and deceptive trade practices under § 4-88-107, the Arkansas Deceptive Trade Practices Act.

4. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1338(a) and 15 U.S.C. § 1121. The Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. §1367.

5. The Court has personal jurisdiction over the defendant MAHCO because MAHCO maintains its principal place of business in the State of Arkansas

#### **VENUE**

6. MAHCO conducts business within this State and/or judicial district; has committed a tortious act within this State and/or judicial district, including acts of patent infringement, within this State and/or this judicial district thereby subjecting MAHCO to the personal jurisdiction of this Court.

7. Venue is proper in the Western District of Arkansas pursuant to 28 U.S.C. §§1391(b) and (c), and 28 U.S.C. §1400(b).

#### **BACKGROUND**

8. DENOVO is the manufacturer of outdoor furniture, including a folding camping chair that was first produced in 2008 and marketed under the trademark DUAL LOCK (the "**DUAL LOCK brand chair(s)**"). DENOVO sells these products to consumers and businesses all over the United States.

9. After entering production, a certain portion of DENOVO's DUAL LOCK brand chairs were further branded as Ozark Trail products for sale by and through Walmart retail outlets. The Ozark Trail brand is a Walmart private label brand.

10. In 2009, DENOVO sold millions of dollars' worth of the DUAL LOCK brand chairs throughout various Walmart Stores, Inc. ("**Walmart**") retail locations.

11. Notwithstanding the fact that DUAL LOCK brand chairs enjoyed robust sales, Walmart discontinued sales of the DENOVO line. Nonetheless, demand for the DUAL LOCK brand chairs continued, and DENOVO continues to sell the DUAL LOCK brand chairs through other retail outlets and through its online store.

12. In February of 2009, DENOVO filed a design patent application at the United States Patent and Trademark Office (the "**USPTO**"), and was issued United States Design Patent No. D593,759 (the "**759 Patent**") on June 9, 2009. A copy of the patent is attached as Exhibit A.<sup>1</sup>

13. In addition, DENOVO received a trademark registration for the term "DUAL LOCK" as used in conjunction with the Dual Lock Chair from the USPTO under United States Trademark Registration No. 3,741,365 (the "**Dual Lock Trademark**"), a copy of which is attached as Exhibit D.<sup>2</sup>

14. DENOVO continued to attempt selling the DUAL LOCK brand chairs through Walmart retail locations and, in 2013, offered the DUAL LOCK brand chair to Walmart. However, DENOVO was unable to secure distribution for its chairs through Walmart.

15. In January of 2014, DENOVO representatives visited a factory provider in Wuyi, China. While at the facility, it was discovered that MAHCO was having a chair produced in

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<sup>1</sup> At the time of the patent application, Plaintiff DENOVO was known as Fairkeep Products, LLC ("Fairkeep"). A name change occurred on March 11, 2011 from Fairkeep to DENOVO. A copy of the Certificate and Restated Articles is attached as Exhibit B. The name change was recorded at the USPTO for the patent on June 28, 2011, a copy of which is attached as Exhibit C.

<sup>2</sup> The name change was recorded at the USPTO for the trademark registration on March 24, 2011, a copy of which is attached as Exhibit E.

China that was called a “Dual Lock” chair that the ordinary observer would confuse with DENOVO’s patented design. MAHCO’s chair was labeled as an Ozark Trail product (the “**MAHCO Chair**”). Attached hereto as Exhibit F are two pictures of the MAHCO chair purchased by DENOVO representatives in early 2014.

16. DENOVO representatives also learned from the factory in China that parts for DENOVO’s DUAL LOCK brand chairs found their way into some of the MAHCO chairs.

17. Further, it was discovered that the MAHCO Chair was being shipped in shipping boxes from China marked with DENOVO’s trademark DUAL LOCK.

18. It was later discovered that the infringing MAHCO Chair was being sold in Walmart retail locations.

#### **THE TRADEMARK**

19. The Plaintiff DENOVO makes, markets and outdoor furniture under the name DUAL LOCK. Plaintiff sells these goods from Arkansas to consumers and businesses all over the United States.

20. Plaintiff DENOVO owns a federally registered trademark, Registration No. 3,741,365 for DUAL LOCK (“the Mark”).

21. The Registration is valid and in full force and effect. It serves as prima facie evidence of 1) the validity of the Mark, and 2) Plaintiff’s exclusive right to use the Mark in connection with goods and services.

22. Plaintiff also has a second pending U.S. Trademark Application for DUAL LOCK, Trademark Application No. 86/391698, which will be published shortly.

23. Defendant has been selling products, including folding chairs, bearing the Mark. Attached as Exhibit G is a picture of a carton shipped by Defendant and received by Plaintiff on March 12, 2014, clearly showing Defendant's use of Plaintiff's Mark.

### **THE PATENT**

24. Plaintiff DENOVO is the owner of U.S. Patent No. D593,759 (the "'759 Patent") entitled "LOCKABLE FOLDING CHAIR."

25. DENOVO is the owner of legal title to the '759 Patent through an assignments that have been recorded at the United States Patent and Trademark Office.

26. Defendant MAHCO is knowingly and willfully manufacturing, selling, offering for sale, and/or importing into the United States chairs disclosed and claimed in the '759 Patent without the authorization of DENOVO.

### **COUNT I**

#### **DIRECT INFRINGEMENT - '759 PATENT**

27. Plaintiff DENOVO hereby incorporates and re-alleges the allegations contained in Paragraphs 1 through 26 above as though fully set forth and restated herein.

28. This is a cause of action against MAHCO pursuant to 35 U.S.C. § 271(a) for direct infringement of the '759 Patent.

29. MAHCO is directly infringing the '759 Patent by making, using, selling and/or offering to sell products that are covered by the '759 Patent in the United States and/or importing such products in the United States without the authorization of DENOVO in violation of 35 U.S.C. § 271(a).

30. On information and belief, MAHCO's acts of infringement are knowing, intentional, and willful.

31. On information and belief, one or more acts of direct infringement have occurred in or from the Western District of Arkansas, thereby giving rise to specific jurisdiction over MAHCO.

32. MAHCO's acts of direct infringement have damaged and will continue to damage Plaintiff DENOVO causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court. This is evident by Defendant's continued selling of the infringing chairs even after DENOVO alerted MAHCO to the infringement.

## COUNT II

### TRADEMARK INFRINGEMENT UNDER 15 §§ U.S.C. 1114

33. Plaintiff DENOVO hereby incorporate and re-allege the allegations contained in Paragraphs 1 through 32 above as though fully set forth and restated herein.

34. Plaintiff DENOVO is the rightful owner of the Mark DUAL LOCK.

35. In addition to its rights in DUAL LOCK at common law, Plaintiff DENOVO is the owner of U.S. Federal Registration No. 3,741,365.

36. Without authorization from Plaintiff DENOVO, Defendant has used and continues to use the Mark DUAL LOCK by using a mark that is likely to cause confusion, mistake and/or deception as to source, sponsorship, or affiliation, subjecting Defendant to liability under 25 U.S.C. § 1125(a) and the common law of the state of Arkansas.

37. Defendant's infringing actions have damaged Plaintiff DENOVO in an amount to be determined at trial.

38. Defendant's infringing actions will continue unless enjoined by this Court.

39. Plaintiff DENOVO has no adequate remedy at law and will suffer irreparable harm to its business, reputation, and goodwill unless Defendant's unlawful conduct is enjoined by this Court.

**COUNT III**

**FALSE DESIGNATION OF ORIGIN UNDER 15 § U.S.C. 1125(a)**

40. Plaintiff DENOVO hereby incorporate and re-allege the allegations contained in Paragraphs 1 through 39 above as though fully set forth and restated herein.

41. The Defendant's use of DUAL LOCK to sell goods constitutes a false designation of origin pursuant to 25 U.S.C. § 1125(a), suggesting to consumers that Defendant is associated with or sponsored by Plaintiff DENOVO.

42. Defendant's unauthorized use of this term has a substantial effect on interstate commerce.

43. Defendant's false designation of origin has been made in connection with goods and services from which it makes a profit.

44. Defendant's false designation of origin is likely to cause confusion, mistake, or deception as to the origin, sponsorship or approval by the Plaintiff of the goods and services provided by Defendant, subjecting Defendant to liability under 25 U.S.C. § 1125(a).

45. Defendant's false designation of origin has damaged DENOVO in an amount to be determined at trial.

**COUNT IV**

**DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER A.C.A. § 4-88-107**

46. Plaintiff DENOVO hereby incorporates and re-alleges the allegations contained in Paragraphs 1 through 45 above as though fully set forth and restated herein.

47. Defendant is, and at all times relevant was, engaged in commerce.

48. The center of gravity of the Defendant's acts has been primarily and substantially in the State of Arkansas.

49. By its above-described conduct, Defendant has engaged in unfair or deceptive trade practices in violation of A.C.A. § 4-88-107.

50. Defendant's unfair and deceptive trade practices impact the public interest by causing consumer confusion.

51. Defendant's unfair and deceptive trade practices have been willful and knowing.

52. Defendant's deceptive and unfair trade practices have damaged DENOVO in an amount to be determined at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, DENOVO respectfully requests that this Honorable Court:

1. Preliminarily and permanently enjoin Defendant, MAHCO, and its officers, partners, employees, agents, attorneys, servants, and all those persons and entities in active concert or participation therewith, from continuing to infringe the '759 Patent, pursuant to 35 U.S.C. § 283;
2. Preliminarily and permanently enjoin Defendant, MAHCO, and its officers, partners, employees, agents, attorneys, servants, and all those persons and entities in active concert or participation therewith, from using the Mark DUAL LOCK, whether alone or in combination with other words, symbols, and from any further infringement, false designation of origin, unfair competition, and unfair trade practices, with respect to Plaintiff's DUAL LOCK Mark pursuant to 15 U.S.C. § 1125 or otherwise;
3. Enter judgment that the Defendant's infringement has been knowing and willful;



4. Award Plaintiff compensatory damages as provided under 35 U.S.C. § 284;
5. Award Plaintiff enhanced damages as provided under 35 U.S.C. § 284;
6. Award Plaintiff all of Defendant's profits as provided under 35 U.S.C. § 289;
7. Award of Plaintiff's reasonable attorney's fees and costs as provided under 35 U.S.C. § 285 and Rule 54(d), Fed. R. Civ. P.;
8. Direct Defendant to pay Plaintiff all of their actual damages, any additional profits, damages sustained by the plaintiff, and the costs of this action under 25 USC § 1117(a) and otherwise;
9. Enter judgment that Defendant's trademark infringement false designation of origin, unfair competition, and unfair trade practices have been knowing and willful;
10. Order the recall, impounding, and destruction of all goods, advertising, or other items bearing infringing markings, pursuant to 25 USC § 1118 or otherwise;
11. Award prejudgment and post-judgment interest; and
12. Provide such other and further relief as the Court deems just, fair, and appropriate.

**JURY DEMAND**

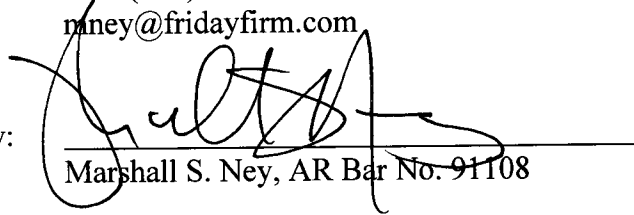
Plaintiff demands a trial by jury on all issues so triable.

Dated this 9<sup>th</sup> day of February, 2015.

Respectfully Submitted

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