

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

RADIUS GARDEN LLC,  
a Michigan limited liability company

Plaintiff,

vs.

GLORIOUS OUTDOORS, LLC,  
a Connecticut limited liability company

Defendant.

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Case No.

Hon.

**JURY DEMAND**

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## **COMPLAINT AND JURY DEMAND**

Pursuant to Rule 7(a) of the Federal Rules of Civil Procedure, Plaintiff Radius Garden LLC (“Radius Garden” or “Plaintiff”) hereby provides its Complaint against Defendant Glorious Outdoors, LLC (“Glorious Outdoors” or “Defendant”) for patent infringement and false advertising.

### **THE PARTIES**

1. Plaintiff Radius Garden is a limited liability company organized and existing under the laws of the State of Michigan, having a registered address of 722 Airport Blvd. Suite 3, Ann Arbor, MI 48108.

2. Radius Garden is a leading designer of home gardening tools and equipment, and has a place of business in this jurisdiction at 722 Airport Blvd. Suite 3, Ann Arbor, MI 48108.

3. Upon information and belief, Glorious Outdoors is a Connecticut limited liability company with its registered address at 31 Hollow Brook Road, Windsor, Connecticut 06095. Based on information and belief, Glorious Outdoors sells infringing products and falsely advertises in the United States, including within this Judicial District.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35, Section 101 and 271, of the United States Code.

5. This action also arises under the Lanham Act, Title 15, Section 1125, of the United States Code.

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

7. Upon information and belief, this Court has personal jurisdiction over the Defendant because it regularly and continuously engages in substantial sales and other business transactions in the Eastern District of Michigan, and has sold infringing products and/or committed infringing acts in this Judicial District. Further, Defendant has placed infringing products into the stream of commerce knowing and intending that this Judicial District was, and is, a likely destination of those products. Still further, Defendant false advertised its products within this Judicial District. This Court has personal jurisdiction over the Defendant because it caused injury to Plaintiff in this Judicial District. Further, based upon information and belief, Defendant has substantial contacts with this forum as a result of pervasive business activities conducted within the State of Michigan and within this Judicial District, including but not limited to the selling or offering for sale of infringing products.

8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400.

### **NATURE OF THIS ACTION**

9. This is a civil action against Defendant Glorious Outdoors for infringement of United States Design Patent No. D579,288 (the “’288 patent”), arising under the laws of the United States set forth in Title 35 of the United States Code and for false advertising arising under Title 15, Section 1125 of the United States Code. A true and correct copy of the ’288 patent is attached as **Exhibit A** and is made a part of this Complaint.

10. Glorious Outdoors has entered the home garden tools market by selling a shovel known as the Spear Head Gardening Shovel & Spade or Spear Head Spade (“Spear Head Spade”) (shown below and attached as **Exhibit B**):



11. Defendant markets this tool to compete with similar tools for home gardening, including Plaintiff's own Transplanter. But the Spear Head Spade misappropriates a variety of Plaintiff's intellectual property, including at least its patent rights.

12. Defendant also markets this tool as embodying "patent pending" technology when, in fact, there is no pending patent related to the Spear Head Spade. This marketing and commercial advertising is done in bad faith to confuse consumers and competitors.

13. Plaintiff seeks an award of monetary damages, including costs and attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285 for violation of 35 U.S.C. § 271.

14. Plaintiff also seeks an award of monetary damages, including costs and attorneys' fees pursuant to 15 U.S.C. §1117(a) for violation of 15 U.S.C. §1125(a).

## **BACKGROUND ALLEGATIONS**

### **The Patent**

15. Plaintiff has numerous patents in the United States relating to home gardening tools and equipment.

16. On October 28, 2008, the United States Patent and Trademark Office ("PTO") duly and legally issued the '288 patent, entitled "Transplanter."

17. Plaintiff owns all right, title and interest in the '288 patent.

18. Plaintiff is the designer of the "Transplanter" – a shovel with a narrow, tapered, deep blade. *See Exhibit C* attached hereto.

19. Baker has years of experience in the home gardening tool and equipment industry.

20. Baker retained a patent attorney to obtain the '288 patent in or around March 2007, who filed an application with the PTO on or about March 14, 2007.

21. Baker obtained the '288 patent for the Transplanter on October 28, 2008, which covers "[t]he ornamental design for a transplanter, as shown and described." *See Exhibit A*. The '288 patent contains six (6) figures or drawings of the Transplanter highlighting its unique features such as its shape and head design.

### **Glorious Outdoors' Infringement**

22. Based upon information and belief, Defendant sells and offers to sell in the United States, including in this Judicial District, shovels incorporating design elements patented by the '288 patent, and Glorious Outdoors will continue to do so unless enjoined by this Court.

23. QVC, Inc. ("QVC") is a marketer and distributor of a wide variety of goods, including home gardening tools and equipment.

24. On information and belief, QVC markets and distributes the Spear Head Spade in this Judicial District and elsewhere throughout the United States.

25. Upon information and belief, Mr. Julien C. Mathieu is the owner and President of Defendant Glorious Outdoors.

26. Plaintiff first became aware of Defendant's Spear Head Spade at the National Hardware Show in May 2010.

27. At this show, Mr. Mathieu introduced himself to Plaintiff to show it Defendant's Spear Head Spade.

28. Mr. Mathieu told Mr. Baker that the Spear Head Spade was an almost direct copy of Radius Garden's Transplanter.

29. On August 3, 2009, Daniel Mathieu, Mr. Mathieu's father, filed a utility patent application with the PTO and assigned his rights to Defendant. The application number is 12/462,377 ("the '377 patent application"). The '377 patent application was published on March 4, 2010 and is attached hereto as **Exhibit D**.

30. The Information Disclosure Statement, included with the '377 patent application, disclosed Plaintiff's '288 patent as relevant prior art. *See Exhibit E*.

31. Defendant had knowledge of the '288 patent at least since August 3, 2009.

32. At least as early as May 2010, and again in January 2011, Plaintiff informed Defendant of its infringement of Plaintiff's intellectual property rights.

33. Defendant had knowledge of its infringement of the '288 patent at least since May 2010.

34. Upon information and belief, Defendant sells the Spear Head Spade through QVC knowing that it infringes the '288 patent.

35. Defendant and QVC have enjoyed substantial success selling the Spear Head Spade that incorporates Plaintiff's patented design.

36. On information and belief, as of February 2015, Defendant had sold over 80,000 infringing Spear Head Spades through the QVC channel.

### **False Advertising**

37. The '377 patent application, which was assigned to Defendant, was rejected by the examiner in an Office Action dated December 18, 2013.

38. On February 10, 2014, Defendant's patent counsel withdrew from its representation of Defendant in connection with prosecution of the '377 patent application. Counsel explained to the PTO that "[d]espite repeated attempts, no communication from client." *See Exhibit E.*

39. In its February 10, 2014 Request for Withdrawal as Attorney, Defendant's attorney certified that it had informed its client of the time frame within which it must respond to the examiner's Office Action. The examiner approved counsel's withdrawal in a notice mailed April 9, 2014. *See Exhibit E.*

40. Upon information and belief, Defendant never replied to the December 18, 2013 Office Action.



41. On July 2, 2014 the examiner dispatched correspondence to Defendant notifying it of abandonment of the '377 patent application. *See Exhibit E.*

42. The '377 patent application has not been pending at least since July 2, 2014.

43. Upon information and belief, the '377 patent application is the only patent application ever filed by, or assigned to, Defendant related to the Spear Head Spade.

44. Upon information and belief, Defendant has in the past marked (or caused to be marked) and presently marks at least the commercial advertising and marketing materials for the Spear Head Spade with the phrase "patent pending" when in fact, Defendant does not have a patent pending in the PTO and no such patent was issued for the Spear Head Spade. *See, e.g., Exhibits F - J.*

45. Upon information and belief, Defendant commercially advertises and markets the Spear Head Spade through QVC as containing "patent pending" technology when in fact, Defendant does not have a patent pending in the PTO and no such patent was issued for the Spear Head Spade. *See, e.g., Exhibit F.*

46. The Spear Head Spade was and is sold by Defendant in interstate commerce.

47. Defendant knowingly marks its commercial advertising and marketing materials for the Spear Head Spade with “patent pending” knowing that Plaintiff’s Transplanter does, in fact, embody the design of the ’288 patent.

### **Damages**

48. As a direct and proximate result of Defendant’s willful infringement of Plaintiff’s ’288 patent, Plaintiff has been gravely damaged.

49. Plaintiff has been deprived of profits Defendant has illicitly earned by selling copies of Plaintiff’s patented invention nationwide and through the QVC channel.

50. Due to Defendant’s infringement of Plaintiff’s patented design, Defendant has maliciously undercut Plaintiff’s retail price of \$59.99 for the Transplanter and resells the Spear Head Spade at \$49.99, making it virtually impossible for Plaintiff to recoup his expenses incurred in the development of the Transplanter over Defendant’s lower-priced counterfeit. *See Exhibit C, Exhibit F.*

51. Plaintiff has also been damaged in terms of royalties it would have received from QVC had QVC sold the original Transplanter, as opposed to selling the Spear Head Spade which incorporates Plaintiff’s patented design to create a cheaper replica.

### **COUNT I – PATENT INFRINGEMENT**

52. Plaintiff incorporates herein his allegations set forth in Paragraphs 1 through 51 above.

53. The '288 patent was duly and legally issued to Baker by the PTO. A true and correct copy of the '288 patent is attached hereto as **Exhibit A**.

54. The '288 patent was duly and legally assigned by Baker to Plaintiff Radius Garden.

55. All rights, title, and interest in and to the '288 patent are vested in Plaintiff.

56. Upon information and belief, Defendant has infringed and continues to infringe, literally or under the doctrine of equivalents, the claims of the '288 patent by: (i) making, using, importing, selling, and offering for sale in Michigan and nationwide, the Spear Head Spade which embodies the subject matter claimed in the '288 patent; (ii) inducing others to infringe the '288 patent, and/or (iii) committing acts which constitute contributory infringement.

57. Defendant's infringing activities violate 35 U.S.C. § 271.

58. Upon information and belief, Defendant was fully aware of the existence of the '288 patent and yet deliberately copied and continues to deliberately copy and misappropriate the subject matter claimed in the '288 patent. Upon information and belief, Defendant has therefore knowingly and willfully infringed and contributed to the infringement of the '288 patent.

59. Defendant's infringement has caused grave injury to Plaintiff, and as such Plaintiff is entitled to damages pursuant to 35 U.S.C. § 284.

60. In addition, Plaintiff has no adequate remedy at law against Defendant's continuing acts of infringement. Defendant's infringement of the '288 patent may continue unless and until enjoined by this Court, causing Plaintiff severe irreparable harm.

61. Plaintiff is therefore entitled to an injunction under 35 U.S.C. § 283 against Defendant, preliminarily and permanently enjoining and restraining Defendants from infringing the '288 patent, and from making, manufacturing, developing, producing, supplying, selling, distributing, importing, exporting, advertising, and offering for sale the Spear Head Spade or any other product which incorporates any of Plaintiff's designs protected by the '288 patent.

62. This is an exceptional case that falls within the provisions of 35 U.S.C. § 285, and accordingly Plaintiff is entitled to an award of reasonable attorneys' fees.

## **COUNT II – FALSE ADVERTISING UNDER THE LANHAM ACT**

63. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 62 above.

64. Upon information and belief, Defendant knew or should have known (itself or by its representatives) that any patent application it filed for the Spear

Head Spade did not issue as a patent and has not been pending since at least July 2, 2014.

65. Upon information and belief, Defendant knew or should have known (itself or by its representatives) that there were no patents either pending or granted for the Spear Head Spade.

66. Because such patents were never granted and all monopoly rights exist only under a valid patent, Defendant cannot reasonably believe that there is a patent pending on the Spear Head Spade.

67. Upon information and belief, Defendant knows, or should know, that the Spear Head Spade was advertised as “patent pending” when no patent was pending or in existence, and therefore at least the Spear Head Spade commercial marketing and advertising materials were and are literally false or, alternatively, significantly ambiguous to render a false impression when viewed in context.

68. The foregoing acts of Defendant materially misrepresent the nature, characteristics, or qualities of Defendant’s goods in violation of 15 U.S.C. §1125(a)(1)(B).

69. Defendant’s wrongful acts constitute a deliberate, intentional, and willful attempt to injure Plaintiff’s business and/or to confuse and deceive Plaintiff and other competitors and consumers.

70. Each item of commercial material and advertisement marked “patent pending” for which there is no pending patent application or issued patent is likely to, or at least has the potential to, discourage or deter each person or company (itself or by its representatives) which views it from commercializing a competing product.

71. Upon information and belief, for the reasons set forth herein as well as other reasons as may be deemed by the evidence in this matter, Defendant wrongfully and illegally advertised pending patent monopolies which it does not possess and, as a result, has likely benefited at least by gaining market share with respect to the Spear Head Spade in the marketplace.

72. Upon information and belief, Defendant’s marking of Spear Head Spade marketing materials with language indicating that a patent application is pending for the Spear Head Spade, has wrongfully quelled competition with respect to products, thereby causing harm to competitors and causing Defendant to earn profits which it would not have otherwise earned, in an amount to be determined.

73. For the reasons herein, as well as other reasons as may be deemed by the evidence in this matter, all of the Spear Head Spade commercial marketing and advertising materials marked “patent pending” likely, or at least potentially, contribute to the public harm.

74. At least for the reasons set forth herein, together with such other reasons as may be determined by the evidence in this matter, Defendant has, on information and belief, “false advertised” its products, with the intent to deceive the public, in violation of 15 U.S.C. § 1125(a).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully demands the entry of judgment against the Defendant as follows:

A. An order finding and declaring that:

1. Glorious Outdoors has infringed the '288 patent; and
2. Glorious Outdoors has engaged in false advertising in violation of the Lanham Act.

B. An order enjoining Glorious Outdoors, and its employees, agents, officers, directors, shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them, from:

1. infringing the '288 patent; and
2. engaging in further false advertising with respect to Radius Garden.

C. An order awarding Radius Garden:

1. damages to compensate Radius Garden for the injuries caused by Glorious Outdoors, together with any applicable interest;

2. Radius Garden's costs, expenses, and attorneys' fees as provided under the Lanham Act;
3. enhanced damages for willful and intentional infringement;
4. monetary awards including disgorgement of Glorious Outdoors' profits and unjust enrichment as provided for in the Lanham Act;
5. any other unjust enrichment remedies; and
6. all other damages to which Radius Garden may be entitled by law and equity.

D. Other relief as the Court may deem appropriate.

**JURY DEMAND**

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



Dated: April 20, 2015

Respectfully submitted;

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