

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION**

STERTIL-KONI USA, INC.,
200 Log Canoe Circle
Stevenson, Maryland 21666

Plaintiff,

V.

VEHICLE SERVICE GROUP, LLC,
d/b/a ROTARY LIFT,
2700 Lanier Dr.
Madison, IN 47250

Defendant.

Civil Action No.

Jury Trial Demanded

COMPLAINT

For its Complaint, Plaintiff, Steril-Koni USA, Inc. (“Steril-Koni” or Plaintiff) alleges as follows:

THE PARTIES

1. Plaintiff, Stertil-Koni is a corporation organized and existing under the laws of the State of Maryland with a registered address at 200 Log Canoe Circle, Stevenson, Maryland 21666.
2. On information and belief, Defendant, Vehicle Service Group, LLC, d/b/a Rotary Lift ("Rotary Lift" or "Defendant"), is a Delaware limited liability company, with a place of business at 2700 Lanier Dr., Madison, IN 47250. On information and belief, Rotary Lift has conducted business within the State of Maryland.

JURISDICTION AND VENUE

3. This action arises under the United States patent laws, codified at 35 U.S.C. §1 et seq., the United States trademark laws, codified in the Lanham Act at 15 U.S.C. §1125(a), the U.S. copyright laws, codified at 17 U.S.C. §101 et seq. and various state laws. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367.

4. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§1121, 1331 and 1338 (a).

5. Upon information and belief, Rotary Lift's acts of infringement were and are being committed in interstate commerce.

6. This Court has personal jurisdiction over Rotary Lift because Rotary Lift has transacted business in Maryland and, on information and belief, has committed acts of infringement, and is continuing to commit acts of infringement, in Maryland.

7. Venue is proper in this District, pursuant to 28 U.S.C. §§1391(b) and 1391(c) and 28 U.S.C. §§ 1400 (a) and (b).

OPERATIVE FACTS

The '865 Patent (The Patent in Suit)

8. On June 5, 2012, U.S. Patent No. 8,191,865 entitled "Device and System for Lifting a Motor Vehicle" was duly and lawfully issued by the U.S. Patent and Trademark Office to Kurt E. Polins, Glenn D. Felpel and Allan Pavlick ("the '865 patent"). A true and correct copy of the '865 patent is attached as Exhibit A.

9. Steril-Koni owns all right, title and interest to the '865 patent by virtue of assignment, and has the right to bring suit for infringement of the '865 patent. Steril-Koni has the right to

exclude others from making, using, selling, importing and offering for sale systems, lifts, devices and kits covered by the '865 patent, the right to bring actions for infringement of the '865 patent, the right to demand and collect past, present and future damages for infringement of the '865 patent, and the right to obtain injunctive relief for infringement of the '865 patent.

10. The '865 patent covers Stertil-Koni's ECOLIFT scissor lift products. At all relevant times, Stertil-Koni has marked its ECOLIFT scissor lift products with a notice that such products are covered by the '865 patent, in accordance with 35 U.S.C. §287(a).

Stertil-Koni Products and Trade Dress

11. Stertil-Koni is the leader in the design, manufacture and sale of heavy duty lifts – mobile and in-ground vehicle lift systems for the truck, bus, military and automotive servicing industry.

12. Stertil-Koni's goods are sold in interstate commerce in the United States and in this District.

13. Since Stertil-Koni began manufacturing, selling and distributing heavy duty lift equipment, Stertil-Koni's products have become well-known and highly respected in the heavy lift industry. Stertil-Koni has gained a substantial and loyal following of customers, owing to its established reputation for heavy duty lift equipment. Stertil-Koni has worked hard to establish and maintain this reputation and goodwill.

14. Among the products offered by Stertil-Koni are its ECOLIFT scissor lift products, the industry's first ultra-shallow, full-rise in-ground axle engaging lifts. The ECOLIFT scissor-lift products are unique and innovative and offer the latest in advanced technology.

15. Stertil-Koni's ECOLIFT scissor lift products have been sold since March 2005.

16. Stertil-Koni's ECOLIFT scissor lift products come in two capacities, namely 60,000 lbs (referred to by Stertil-Koni's trademarks "ECO-60" or "ECO60") and 90,000 lbs (referred to by Stertil-Koni's trademarks "ECO-90" or "ECO90").

17. Stertil-Koni's ECOLIFT scissor lift products bear a distinctive trade dress consisting of, *inter alia*, a scissor design with a unique size and shape not previously used in the industry and also that includes distinctively shaped tiers in a two-toned color scheme, with other identifying features, including but not limited to aluminum covers and gussets (hereinafter referred to as Stertil-Koni's "ECOLIFT trade dress"). Stertil-Koni's trade dress is shown in the attached Exhibit B.

18. Stertil-Koni's ECOLIFT scissor lift trade dress presents a highly distinctive and unique appearance.

19. Stertil-Koni's ECOLIFT scissor lift trade dress has been used in interstate commerce exclusively and extensively by Stertil-Koni since March 2005.

20. Since March 2005, Stertil-Koni has made substantial sales of its heavy duty lift products bearing its ECOLIFT scissor lift trade dress.

21. Since March 2005, Stertil-Koni has expended a large amount of money advertising and promoting its heavy duty lift products bearing its distinctive ECOLIFT scissor lift trade dress.

22. As a result of Stertil-Koni's extensive sales and promotion of its heavy duty lift products bearing its ECOLIFT scissor lift trade dress, Stertil-Koni's ECOLIFT scissor lift trade dress has come to signify or be associated with Stertil-Koni with the customers for such goods. This powerful and immediate customer association between the distinctive ECOLIFT scissor lift trade dress and Stertil-Koni existed prior to the acts of Defendant complained of here. Stertil-Koni

now owns a valuable good will symbolized by, and embodied in its ECOLIFT scissor lift trade dress.

Defendant's Infringing EFX Trade Dress

23. Defendant is a direct competitor of Stertil-Koni. Defendant sells heavy duty lift equipment to customers in direct competition with Stertil-Koni.

24. Subsequent to Stertil-Koni's adoption and use of its ECOLIFT scissor lift trade dress in connection with the sale of its heavy duty lift equipment, Defendant manufactured, advertised, offered for sale and/or sold its model EFX scissor lift depicted in Exhibit C hereto.

25. Defendant's model EFX scissor lift equipment has borne and/or bears a trade dress that is substantially identical to Stertil-Koni's unique ECOLIFT scissor lift trade dress. Upon information and belief, Defendant's infringing model EFX scissor lift products are and/or were sold with Defendant's own trademarks.

26. Like Stertil-Koni's products bearing Stertil-Koni's ECOLIFT scissor lift trade dress, Defendant's model EFX scissor lift products have had and/or have the same distinctive features that make up Stertil-Koni's unique ECOLIFT scissor lift trade dress, including a scissor design with a unique size and shape not previously used in the industry and also that included and/or includes distinctively shaped tiers in a two-toned color scheme, with other identifying features, such as aluminum covers and gussets (hereinafter referred to as "Defendant's infringing EFX scissor lift trade dress").

27. Defendant's products that have borne and/or bear Defendant's infringing EFX scissor lift trade dress have competed and/or compete directly with Stertil-Koni's products bearing its ECOLIFT scissor lift trade dress.

28. Defendant's use of its infringing EFX scissor lift trade dress has had the effect of wrongfully infringing upon Stertil-Koni's distinctive ECOLIFT scissor lift trade dress, and has usurped the goodwill represented by Stertil-Koni's distinctive ECOLIFT scissor lift trade dress.

29. Upon information and belief, Defendant's use of its infringing EFX scissor lift trade dress was and/or is willful and deliberate, and was and/or is done with full knowledge of Stertil-Koni's distinctive ECOLIFT scissor lift trade dress.

30. Upon information and belief, Defendant's willful and deliberate conduct is evidenced by Defendant's blatant copying of Stertil-Koni's Copyrighted ECOLIFT Brochures and ECO Drawing, as described in paragraphs 39-41 herein.

31. Upon information and belief, Defendant's willful use of its infringing EFX scissor lift trade dress was with the intention of allowing Defendant to obtain an unfair advantage of Stertil-Koni for competing products. Defendant's actions gave Defendant the potential to make sales that it would not otherwise make.

32. Upon information and belief, Defendant's use of its infringing EFX scissor lift trade dress is and/or has been unfair, dishonest, deceptive, destructive, fraudulent and discriminatory, and was undertaken with the intent of destroying fair and honest competition between Defendant and Stertil-Koni.

Stertil-Koni's Copyrighted Brochures and Drawings

33. In at least as early as September 2008 and again in March 2010, Stertil-Koni employees acting within the scope of their employment created original brochures for its ECOLIFT scissor lift products bearing its distinctive ECOLIFT scissor lift trade dress (hereinafter "Copyrighted

ECOLIFT brochures”). Copies of the September 2008 and March 2010 Steril-Koni Copyrighted ECOLIFT brochures are annexed hereto as Exhibits D and E.

34. Steril-Koni is the sole author of the Copyrighted ECOLIFT brochures.

35. Steril-Koni has not assigned or exclusively licensed its rights in the Copyright ECOLIFT brochures, and it remains the sole owner of the Copyrighted ECOLIFT brochures.

36. Steril-Koni has duly received from the Register of Copyrights Certificates of Registration covering the Copyrighted ECOLIFT brochures, namely TX-7520138 and TX-7522007, evidenced by the Certificates of Registration, annexed hereto as Exhibits F and G.

37. Steril-Koni employees acting within the scope of their employment also created original drawings for its ECOLIFT line of scissor lift products, a copy of which is attached hereto as Exhibit H.

38. One of the drawings covered Steril-Koni’s ECO60 scissor lift product line (“Copyrighted ECO Drawing”).

39. Steril-Koni is the sole author of the Copyrighted ECO Drawing.

40. Steril-Koni has not assigned or exclusively licensed its rights in the Copyrighted ECO Drawing, and it remains the sole owner of the Copyrighted ECO Drawing.

41. Steril-Koni has duly received from the Register of Copyrights a Certificate of Registration covering the Copyrighted ECO Drawing, namely TX-7527543, evidenced by the Certificate of Registration, annexed hereto as Exhibit I hereto.

Defendant's Infringing Brochure and Drawing

42. Stertil-Koni discovered that Defendant had created a drawing for its EFX scissor lift product, which drawing is virtually identical to Stertil-Koni's Copyrighted ECO Drawing (hereinafter "Infringing Drawing"), a copy of which is attached as Exhibit J.

43. Stertil-Koni has not consented, authorized or licensed Defendant to copy, print, publish, display, transmit, distribute or otherwise use the Copyrighted ECO Drawing.

44. Stertil-Koni also discovered that Defendant used Stertil-Koni's Copyrighted ECOLIFT brochures to create an infringing promotional banner and/or brochure for its infringing EFX scissor lift product (hereinafter Defendant's infringing EFX brochure). A copy of Defendant's infringing EFX brochure is annexed hereto as Exhibit K. The drawing of Defendant's EFX scissor lift in Defendant's infringing EFX brochure is identical to the drawings in Stertil-Koni's Copyrighted ECOLIFT brochures.

Defendant's False Advertising

45. Upon information and belief, Defendant created, published and distributed advertising or promotional material comparing its model EFX scissor lift product to Stertil-Koni's ECO-60 scissor lift product. The advertising/promotional material is entitled "Performance Comparison: Rotary EFX vs. ECO-60" (hereinafter referred to as "Performance Comparison Advertisement") and is attached hereto as Exhibit L.

46. Many of the statements in Rotary's Performance Comparison Advertisement are false and/or misleading. Annexed hereto as Exhibit M is a chart showing those statements that are either false and/or misleading.

47. Upon information and belief, Defendant also submitted false and/or misleading statements to Professional Tool & Equipment News' 2012 PTEN Innovation Awards program. A copy of Defendant's submission is attached hereto as Exhibit N.

COUNT I
ROTARY LIFT'S INFRINGEMENT OF THE '865 PATENT

48. Stertil-Koni re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

49. On information and belief, Rotary Lift has directly infringed the '865 patent, literally and/or under the doctrine of equivalents, through making, using, selling, offering for sale and/or importing model EFX scissor lifts in direct infringement of the '865 patent under 35 U.S.C. § 271(a).

50. On information and belief, Rotary Lift has indirectly infringed the '865 patent by inducing others to use the model EFX scissor lifts in infringement of the '865 patent, including through maintenance of the infringing model EFX scissor lifts that it has sold, with knowledge that the induced acts constitute patent infringement, and Rotary Lift's acts of inducement have resulted in actual direct and/or continuing infringement of the '865 patent by others. Accordingly, Rotary Lift has indirectly infringed the '865 patent under 35 U.S.C. § 271(b).

51. On information and belief, Rotary Lift has indirectly infringed the '865 patent by selling and/or importing components of its infringing model EFX scissor lifts, including supplying components for maintenance thereof, and such components have been and/or are a material part of the invention of the '856 patent. Rotary Lift has sold, imported and/or supplied such components with knowledge that they were and/or are especially made or especially adapted for use in infringement of the '865 patent, and, such components were and/or are not staple articles

or commodities of commerce suitable for substantial non-infringing use. Rotary Lift's acts of selling, importing and otherwise supplying components have resulted in actual direct and/or continuing infringement by others. Accordingly, Rotary Lift has indirectly infringed the '865 patent under 35 U.S.C. § 271(c).

52. Steril-Koni is entitled to recover from Rotary Lift damages adequate to compensate Steril-Koni for Rotary Lift's acts of direct and indirect infringement of the '865 patent, including in an amount equal to Steril-Koni's lost profits attributable to Rotary Lift's infringement, but in no event less a reasonable royalty for the use made of the invention of the '865 patent by Rotary Lift.

53. On information and belief, Rotary Lift's infringing activities have been willful, entitling Steril-Koni to increased damages.

54. Rotary Lift's infringement warrants a finding that this is an exceptional case, entitling Steril-Koni to recover its attorney fees and expenses.

COUNT II
TRADE DRESS INFRINGEMENT OF
PLAINTIFF'S ECOLIFT TRADE DRESS

55. Steril-Koni re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

56. This cause of action for trade dress infringement arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

57. Steril-Koni has continuously used its distinctive ECOLIFT scissor lift trade dress in connection with its ECOLIFT scissor lift products. Steril-Koni has sold and promoted in interstate commerce its distinctive ECOLIFT scissor lift trade dress since March 2005. Steril-

Koni's continuous sale and promotion of its distinctive ECOLIFT scissor lift trade dress in interstate commerce began, and has continued, since long prior to the acts of Defendant complained of herein.

58. The ECOLIFT scissor lift trade dress is not functional.

59. To the best of Stertil-Koni's knowledge, Stertil-Koni's ECOLIFT scissor lift trade dress was unique to Stertil-Koni until the infringing acts of the Defendant complained of herein.

60. Upon information and belief, other than Defendant, no other party currently sells or sold a scissor lift bearing the ECOLIFT scissor lift trade dress in the United States, other than Stertil-Koni.

61. Defendant has infringed Stertil-Koni's rights in its scissor lift ECOLIFT trade dress by, among other things, manufacturing, advertising, offering for sale and/or selling a scissor lift bearing a trade dress that is identical, or confusingly similar, to Stertil-Koni's distinctive ECOLIFT scissor lift trade dress.

62. Defendant used its infringing EFX scissor lift trade dress without Stertil-Koni's permission.

63. Defendant's use of its infringing EFX scissor lift trade dress without Stertil-Koni's permission has given rise to a likelihood of confusion, both at the point of purchase and post-sale, in violation of 15 U.S.C. §1125, and constitutes an infringement of Stertil-Koni's distinctive ECOLIFT scissor lift trade dress.

64. Defendant's manufacturing, advertising, promoting, offering to sell and/or selling of a scissor lift bearing its infringing EFX scissor lift trade dress has caused, and is likely to continue to cause, confusion, including post-sale confusion, among customers and users of the ECOLIFT scissor lift trade dress.

65. Upon information and belief, the acts of Defendant have, were intended, and/or are likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of the goods marketed by Defendant bearing Defendant's infringing EFX scissor lift trade dress. Customers or others are likely to mistakenly believe that the scissor lifts made, advertised and sold by Defendant are made, advertised, sold by, or under the sponsorship of, or in affiliation with, Stertil-Koni.

66. Upon information and belief, Defendant's infringing activities commenced despite Defendant's actual knowledge of Stertil-Koni's rights in the ECOLIFT scissor lift trade dress.

67. Upon information and belief, Defendant's scissor lifts bearing Defendant's infringing EFX scissor lift trade dress were sold through the same channels of trade to the same users and customers as the ECOLIFT scissor lift products sold by Stertil-Koni under its distinctive ECOLIFT scissor lift trade dress.

68. Stertil-Koni had no control over Defendant's scissor lifts sold bearing a trade dress that infringes Stertil-Koni's ECOLIFT scissor lift trade dress, with the result that Stertil-Koni's valuable goodwill with respect to its scissor lifts and other products was irreparably damaged by the acts of Defendant complained of herein.

69. Defendant's aforesaid actions constitute trade dress infringement in violation of 15 U.S.C. §1125(a).

70. Upon information and belief, Defendant will continue to infringe Stertil-Koni's rights in and to its distinctive ECOLIFT scissor lift trade dress unless restrained by this Court.

71. As a result of said trade dress infringement by Defendant, Stertil-Koni has suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

**COUNT III
FEDERAL UNFAIR COMPETITION**

72. Stertil-Koni re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

73. This cause of action for unfair competition arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

74. Persons, including potential customers, familiar with Stertil-Koni's distinctive ECOLIFT scissor lift trade dress would be likely to believe, and would be justified in so believing, that Defendant's scissor lifts, bearing Defendant's infringing EFX scissor lift trade dress and trademark, were and/or are introduced by or under the sponsorship of or in affiliation with Stertil-Koni.

75. Defendant's promotion and/or sale of scissor lifts bearing an infringing copy of Stertil-Koni's distinctive ECOLIFT scissor lift trade dress has represented and/or represents to the industry that Defendant's equipment was and/or is sold by or under the sponsorship of, or in affiliation with, or with the approval of, Stertil-Koni.

76. Defendant's promotion and/or sale of such infringing scissor lifts constitute unfair competition and have caused and/or are likely to cause confusion, mistake or deception among the trade and public.

77. Persons, including potential customers, familiar with Stertil-Koni's distinctive ECOLIFT scissor lift trade dress would be likely to believe, and would be justified in so believing, that Defendant's infringing scissor lifts was introduced by or under the sponsorship of or in affiliation with Stertil-Koni.

78. Defendant's promotion and/or sale of its infringing scissor lifts have caused and/or are likely to cause confusion, mistake or deception among the trade and public.

79. Defendant's aforesaid actions constitute unfair competition in violation of 15 U.S.C. §1125(a).

80. Upon information and belief, Defendant will continue to engage in the unfair competition complained of herein unless restrained by this Court.

81. As a result of said unfair competition by Defendant, Stertil-Koni has suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

**COUNT IV
FALSE DESIGNATION OF ORIGIN**

82. Stertil-Koni re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

83. This cause of action for false designation of origin arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

84. Defendant's promotion and/or sale of infringing EFX scissor lifts constitute a false designation of the origin of the said equipment in violation of Section 43(a) of the Lanham Act.

85. Stertil-Koni has no control over Defendant's infringing EFX scissor lifts, which have been and/or are manufactured, promoted, advertised, and/or sold by Defendant, with the result that Stertil-Koni's valuable goodwill with respect to its scissor lifts and other products is irreparably damaged.

86. Upon information and belief, Defendant will continue to make such false designations of origin in commerce unless restrained by this Court.

87. As a result of Defendant's false designations of origin complained of herein, Stertil-Koni has suffered and continues to suffer irreparable injury for which it has no adequate remedy at law.

COUNT V
STATE TRADEMARK AND UNFAIR COMPETITION CLAIMS

88. Stertil-Koni re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

89. This cause of action arises under state statutory and common law.

90. By the acts and activities complained of herein, Defendant was and is in a position to pass off its infringing EFX scissor lifts as scissor lifts produced by, or under license from, or with the approval of, Stertil-Koni.

91. Stertil-Koni has no control over the infringing EFX scissor lifts advertised, offered for sale and/or sold by Defendant, with the result that Stertil-Koni's valuable good will is irreparably injured by the acts complained of herein.

92. The acts and conduct of Defendant complained of herein constitute trademark infringement and unfair competition under state statutory and common law.

93. Defendant's conduct herein averred has damaged Stertil-Koni and will, unless restrained, further impair, if not destroy, the value of Stertil-Koni's trade dress and the goodwill associated therewith.

94. Upon information and belief, Defendant will continue to engage in such infringing and unfair conduct unless restrained by this Court.

95. As a result of Defendant's infringing and unfair conduct complained of herein, Steril-Koni has suffered and continues to suffer irreparable injury for which it has no adequate remedy at law.

96. Plaintiff has no adequate remedy at law for the damage caused thereby.

**COUNT VI
UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF STATE
UNFAIR TRADE PRACTICES AND CONSUMER
PROTECTION LAWS**

97. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

98. By the acts and activities complained of herein, Defendant has committed unfair or deceptive acts in violation of Maryland's Unfair Trade Practices and Consumer Protection Law, at Maryland Commercial Law Code, 13-301.

99. As a result of Defendant's unfair or deceptive acts or practices, Plaintiff has suffered, and is continuing to suffer, irreparable injury, and has incurred, and is continuing to incur, monetary damage in an amount to be determined.

100. Defendant's actions have misled and will continue to mislead members of the public into falsely believing that the Defendant goods possess characteristics that they, in fact, do not.

**COUNT VII
COPYRIGHT INFRINGEMENT**

101. Steril-Koni realleges and incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

102. This cause of action for copyright infringement arises under the copyright laws of the United States, 17 U.S.C. §101, et seq.

103. Stertil-Koni owns all right, title and interest in and to the Copyrighted ECOLIFT Brochures and Copyrighted ECO Drawing, which were created by Stertil-Koni employees acting within the scope of their employment.

104. The Copyrighted ECOLIFT Brochures and ECO Drawing are original works and thus protected under United States copyright law.

105. Stertil-Koni registered the copyright rights in and to the Copyrighted ECOLIFT Brochures and ECO Drawing, as evidenced by the Exhibits attached hereto.

106. Upon information and belief, Defendant had access to the Copyrighted ECOLIFT Brochures and ECO Drawing.

107. In violation of Stertil-Koni's copyright rights in and to the Copyrighted ECOLIFT Brochures and ECO Drawing, Defendant has, without Stertil-Koni's consent, approval or license, copied, printed, published, displayed, transmitted, distributed and otherwise used Stertil-Koni's Copyrighted ECOLIFT Brochures and ECO Drawing.

108. Defendant's Infringing Brochure and Drawing are substantially similar, and in most cases identical, to Stertil-Koni's Copyrighted ECOLIFT Brochures and ECO Drawing.

109. Upon information and belief, Defendant's Infringing Brochure and Drawing constitutes an infringement of Stertil-Koni's Copyrighted ECOLIFT Brochures and ECO Drawing and the Certificates of Registration therefor.

110. Upon information and belief, the Defendant is in possession of the Infringing Brochure and Drawing, and continues to infringe said Copyrighted ECOLIFT Brochures and ECO Drawing throughout the United States.

111. Upon information and belief, Defendant's use of the Infringing Brochure and Drawing has been willful and deliberate.

112. Upon information and belief, Defendant continues to infringe Stertil-Koni's copyright rights in the Copyrighted ECOLIFT Brochures and ECO Drawing.

113. Defendant's infringement of Stertil-Koni's copyright rights in the Copyrighted ECOLIFT Brochures and ECO Drawing has caused Stertil-Koni monetary damages in the form of lost sales and other injuries, in an amount thus far not determined.

114. Defendant's infringement of Stertil-Koni's copyright rights has yielded Defendant's profits in an amount not yet determined.

115. Upon information and belief, Defendant will continue to infringe Stertil-Koni's copyright rights in the Copyrighted ECOLIFT Brochures and ECO Drawing unless restrained by this Court.

116. Stertil-Koni believes that it has suffered or is likely to suffer damages and will continue to suffer serious and substantial damages resulting from Defendant's copyright infringement, including irreparable injury for which there is no adequate remedy at law.

COUNT VIII
FALSE ADVERTISING UNDER SECTION 43(a)
OF THE LANHAM ACT

117. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

118. This cause of action arises under the Lanham Act, 15 U.S.C. 1125(a).

119. The statements made in Defendant's Performance Comparison Advertisement, referenced in Exhibit M, are false and misleading and misrepresent the characteristics and qualities of Steril-Koni's ECOLIFT scissor lift products.

120. The false and misleading statements in the advertisement deceived, and have a tendency to continue to deceive, a substantial segment of its intended audience.

121. The deception of the advertisement is material and has influenced, and will continue to influence the purchasing decisions of potential customers of Steril-Koni, specifically companies that plan to purchase heavy duty lift equipment.

122. The deceptive advertisement was published placed into interstate commerce.

123. The deceptive advertisement injured and is likely to continue to injure Steril-Koni.

124. The deceptive advertisement violates Section 43(a) of the Lanham Act, codified as 15 U.S.C. 1125(a), which prohibits defendant from using false, misleading, or disparaging representations of fact that misrepresent the nature, characteristics or qualities of its own or Steril-Koni's products.

125. Steril-Koni has no adequate remedy at law.

**COUNT IX
FALSE ADVERTISING UNDER MARYLAND LAW**

126. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

127. This cause of action arises under the Maryland Commercial Law Code, 11-701.

128. By the acts and activities complained of herein, Defendant has committed false advertising.

**COUNT X
UNJUST ENRICHMENT**

129. The cause of action arises under the common law.

130. By the acts and activities complained of herein, Defendant has been unjustly enriched.

JURY DEMAND

Stertil-Koni demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Stertil-Koni prays for relief as follows:

- (a) Entering a judgment that Rotary Lift has directly infringed, induced others to infringe, and contributed to the infringement of, the '865 patent and is liable as an infringer under 35 U.S.C. §§271(a), (b) and (c);
- (b) Entering a judgment that Rotary Lift's infringement of the '865 patent has been and continues to be willful;
- (c) Entering a permanent injunction enjoining Rotary Lift and its officers, directors, employees, agents, consultants, contractors and all others acting in privity with Rotary Lift from further direct infringement of the '865 patent, and/or from inducing others to infringe, and from contributing to the infringement of, the '865 patent;
- (d) Entering an award to Stertil-Koni of damages adequate to compensate it for the infringement of the '865 patent by Rotary Lift, in an amount to be proven at trial, together with pre-judgment and post-judgment interest and costs, as fixed by the Court;
- (e) Trebling the damages due to Rotary Lift's willful infringement, pursuant to 35 U.S.C. §284;

- (f) Entering a finding that, with respect to Rotary Lift, this case has been exceptional, and awarding to Steril-Koni of its reasonable costs and attorney fees pursuant to 35 U.S.C. §285;
- (g) Entering a judgment that Plaintiff's ECOLIFT scissor lift trade dress has been and continues to be infringed by Defendant in violation of 15 U.S.C. §1125 (a);
- (h) Entering a judgment that Defendant's use of its infringing EFX scissor lift trade dress constitutes federal unfair competition in violation of 15 U.S.C. §1125(a);
- (i) Entering a judgment that Defendant's use of its infringing EFX scissor lift trade dress violates state and common law trademark infringement and common law unfair competition laws;
- (j) Preliminarily and permanently enjoining and restraining Defendant and each of its agents, employees, officers, attorneys, successors, assigns, affiliates and any persons in privity or active concert or participation with any of them from using the infringing ECOLIFT scissor lift trade dress and any trade dress substantially similar to it, to market, advertise, distribute or identify Defendant's products where that designation would create a likelihood of confusion, mistake or deception with Plaintiff's ECOLIFT scissor lift trade dress.
- (k) Pursuant to 15 U.S.C. §1118, requiring that Defendant and all others acting under Defendant's authority, at their cost, be required to deliver up, remove, disable and/or destroy, as appropriate, all devices, literature, websites, social network pages, advertising, labels and other material in their possession bearing the infringing EFX scissor lift trade dress;
- (l) Ordering Defendant to account to Plaintiff for, and disgorge to Plaintiff, all profits it has derived as a result of the unlawful acts complained of above;

- (m) Permanently enjoining Defendant from directly or indirectly infringing Stertil-Koni's copyright rights in the Copyrighted ECOLIFT Brochures and ECO Drawing, and the respective copyright registrations therefore or any colorable imitation thereof.
- (n) Permanently enjoining Defendant from publishing its Product Comparison Advertising and from publishing further false and/or misleading statements.
- (o) Entering judgment against Defendant on all counts of this Complaint.
- (p) That the Court award Plaintiff its costs in this action;
- (q) That the Court find this case to be exceptional and award Plaintiff its attorneys' fees pursuant to 15 U.S.C. §1117;
- (r) Granting Plaintiff such other and further relief as the Court may deem just.

Respectfully submitted,

STERTIL-KONI USA, Inc.

Date: 7/30/2012

/s/
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