

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

**SHERMAN DIVISION**

**LAKESOUTH HOLDINGS, LLC,**

*Plaintiff,*

v.

**SEARS, ROEBUCK AND CO.,  
K MART CORPORATION,**

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 4:15-CV-400**

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

COMES NOW Plaintiff LakeSouth Holdings, LLC and files this Original Complaint for patent infringement against Sears, Roebuck and Co. and K Mart Corporation, and alleges as follows:

**NATURE OF THE SUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**THE PARTIES**

2. Plaintiff **LakeSouth Holdings, LLC** (“**Plaintiff**” or “**LakeSouth**”) is a Delaware limited liability company with its principal place of business located at 1460 Main Street, Suite 244, Southlake, Texas 76092.

3. Upon information and belief, Defendant **Sears, Roebuck and Co.** (“**Sears**”) is a corporation organized and existing under the laws of the State of New York with its principal place of business at 3333 Beverly Road D768/Tax B2-119B, Hoffman Estates, Illinois 60179.

BB&B may be served via its registered agent, CT Corp System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

4. Upon information and belief, Defendant **K Mart Corporation (“Kmart”)** is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 3333 Beverly Road B2-100B, Hoffman Estates, Illinois 60179. It may be served via its registered agent CT Corp System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

5. Defendants **Sears** and **Kmart** are, unless otherwise indicated, referred to hereinafter collectively as “**Sears-Kmart.**”

#### **JURISDICTION AND VENUE**

6. This action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court’s jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271, *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and § 1338 (jurisdiction over patent actions).

7. Upon information and belief, Sears-Kmart, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), has transacted business in this district and has committed acts of patent infringement in this District. Thus, venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

8. Upon information and belief, Sears-Kmart has conducted and does conduct substantial business in this forum, directly and/or through subsidiaries or intermediaries, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or

deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district. Thus, Sears-Kmart is subject to this Court's specific and general personal jurisdiction pursuant to due process and the Texas Long Arm Statute. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §1391 and 28 U.S.C. § 1400(b).

### **THE PATENTS AT ISSUE**

9. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on more than 40 patents.

10. This cause of action asserts infringement of United States Patent No. 8,794,781 ("the '781 Patent" or the "Asserted Patent").

11. The '781 Patent, entitled "Umbrella Apparatus," duly and legally issued on August 5, 2014, from U.S. Patent Application No. 10/650,537, filed on August 28, 2003, naming as inventor Mr. Kuelbs. A true and correct copy of the '781 Patent is attached hereto as **Exhibit A**.

12. Plaintiff LakeSouth is the owner and assignee of all rights, title, and interest in and under the '781 Patent.

13. LakeSouth has standing to sue for infringement of the '781 Patent.

### **GENERAL ALLEGATIONS**

14. Upon information and belief, Sears-Kmart purchases various patio and outdoor umbrellas that it uses, offers to sell, sells, and/or imports.

15. Sears-Kmart's umbrellas are sold online through its websites, www.sears.com and www.kmart.com and at Sears and Kmart stores, including stores in the Eastern District of Texas.

16. Sears-Kmart uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel and infringe one or more claims of the '781 Patent ("the Accused

Umbrellas”). For example and without limitation, Sears-Kmart offers for sale and/or sells Accused Umbrellas under the brand name “Garden Oasis,” including umbrellas with product code D71 M20521.

17. Further discovery may reveal additional infringing products and/or models.

18. Upon information and belief, Sears-Kmart’s Accused Umbrellas are offered for sale and sold within the Eastern District of Texas.

19. Sears-Kmart has infringed and continues to infringe (literally and/or under the doctrine of equivalents) directly and/or through subsidiaries or intermediaries, one or more claims of the Asserted Patent by using, importing, testing, supplying, causing to be supplied, selling, and/or offering for sale in the United States the Accused Umbrellas.

20. LakeSouth has been and continues to be damaged as a result of Sears-Kmart’s infringing conduct. Sears-Kmart is therefore liable to LakeSouth in an amount that adequately compensates LakeSouth for Sears-Kmart’s infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. Sears-Kmart failed to obtain permission from LakeSouth to use, offer to sell, sell, or import products incorporating the inventions claimed in the Asserted Patent.

22. For each count of infringement listed below, LakeSouth incorporates and realleges the allegations contained in the preceding paragraphs above including these General Allegations as if fully set forth in each count of infringement.

**Count I – DIRECT INFRINGEMENT OF THE ’781 PATENT**

23. Sears-Kmart has been and is now directly infringing the ’781 Patent in violation of 35 U.S.C. § 271(a) by using, selling, offering for sale, and/or importing into the United States

products that are covered by at least Claim 1 of the '781 Patent, including but not limited to the Accused Umbrellas.

24. As a result of Sears-Kmart's infringement of the '781 Patent, LakeSouth has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

**DEMAND FOR A JURY TRIAL**

25. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, LakeSouth demands a trial by jury on all issues triable of right by a jury.

**PRAYER FOR RELIEF**

26. WHEREFORE, LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

27. A judgment that Sears-Kmart has directly infringed one or more claims of the '781 Patent;

28. A judgment and order requiring Sears-Kmart to pay LakeSouth past and future damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, as provided by 35 U.S.C. § 284;

29. A judgment and order requiring Sears-Kmart to pay LakeSouth pre-judgment and post-judgment interest on the damages award; and

30. Such other and further relief as the Court may deem just and proper.

Dated: June 12, 2015

Respectfully submitted,



Eric M. Albritton

Texas State Bar No. 00790215

ema@emafirm.com

Michael A. Benefield

Texas State Bar No. 24073408

mab@emafirm.com

Anthony K. Bruster, Of Counsel

Texas State Bar No. 24036280

akb@emafirm.com

Andrew J. Wright, Of Counsel

Texas State Bar No. 24063927

ajw@emafirm.com

**ALBRITTON LAW FIRM**

1330 North White Chapel Blvd. Suite 100

Southlake, Texas 76092

Telephone: 817.251.0610

Facsimile: 903.758.7397

Mailing Address:

P.O. Box 2649

Longview, Texas 75606

**COUNSEL FOR PLAINTIFF  
LAKESOUTH HOLDINGS, LLC**