



### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) and (b), as the action arises under Acts of Congress related to patents and the protection of trade dress, and pursuant to 28 U.S.C § 1367, with respect to the claims under New York law.

4. This Court has personal jurisdiction over Defendant Focus Window Fashions by virtue of, among other things, Defendant's transacting, doing, and soliciting business in this District and because the harm caused by the Defendant's actions has occurred in this District, which is the principal place of business of Plaintiff Hunter Douglas.

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

### **FACTUAL BACKGROUND**

6. Hunter Douglas is a preeminent manufacturer of a full array of custom window covering products, including, among other things, roman shades, honeycomb or "cellular" shades, pleated shades, vertical blinds, mini blinds, wood blinds, shutters, and window shadings, and is known as an innovator in the custom window coverings field.

7. Hunter Douglas distributes its window covering products throughout the United States and around the world, and has numerous intellectual property assets.

8. Hunter Douglas sells a line of window covering products under the Hunter Douglas SILHOUETTE® brand, which embody features that are the subject of U.S. Design Patent No. D456,196 ("the '196 Patent" or "the Asserted Patent"), entitled "Fabric Light Control Window Covering." A copy of the '196 Patent is attached hereto as **Exhibit A**.

9. Hunter Douglas is the lawful owner, by assignment, of all rights, title, and interest in the '196 Patent.

10. Beginning on a date long before any use, manufacture, sale, offer for sale, and/or importation by the Defendant, Plaintiff adopted and began using in commerce products sold under the Hunter Douglas SILHOUETTE<sup>®</sup> brand that bear a distinctive trade dress.

11. The distinctive trade dress is the s-shape of the vane between and connecting the front and back sheers in a window covering shade (hereinafter referred to as “the Trade Dress”). The Trade Dress is non-functional.

12. The photographs below show an example of a window covering product sold under the Hunter Douglas SILHOUETTE<sup>®</sup> brand featuring the Trade Dress.

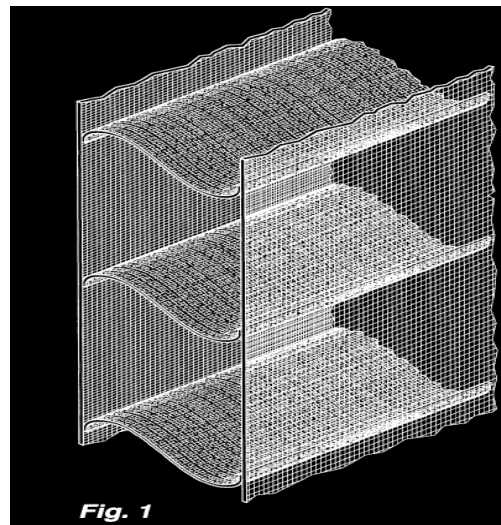
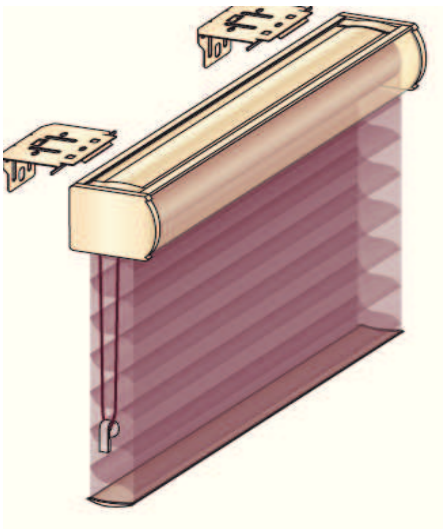


13. The goods manufactured and sold by Plaintiff having the Trade Dress are well-known, and the Trade Dress serves as an indicia that the goods originate from Plaintiff.

14. The Trade Dress is valid and has been in continuous use in the District and throughout the United States by Hunter Douglas since at least 1991. The Trade Dress is inherently distinctive, has acquired secondary meaning, and/or has become distinctive in the minds of purchasers of Plaintiff's goods as being associated exclusively with the Plaintiff.

15. Upon information and belief, Defendant Focus Window Fashions sells and offers to sell in this District and elsewhere in the United States a window covering product called Sheerview Horizontal Window Shades ("the Infringing Shades"). Defendant makes available the Infringing Shades for sale at least on its website via facsimile and email. (*See, e.g.,* <http://www.focuswf.com>; Product Reference & Pricing 2014, attached hereto as **Exhibit B.**)

16. The Sheerview Horizontal Window Shades infringe the claim of the Asserted Patent and the Trade Dress. The depictions below show an example of the Infringing Shades offered for sale and sold by Focus Window Fashions on the left (as shown in its product reference), and Figure 1 of the '196 Patent on the right:



17. Hunter Douglas has no agreement of any kind with Focus Window Fashions that would authorize the Defendant reproduction of the Asserted Patent or the Trade Dress, or the

sale or distribution of the Infringing Shades.

**COUNT ONE**  
**(Patent Infringement)**

18. Plaintiff repeats and realleges Paragraphs 1-17 as if fully set forth herein.

19. By making, using, offering to sell, selling, and/or importing into the United States Sheerview Horizontal Window Shades, Defendant has infringed and continue to infringe the '196 Patent, in violation of 35 U.S.C. § 271.

20. Upon information and belief, Defendant's infringement of the '196 Patent is willful, entitling Hunter Douglas to increased damages pursuant to 35 U.S.C. § 284.

21. In addition, this case is exceptional, entitling Hunter Douglas to attorneys' fees and costs pursuant to 35 U.S.C. § 285.

22. As a direct and proximate result of Defendant's conduct, Hunter Douglas has suffered, and will continue to suffer, irreparable harm, for which it has no adequate remedy at law.

23. Unless enjoined by the Court, Defendant will continue to infringe the '196 Patent.

24. Unless this Court preliminarily and permanently enjoins Defendant's infringing product, Hunter Douglas will continue to be irreparably harmed by Defendant's infringement of the '196 Patent.

**COUNT TWO**  
**(Trade Dress Infringement)**

25. Plaintiff repeats and realleges paragraphs 1-24 of this Complaint as if fully set forth herein.

26. The photographs below show an example of the Infringing Shades sold by Focus Window Fashions on the left, and an example of a window covering product sold under the Hunter Douglas SILHOUETTE<sup>®</sup> brand with the Trade Dress on the right:



**Infringing Shade**



**SILHOUETTE<sup>®</sup> product**

27. Hunter Douglas is the exclusive owner of the Trade Dress, and Plaintiff uses it in connection with the sale of its window covering products, as demonstrated above.

28. Upon information and belief, rather than applying creative or financial resources to the development and design of its own window covering products, Defendant has copied the Trade Dress in its Sheerview Horizontal Window Shades to convey an impression in the minds of consumers that the Infringing Shades are the same as or closely related to those window covering products and other products sold by Plaintiff. These actions are deliberate and willful, and conducted with the intent of trading on the goodwill and reputation of Plaintiff and are likely to cause confusion, mistake or deception in violation of 15 U.S.C. § 1125(a).



29. As a direct and proximate result of Defendant's infringement of the Trade Dress, Plaintiff has suffered, and will continue to suffer, irreparable harm, for which Plaintiff has no adequate remedy at law.

30. Unless this Court preliminarily and permanently enjoins Defendant's infringing product, Plaintiff will continue to be irreparably harmed by Defendant's infringement of the Trade Dress.

31. In addition, Defendant's infringement of the Trade Dress has deprived and, unless enjoined, will continue to deprive Plaintiff of sales, profits, and royalties to which it would otherwise have been entitled.

32. Defendant's violation of 15 U.S.C. § 1125(a) entitles Plaintiff to recover damages, including but not limited to Defendant's profits from the sale of all infringing window covering products, actual damages, treble damages, litigation costs, and attorneys' fees.

**COUNT THREE**  
**(Deceptive Acts and Practices under New York law)**

33. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32 above as if fully set forth herein.

34. Defendant's intentional misuse of the Trade Dress is likely to cause and is causing confusion, mistake, and deception among the general purchasing public as to the origin of Defendant's infringing window covering products, and is likely to deceive the public into believing that Defendant's infringing window covering products originate from, are associated with, or are otherwise authorized by Hunter Douglas.

35. The acts of Defendant described above constitute deceptive acts and practices in violation of New York General Business Law § 349.

36. As a direct and proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continue to suffer injury.

37. Defendant's acts have caused and continue to cause Plaintiff irreparable harm, for which Plaintiff has no adequate remedy at law.

**COUNT FOUR**  
**(Common Law Unfair Competition)**

38. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-37 above as if fully set forth herein.

39. Defendant's conduct as described above constitutes unfair competition in violation of the common law of the State of New York by reason, *inter alia*, of Defendant's misuse and/or imitation of the Trade Dress and proprietary designs to compete with Plaintiff in the marketing and sale of window covering products in commerce.

40. As a direct and proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continues to suffer injury.

41. As a direct and proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continues to suffer irreparable injury, for which Plaintiff has no adequate remedy at law.

**WHEREFORE**, Plaintiff prays:

A. For judgment preliminarily and permanently restraining and enjoining Defendant (and its officers, directors, employees, agents, servants, successors, assigns, and any and all persons in privity or in concert with them, directly or indirectly) from infringing the claim of the '196 Patent in any manner;

B. For judgment that the claim of the '196 Patent has been infringed by Defendant;



C. For damages adequate to compensate Plaintiff for Defendant's patent infringement, but in no event less than a reasonable royalty, together with interest thereon;

D. For a threefold increase in damages as a result of willful infringement by Defendant;

E. For judgment that the Trade Dress has been infringed by Defendant;

F. For judgment that Defendant has engaged in unfair competition and deceptive trade practices;

G. For judgment preliminarily and permanently restraining and enjoining Defendant (and its officers, directors, employees, agents, servants, successors, assigns, and any and all persons in privy or in concert with them, directly or indirectly) from any use of the Trade Dress or any colorable imitation thereof, and further enjoining Defendant from any other acts which will injure or are likely to injure the business reputation of Plaintiff;

H. For judgment awarding, under 15 U.S.C. § 1117(a), for all profits realized by Defendant and all damages sustained by Plaintiff by reasons of Defendant's trade dress infringement, false designation of origin, passing off, and unfair and deceptive trade practices, and further awarding Plaintiff's costs incurred in prosecution of this action, and increasing the award three (3) times due to the willful and deliberate nature of the infringement;

I. For judgment, pursuant to 15 U.S.C. § 1118, ordering destruction of all articles infringing the Trade Dress;

J. For an order awarding punitive damages in an amount to be determined by the trier of fact for Defendant's willful and deliberate violations of Plaintiff's rights under the common law;

K. For an assessment and award of interest, costs, and attorneys' fees against Defendant; and

L. For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

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

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Date: August 26, 2015