

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION
Case No. 1:16-cv-00581**

BLUE RHINO GLOBAL SOURCING,)
INC.,)
)
Plaintiff,)
)
v.)
)
SANXIN INTERNATIONAL LTD. f/k/a)
SUMXING INTERNATIONAL LTD.,)
BAZHOU SANXIN STEEL PIPE CO.,)
LTD., and CARLOS E. RODRIGUEZ,)
)
Defendants.)
_____)

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff BLUE RHINO GLOBAL SOURCING, INC. (“Blue Rhino” or “Plaintiff”) brings this action pursuant to 35 U.S.C. § 1 *et seq.*, seeking injunctive relief and damages against Defendants SANXIN INTERNATIONAL LTD. f/k/a SUMXING INTERNATIONAL LTD. (“Sanxin”), BAZHOU SANXIN STEEL PIPE CO., LTD. (“Bazhou Sanxin”), and CARLOS E. RODRIGUEZ (“Mr. Rodriguez”) (collectively, the “Defendants”) for patent infringement, and alleges as follows:

PARTIES

1. Plaintiff is a corporation formed under the laws of the State of Delaware, having a place of business at 5650 University Parkway, Suite 400, Winston-Salem, North Carolina 27105.

2. Defendant Sanxin, on information and belief, is a corporation formed under the laws of the State of Delaware, having a principal place of business at 8700 East Point Douglas Road South, Cottage Grove, Minnesota 55016.

3. Defendant Bazhou Sanxin, on information and belief, is a corporation formed under the laws of the People's Republic of China, having a principal place of business at 112 National Road, East Gate, Xin'an Town, Bazhou, Hebei 065703, China.

4. Defendant Mr. Rodriguez, on information and belief, is the current President of Sanxin International Ltd. f/k/a Sumxing International Ltd., and a resident of the State of Minnesota.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4.

7. On information and belief, Defendants have regularly and intentionally conducted business in this State and District, and are subject to personal jurisdiction in this State and District by virtue of their contacts here.

8. On information and belief, Defendants are conducting business by servicing Defendants' product market, either directly or indirectly, by, *inter alia*, importing, selling, offering for sale, providing post-sales support services, and otherwise engaging in business activities in this State and District. Additionally, on information and belief, Defendants are placing and/or are knowingly directing the placing of

infringing products into the stream of commerce with knowledge, or reasonable foreseeability, that a termination point of the stream is this State and District. Further, on information and belief, Defendants have knowingly sent and/or have knowingly directed the sending of infringing products to purchasers in this State and District, and continue to do so.

9. On information and belief, Defendants' products are offered for sale and sold to customers residing in this State and District through online retailers. On information and belief, Defendants provide an online storefront through Amazon that is available to customers and prospective customers within this State and District. As a result of Defendants' business activities in this State and District, on information and belief, Defendants have had continuous and systematic contacts with this State and District, including sales to customers residing in this State and District, receiving post-sales support services requests and inquiries from customers residing in this State and District, and providing such post-sales support services to customers residing in this State and District.

10. On information and belief, Defendant Sanxin has engaged in substantial activity within this State and District, including solicitation and services activities, including engaging in the solicitation of customers and prospective customers residing in this State, such as Family Dollar and Lowe's, through e-mail and telephone correspondence and in-person meetings in this State. Further, on information and belief, Defendant Sanxin has engaged in providing extensive customer service services and/or post-sales support services to customers residing in this State and District, including to

at least 119 customers residing in this State. On information and belief, such services include the provision of parts and components for Defendants' products to customers residing in this State.

11. On information and belief, Defendant Bazhou Sanxin is conducting business by importing, selling, offering for sale, providing post-sales support services, and otherwise engaging in business activities in the United States, including in this State and District. Additionally, on information and belief, Defendant Bazhou Sanxin has been offering for sale and selling its products to retail stores and customers throughout the United States, including in this State and District.

12. On information and belief, Defendant Mr. Rodriguez has conducted business and engaged in activities as a principal agent for Sanxin International Ltd. f/k/a Sumxing International Ltd., including conducting business in and affecting this State and District, soliciting customers and potential customers in this State and District, providing customer service and/or post-sales support services to customers and potential customers in this State and District, and has been an active participant in the direction and conduct of the activities alleged herein.

13. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and 1400(b). Plaintiff is located in this District, a substantial part of the events giving rise to Plaintiff's claims occurred in this State and District, and Defendants are subject to personal jurisdiction in this State.

FACTUAL BACKGROUND

14. Plaintiff is in the business of marketing and selling grills, among other products. In the United States, Plaintiff is a leading distributor of grills and other outdoor living accessories.

15. Plaintiff is the owner, by assignment, of all right, title, and interest in and to United States Design Patent No. D680,795 (“the ‘795 Patent”) entitled “Barbecue Grill.” A true and correct copy of the ‘795 Patent is attached hereto as Exhibit A.

16. The ‘795 Patent was duly and lawfully issued by the United States Patent and Trademark Office on April 30, 2013. The ‘795 Patent and its claimed design are presumed valid pursuant to 35 U.S.C. § 282.

17. On information and belief, products sold under the ‘795 Patent by Plaintiff have been properly marked pursuant to 35 U.S.C. § 287.

18. On information and belief, Defendant Bazhou Sanxin is engaged in the business of making, importing, marketing, offering for sale, and selling, a variety of outdoor living accessories, including grills.

19. On information and belief, Defendant Sanxin is engaged in the business of importing, marketing, offering for sale, selling, and providing post-sales support and sales agent services for a variety of outdoor living accessories manufactured by Defendant Bazhou Sanxin, including grills.

20. On information and belief, Defendant Sanxin and Defendant Bazhou Sanxin are related entities with common ownership.

21. On information and belief, Defendant Sanxin provides sales agent services and customer support on behalf of Defendant Bazhou Sanxin in the United States for the products manufactured by Defendant Bazhou Sanxin, including grills.

22. On information and belief, Defendant Sanxin serves as the customer service contact by providing its e-mail address and phone number to Charcoal Grill purchasers. On further information and belief, as the customer service contact, Defendant Sanxin is contacted by individual and third-party retailer customers with questions regarding the Charcoal Grills. Additionally, on information and belief, Defendant Sanxin receives and answers calls and e-mails from Charcoal Grill customers and resolves customer inquiries by providing information regarding the Charcoal Grills.

23. On information and belief, Defendant Sanxin imports products, makes sales calls, accepts orders and payments, coordinates deliveries, engages in communications with customers and prospective customers, participates in trade shows, and engages in other business activities as an agent for Defendant Bazhou Sanxin.

24. On information and belief, Defendant Sanxin contacts and works with retailers in an effort to have those retailers purchase products manufactured by Defendant Bazhou Sanxin. On further information and belief, Defendant Sanxin receives orders and payments directly from retailers for products manufactured by Defendant Bazhou Sanxin.

25. Defendants have imported, offered for sale and sold, and, on information and belief, are continuing to import, offer for sale and sell, through established streams of commerce throughout the United States, including to customers and potential

customers in this State and District, grills that infringe the claimed design of the ‘795 Patent.

26. On information and belief, Defendant Bazhou Sanxin is a Chinese manufacturer of Backyard Grill-branded charcoal grills, including charcoal grills bearing model number BY1610200202 (hereinafter, the “Charcoal Grills”). A true and correct copy of the Owner’s Manual provided with the Charcoal Grills is attached hereto as Exhibit B.

27. As depicted in the Owner’s Manual, the Charcoal Grills are identical to, and encompass every ornamental feature of, the ‘795 Patent, and infringe the ‘795 Patent.

28. On information and belief, Defendants have knowledge of the ‘795 Patent and the claimed design therein.

29. Defendants have had actual knowledge of the ‘795 Patent since at least June 28, 2016, when Defendant Sanxin was served with Plaintiff’s Complaint.

30. On information and belief, Defendants have knowledge that the Charcoal Grills infringe the claimed design of the ‘795 Patent.

31. Defendants have had actual knowledge that the Charcoal Grills infringe the claimed design of the ‘795 Patent since at least June 28, 2016, when Defendant Sanxin was served with Plaintiff’s Complaint.

32. On information and belief, Defendants import into the United States charcoal barbecue grills and Backyard Grill-branded charcoal grills manufactured by Defendant Bazhou Sanxin, including the infringing Charcoal Grills.

33. On information and belief, Defendant Sanxin imports the Charcoal Grills manufactured by Defendant Bazhou Sanxin into the United States. A Panjiva.com print-out of a Bill of Lading showing Defendant Bazhou Sanxin as the shipper and Defendant Sanxin as the consignee for a shipment described as “CHARCOAL GRILL”, is attached hereto as Exhibit C.

34. On information and belief, Defendants also import into the United States components of charcoal barbecue grills and Backyard Grill-branded charcoal grills manufactured by Defendant Bazhou Sanxin, including components of the infringing Charcoal Grills.

35. On information and belief, Defendant Sanxin specifically imports and maintains an inventory of Charcoal Grill components at its principal place of business in Cottage Grove, Minnesota, including lids, vents, handles, and other material parts of the Charcoal Grill.

36. On information and belief, Defendants provide Charcoal Grill components to customers as part of their post-sales support services in order for customers and/or other individuals to use the Charcoal Grills.

37. On information and belief, the Charcoal Grill components are material to the Charcoal Grills, are especially made and/or adapted for the Charcoal Grills, are not a staple article or commodity of commerce, and are not suitable for substantial noninfringing use.

38. On information and belief, Defendants have knowledge that the Charcoal Grill components are material to the Charcoal Grills, are especially made and/or adapted

for the Charcoal Grills, are not a staple article or commodity of commerce, and are not suitable for substantial noninfringing use.

39. On information and belief, Defendants have been marketing, offering for sale and selling, and presently are offering for sale and selling, the Charcoal Grills throughout the United States, including to customers and potential customers in this State and District, through an online Amazon storefront for Backyard Grill-branded items, including the Charcoal Grills. Print-outs from Amazon.com showing the offering for sale of Backyard Grill-branded grills, including the Charcoal Grills, is attached hereto as Exhibit D.

40. On information and belief, Defendants have been marketing, offering for sale and selling, and presently are offering for sale and selling, the Charcoal Grills to third-party retail stores, such as Walmart, and various third-party online retailers. These third-party retailers also market, offer for sale and sell, and presently are offering for sale and selling, the Charcoal Grills throughout the United States, including to customers and potential customers in this State and District. A Google.com print-out showing the various third-party online retailers that offer the Charcoal Grills for sale is attached hereto as Exhibit E.

41. On information and belief, Defendants intend for the third-party retailers to market, offer for sale, and sell the Charcoal Grills throughout United States.

42. On information and belief, Defendants have knowledge that the third-party retailers have been marketing, offering for sale and selling, and presently are offering for

sale and selling, the Charcoal Grills to customers throughout the United States, including this State and District.

43. On information and belief, Defendants have had actual knowledge that the third-party retailers have been marketing, offering for sale and selling, and presently are offering for sale and selling, the Charcoal Grills since at least March 2014, when Defendant Sanxin first started receiving post-sales support requests from customers for the Charcoal Grills.

44. On information and belief, upon purchasing a Charcoal Grill, customers and/or other individuals use the Charcoal Grills.

45. On information and belief, Defendants intend for customers and/or other individuals to use the Charcoal Grills subsequent to purchase.

46. On information and belief, Defendants have knowledge that customers and/or other individuals use the Charcoal Grills subsequent to purchase.

47. Use of the Charcoal Grills constitutes infringement of the '795 Patent.

48. On information and belief, Defendants have knowledge that use of the Charcoal Grills constitutes infringement of the '795 Patent.

49. On information and belief, Defendants have had actual knowledge since at least June 28, 2016, when Defendant Sanxin was served with Plaintiff's Complaint, that customers and/or other individuals are infringing the '795 Patent through their use of the Charcoal Grills.

50. On information and belief, Defendants have used the Charcoal Grills.

51. On information and belief, Defendants created the Owner's Manual provided with the Charcoal Grills that instructs customers and/or other individuals on the use of the Charcoal Grills.

52. The Owner's Manual states that Defendant Sanxin is Defendant Bazhou Sanxin's "Customer Service Department" for the Charcoal Grills, and provides Defendant Sanxin's toll-free phone number and email address for customers and/or other individuals to contact for issues pertaining to repairs, damages, grill components, replacement parts, warranties, and returns, as well as for general questions and help. On information and belief, Defendant Sanxin acts as an agent of Defendant Bazhou Sanxin, and provides services at Defendant Bazhou Sanxin's discretion and under Defendant Bazhou Sanxin's direction and control.

53. As stated in the Owner's Manual, customers and/or other individuals must contact Defendant Sanxin for issues pertaining to repairs, damages, grill components, replacement parts, warranties, returns, general questions and help, as well as post-sales and customer service support for the Charcoal Grills. The Owner's Manual further states that any replacements parts and/or components will be provided by Defendants at Defendant Bazhou Sanxin's discretion and determination.

54. On information and belief, Defendant Sanxin ships replacement parts and/or components directly to Charcoal Grill customers on behalf of Defendant Bazhou Sanxin, which shipping costs are then invoiced to and paid for by Defendant Bazhou Sanxin.

55. On information and belief, Defendants have provided additional post-sales support services and is presently providing additional post-sales support services in order to assist customers and/or other individuals in using the Charcoal Grills. On further information and belief, such post-sales support services include supplemental instructions, guidance, troubleshooting, and providing Charcoal Grill components, all for the purpose of assisting customers and/or other individuals in using the Charcoal Grills.

56. Defendants are actively, intentionally, and/or knowingly inducing the direct infringement of the '795 Patent by others, including, but not limited to customers and/or individuals who use the infringing Charcoal Grills, and third-party retailers who have been marketing, offering to sell, and selling the Charcoal Grills.

57. Defendants are actively, intentionally, and/or knowingly contributing to the direct infringement of the '795 Patent by others, including, but not limited to customers and/or individuals who use the infringing Charcoal Grills, by importing into the United States material components of the Charcoal Grills.

58. Defendants have directly infringed the '795 Patent by making, using, selling, offering to sell, and/or importing into the United States the Charcoal Grills.

59. On information and belief, Defendant Sanxin only has two employees, one of which is Defendant Mr. Rodriguez, the President of Sanxin International Ltd. f/k/a Sumxing International Ltd.

60. On information and belief, Defendant Mr. Rodriguez is directly and intimately involved in Defendant Sanxin's operations, including but not limited to the importing, marketing, offering for sale and/or selling, of the Charcoal Grills and

Charcoal Grill components, as well as the provision of post-sales support and sales agent services.

61. On information and belief, Defendant Mr. Rodriguez personally participated in and approved of the importing, marketing, offering for sale and/or selling of the Charcoal Grills and Charcoal Grill components, as well as the provision of post-sales support and sales agent services.

62. On information and belief, Defendant Mr. Rodriguez has contacted and contacts potential customers, including but not limited to Family Dollar, Lowe's, Wayfair, Castle Gate, Canadian Tire, Aldi, Big Lots, SuperValu, and Blue Stem Catalog, in an effort to have such retailers carry products manufactured by Defendant Bazhou Sanxin. On information and belief, such contacts include telephone discussions, e-mail correspondence, and in-person meetings by Mr. Rodriguez with potential customers.

63. On information and belief, Defendant Mr. Rodriguez directs and oversees Defendant Sanxin's sales efforts, which include attending trade shows, participating in trade shows, and engaging in advertising efforts.

64. On information and belief, Defendant Mr. Rodriguez actively induced, caused, or materially contributed to the unlawful conduct of Defendant Sanxin with respect to Defendant Sanxin's importing, marketing, offering for sale, and selling of the Charcoal Grills and Charcoal Grill components, as well as the provision of post-sales support and sales agent services. On further information and belief, Defendant Mr. Rodriguez has the right, ability, and power to supervise the acts of Defendant Sanxin, and has a direct financial interest in Defendant Sanxin's conduct.

COUNT I
Infringement of U.S. Patent D680,795 Under 35 U.S.C. § 271(a)

65. Plaintiff hereby realleges and incorporates by reference paragraphs 1-64 as if fully set forth herein.

66. Defendants have infringed and continue to infringe the '795 Patent within the meaning of 35 U.S.C. 271(a) by, without Plaintiff's authority, making, using, offering to sell and/or selling the Charcoal Grills within the United States, and/or importing the Charcoal Grills into the United States.

67. On information and belief, Defendants offer for sale and sell to retail stores and online retailers in the United States the Charcoal Grills that infringe the claimed design of the '795 Patent.

68. On information and belief, Defendants import the Charcoal Grills into the United States.

69. On information and belief, Defendants have violated Plaintiff's patent rights through its activities with at least Defendants' Charcoal Grills.

70. Defendants have committed the acts of infringement complained of herein without the consent or authorization of Plaintiff and in derogation of 35 U.S.C. § 271.

71. On information and belief, Defendants' infringement has been intentional and willful, making this an exceptional case.

72. Plaintiff has been damaged by Defendants' unlawful conduct. Indeed, Defendants' unlawful conduct has irreparably harmed Plaintiff, and unless enjoined, will

continue to harm Plaintiff by virtue of Defendants' infringement of the claimed design of the '795 Patent.

73. Plaintiff is entitled to damages from Defendants pursuant to 35 U.S.C. §§ 284 and 289 and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

COUNT II
Inducement of Infringement of U.S. Patent D680,795 Under 35 U.S.C. § 271(b)

74. Plaintiff hereby realleges and incorporates by reference paragraphs 1-73 as if fully set forth herein.

75. Defendants have infringed and continue to infringe the '795 Patent within the meaning of 35 U.S.C. 271(b) by actively, intentionally, and/or knowingly inducing the direct infringement of the '795 Patent by others, including, but not limited to customers and/or individuals using the Charcoal Grills, and third-party retailers marketing, offering for sale and selling, the Charcoal Grills.

76. On information and belief, Defendants have violated Plaintiff's patent rights through its activities with at least Defendants' Charcoal Grills.

77. Defendants have committed the acts of infringement complained of herein without the consent or authorization of Plaintiff and in derogation of 35 U.S.C. § 271.

78. On information and belief, Defendants' inducement of infringement has been intentional and willful, making this an exceptional case.

79. Plaintiff has been damaged by Defendants' unlawful conduct. Indeed, Defendants' unlawful conduct has irreparably harmed Plaintiff, and unless enjoined, will

continue to harm Plaintiff by virtue of Defendants' infringement of the claimed design of the '795 Patent.

80. Plaintiff is entitled to damages from Defendants pursuant to 35 U.S.C. §§ 284 and 289 and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

COUNT III
Contributory Infringement of U.S. Patent D680,795 Under 35 U.S.C. § 271(c)

81. Plaintiff hereby realleges and incorporates by reference paragraphs 1-80 as if fully set forth herein.

82. Defendants have infringed and continue to infringe the '795 Patent within the meaning of 35 U.S.C. 271(c) by actively, intentionally, and/or knowingly contributing to the direct infringement of the claimed design of the '795 Patent by others, including, but not limited to customers and/or other individuals that use the Charcoal Grill, by importing material components of the Charcoal Grills into the United States to be used in the Charcoal Grills.

83. On information and belief, Defendants have violated Plaintiff's patent rights through its activities with at least Defendants' Charcoal Grills.

84. Defendants have committed the acts of infringement complained of herein without the consent or authorization of Plaintiff and in derogation of 35 U.S.C. § 271.

85. On information and belief, Defendants' contributory infringement has been intentional and willful, making this an exceptional case.

86. Plaintiff has been damaged by Defendants' unlawful conduct. Indeed, Defendants' unlawful conduct has irreparably harmed Plaintiff, and unless enjoined, will

continue to harm Plaintiff by virtue of Defendants' infringement of the claimed design of the '795 Patent.

87. Plaintiff is entitled to damages from Defendants pursuant to 35 U.S.C. §§ 284 and 289 and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

WHEREFORE, Plaintiff prays for the entry of a judgment:

- (A) Holding that Defendants have infringed the '795 Patent;
- (B) Awarding Plaintiff damages adequate to compensate for all such unauthorized acts of infringement pursuant to 35 U.S.C. § 284;
- (C) Awarding Plaintiff disgorgement of all profits attributable to Defendants' infringing activities, pursuant to 35 U.S.C. § 289;
- (D) To the extent applicable, declaring this case as exceptional pursuant to 35 U.S.C. § 285;
- (E) Awarding Plaintiff its attorney's fees and other costs and expenses;
- (F) Awarding Plaintiff pre-judgment and post-judgment interest;
- (G) Permanently enjoining Defendants from further acts of infringement; and
- (H) Awarding such other and further relief as this Court deems just and equitable.

Plaintiff hereby demand a trial by jury on all issues so triable.

Date: September 6, 2016

Respectfully submitted,

/s/ J. Mark Wilson

J. Mark Wilson

N.C. State Bar No. 25763

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N.C. State Bar No. 46178

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, I electronically filed the foregoing *FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT* with the Clerk of Court for the United States District Court, Middle District of North Carolina, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented to accept service by electronic means.

Date: September 6, 2016

/s/ J. Mark Wilson