

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

**SAUDER MANUFACTURING
COMPANY,**

Plaintiff,

v.

**J SQUARED, INC. d/b/a UNIVERSITY
LOFT COMPANY,**

Defendant.

Case No. 3:14-cv-00962-JZ
Hon. Jack Zouhary, U.S. District Judge
Magistrate Judge James R. Knepp, II

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THIRD AMENDED COMPLAINT

NOW COMES Sauder Manufacturing Company (“Sauder”), by and through its attorneys, to complain against J Squared, Inc. d/b/a University Loft Company

(“ULC”) for patent infringement, deceptive trade practices, unfair competition, and violation of Section 43(a) of the Lanham Act, 15 USC §1125(a) as set forth herein.

PARTIES, JURISDICTION AND VENUE

1. Sauder Manufacturing Company (“Sauder”) is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 930 W. Barre Road, Archbold, Ohio.

2. Defendant J Squared, Inc. d/b/a University Loft Company (“ULC”) is an Indiana corporation having its principal place of business at 2588 Jannetides Boulevard, Greenfield, Indiana 46140.

3. This action arises in part under the codified laws of the United States, Titles 15 and 35 U.S. Code and this Court has subject matter jurisdiction pursuant to 28 USC §§1331, 1338(a)-(b), 1367, 15 USC §1121 and otherwise. This Court also enjoys diversity jurisdiction, there being diversity of citizenship and an amount in controversy in excess of \$75,000, exclusive of interest and costs. It also arises in part under the laws of Ohio relating to deceptive trade practices, O.R.C. §4165.02.

4. Personal jurisdiction over ULC is vested in the United States District Court for the Northern District of Ohio because, *inter alia*, ULC has knowingly and purposefully directed its wrongful acts to this forum by advertising, marketing and offering for sale via a website accessible in this forum, a convertible chair

product embodying Sauder's patented inventions and, further, Defendant ULC has, upon information and belief, actively solicited sales of the chair to at least two customers located in Ohio.

5. Venue is proper under 28 USC §1391(b)-(c) as ULC resides in this district by virtue of doing relevant business in this district and has committed acts of infringement, deceptive trade practices, and unfair competition having a damaging effect on Plaintiff in this district and elsewhere in Ohio and in other states.

GENERAL ALLEGATIONS

6. Sauder and its parent company, Sauder Woodworking, Inc., have for over 75 years manufactured and sold furniture for a number of markets. Two of the specific markets served by Sauder are the educational and GSA markets, including furniture for colleges and universities, and governmental residential facilities. In 2006, Sauder introduced into the market its Trey[®] multifunction task chair. The Trey[®] multifunction task chair is a full-height desk chair designed to easily convert into a floor rocker with a table/stool unit and, on information and belief, was unique in appearance and function at the time of its introduction and until ULC introduced its accused infringing "Wave" and "Vector" chairs years afterward.

7. Sauder's Trey[®] chair/rocker/table has been, since its introduction, a commercial success, substantially increasing Sauder's revenues and market share in the relevant markets. The Sauder Trey[®] chair has received accolades from journalists knowledgeable of the marketplace including the People's Choice Award at the 2007 New Product Design Awards, attached as Exhibit A, and PC Gamer Editor's Choice (PC Gamer magazine, January 2008), attached as Exhibit B.

8. The aesthetic qualities of Sauder's Trey[®] chair are protected by Design Patent No. D585,204, duly and legally issued by the U. S. Patent and Trademark Office on January 27, 2009, entitled "CHAIR AND COUPLING COMPANION STOOL BASE." Sauder is the owner by assignment of the '204 Design Patent and continues to hold all rights and interest in the '204 Patent. A copy of the '204 Design Patent is attached as Exhibit C.

9. Sauder informed ULC, through its counsel and otherwise, of the '204 Patent at least as early as June 27, 2012, through correspondence directed at ULC's attorneys. Upon information and belief, ULC was aware of the '204 Patent and the '806 Publication before June 27, 2012.

10. Sauder's exclusive rights in and to the Trey[®] chair are further protected through the November 19, 2013 grant of utility patent no. 8,585,136, a copy of which is attached as Exhibit D. On May 3, 2012, the U.S. Patent and Trademark Office gave public notice of the potential grant of patent rights to

Sauder through publication number US 2012/0104806 A1. Sauder is the owner by assignment of the '136 Patent and continues to hold all rights and interest in the '136 Patent.

11. Sauder's exclusive rights in and to the inventions embodied in the Trey[®] chair are further protected by U.S. Patent No. 8,960,787 issued February 24, 2015, Exhibit E attached. The application leading to the issuance of the '787 patent was published on February 13, 2014, giving the public and ULC notice of the prospective issuance of further and additional patent rights for the inventions embodied in the Sauder Trey[®] chair.

12. Sauder is the owner of Patent Nos. 8,585,136 and 8,960,787; and both such patents are unexpired and enforceable.

13. On information and belief, ULC, its attorneys and principals, were aware of the imminent and actual existence of Sauder's patent rights at least as early as their respective publication dates.

14. Sauder has further pending and issued U.S. Patents based on the disclosures of the '136 patent and has a reasonable expectation of receiving still further and additional patent protection for the inventions embodied in the Sauder Trey[®] chair.

UNIVERSITY LOFT'S INFRINGING PRODUCTS

15. ULC operates a website having the universal resource locator (URL) <http://www.uloft.com> which is accessible throughout the United States, including throughout the State of Ohio and this judicial district. The ULC website directs individuals looking to purchase single retail units to, *inter alia*, authorized Retail Outlets or Online Dealers and, further, invites individuals looking to purchase single retail units to browse “University Loft’s Complete Product Line” and to make the “final purchase through a retail store.” The ULC website invites those “wishing to purchase in wholesale quantities or interested in becoming a dealer of LOFT products” to browse ULC’s “Complete Product Line” and directs those individuals to an inquiry link to request more information. The ULC website directs prospective purchasers to a “Product Line” subcategory through buttons captioned, *inter alia*, “Furniture for Colleges and Universities.” Under a subcategory “Office Chairs,” ULC’s website product offering includes its “Wave” chair with advertising copy “Is it a desk chair? A gaming rocker? A workstation? Yes.”

16. Upon information and belief ULC has built and/or has imported into The United States, and offers or has offered for sale, and sells or has sold several versions of the University Loft “Wave” and “Vector” chairs to customers in the U.S. The “Wave” and “Vector” chairs are substantially identical in appearance and

function and were intentionally and systematically designed to mimic the appearance and functions of the Sauder Trey® chair and incorporate the inventions protected by Sauder's patents, as aforesaid. ULC's sales and promotional activities include websites and advertisements featuring the "Wave" chair published in the "Talking Stick" newsletter of the Association of College and University Housing Offices in the State of Ohio, and distributed throughout Ohio including, on information and belief, in this district and elsewhere in the State of Ohio, as well as outside Ohio. A brochure depicting the "Wave" chair is attached hereto as Exhibit F.

17. On information and belief, ULC owns and either possesses or otherwise controls the tooling for all versions of the "Wave" and "Vector" chairs and has the power in itself or through others to continue and/or resume production of several versions at any time. ULC's website contains images of all of the Wave 1.0, 1.1, and 2.0 versions as of September 26, 2016 indicating to the public that such versions are active products. In addition, ULC has furnished Sauder with photographic evidence that it has built a prototype Wave 2.1 chair.

18. Sauder has not authorized, licensed or otherwise consented to ULC's aforementioned activities, and all of the versions of the Wave and Vector chairs infringe one or more of Sauder's patents as above listed.

19. The aesthetic ornamental design of the ULC “Wave” and “Vector” chairs is so strikingly similar to Sauder’s Trey[®] chair in appearance and function as to cause confusion as to source at a point of initial purchase interest, and would appear substantially and confusingly similar to an ordinary observer to the design protected by the ‘204 Patent. A side-by-side comparison of “Wave 1.0” to the ‘204 drawing is shown below. The “Wave” and “Vector” chairs further incorporate some or all of the salient and unique features of the Trey[®] chair including, but not limited to the configuration of the rocker/backrest support frame, the work table and the unique release and reattachment functions protected by various claims of the above-listed utility patents.



University Loft web page image¹

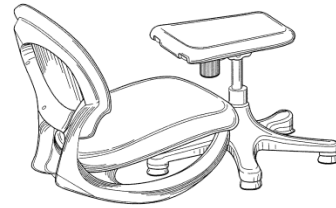


Fig. 10 of Sauder ‘204 Patent

¹ http://www.uloft.com/images/Office_chairs/wave-chair/wave_alt_8733_72.jpg

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. D585,204)

20. Sauder incorporates by reference as if herein fully written paragraphs 1-19 of this Complaint.

21. ULC has directly, indirectly, contributorily and/or by inducement infringed and continues to infringe the '204 Patent under 35 USC §271 by making, having made, using, selling and/or offering to sell in the United States and/or importing into the United States convertible desk chairs, including the various aforementioned ULC "Wave" and "Vector" chairs," all of which embody the design covered by the '204 Patent.

22. ULC's infringement of the '204 Patent has caused and continues to cause monetary damage to Sauder and to Sauder's reputation, the monetary damage arising in large part from lost sales revenues, and is in an amount that can only be determined by an accounting.

23. ULC's unlawful and deceptive activities as alleged will continue to cause immediate and irreparable harm to Sauder for which there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

24. Upon information and belief, ULC's infringement of the '204 Patent is willful and deliberate, has been carried out with full knowledge of the existence of the '204 patent and Sauder's intent to enforce it against ULC, entitling Sauder to ULC's entire profits under 35 USC §289 and to increased damages under 35 USC

§284 and to attorney's fees and costs incurred in prosecuting this action under 35 USC §285.

SECOND CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 8,585,136)

25. Sauder incorporates by reference as if herein fully written paragraphs 1-24 of this Complaint.

26. ULC has directly, indirectly, contributorily and/or by inducement infringed and continues to infringe the '136 Utility Patent under 35 USC §271 by making, having made, using, selling and/or offering through advertising as aforesaid to sell in the United States and/or importing into the United States convertible desk chairs, including the aforementioned ULC "Wave" and "Vector" chairs, which embody one or more of the inventions covered by one or more valid claims of the '136 Patent, including but not limited to claims 3-5 and 12-14.

27. ULC has directly, indirectly, contributorily and/or by inducement infringed upon Sauder's provisional patent rights in the '136 Patent pursuant to 35 USC 154(d), with actual notice of the '806 Publication and the '136 Patent, by making, having made, using, selling and/or offering to sell in the United States and/or importing into the United States convertible desk chairs, including the various aforementioned UCL "Wave" and "Vector" chairs, which embody the invention covered by one or more of the valid and subsisting claims of the '136 Patent.

28. ULC's infringement of the '136 Patent and its control of the manufacturing equipment for the various "Wave" and "Vector" chairs has caused and threatens to continue to cause damage to Sauder in an amount that can only be determined through discovery and an accounting.

29. ULC's infringement as alleged has caused and will continue to cause irreparable harm to Sauder.

30. Upon information and belief, UCL's infringement of the '136 Patent is and has been willful and deliberate, entitling Sauder to increased damages under 35 USC §284 and to attorney's fees and costs incurred in prosecuting this action under 35 USC §285.

THIRD CLAIM FOR RELIEF
(Infringement of U.S. Patent 8,960,787)

31. Sauder incorporates by reference as if set forth herein in full the allegations of paragraphs 1-30.

32. Sauder is the owner of U.S. Patent No. 8,960,787 issued February 24, 2015 and said patent is unexpired and in full force and effect. The application leading to the '787 Patent was published on February 13, 2014. In addition, Sauder, by serving copies of the twenty-one claims in what became U.S. Patent No. 8,960,787 approved by the U.S. Patent and Trademark office effectively put ULC on notice of the imminent issuance of said patent, which claims have been and/or are being infringed by the manufacture, sale, offer for sale, advertising, and

importation of various versions of the accused “Wave” and “Vector” chairs as explained above thereby entitling Sauder to pre-issuance damages under 35 USC §154(d).

33. ULC has directly, indirectly, contributorily and/or by inducement infringed upon Sauder’s provisional patent rights in the ‘787 Patent pursuant to 35 USC §154(d), with actual notice of the Publication on May 14, 2015 and the ‘787 Patent, by making, having made, using, selling and/or offering to sell in the United States and/or importing into the United States convertible desk chairs, including the various aforementioned ULC “Wave” and “Vector” chairs, which embody the inventions covered by one or more of the valid and subsisting claims of the ‘787 Patent.

34. ULC’s advertising promotion, sale and public claims of “innovation” relative to its infringing “Wave” and “Vector” chairs has damaged, continues to damage and/or threatens to continue to damage Sauder through lost sales revenues, lost profits and damage to Sauder’s reputation for originality and quality in the relevant markets. The amount of such damages is ascertainable only through an accounting, prayed for herein.

35. ULC’s infringement of Sauder’s Patent No 8,960,787 has been and will continue to be willful and deliberate, entitling Sauder to recover increased

damages under 35 USC §284 and to its attorney's fees and costs under 35 USC §285.

FOURTH CLAIM FOR RELIEF

(Unfair Competition and Deceptive Trade Practices)

36. Sauder incorporates by reference paragraphs 1-35 of this Complaint.

37. ULC falsely and erroneously claims in its advertising materials that the UCL "Wave" chair was an UCL innovation:

* * *

And then there's the University Loft Wave Chair. Talk about innovative! University Loft created this modern marvel to make student residence life, well, more about the student! The ultra-versatile Wave Chair is part desk chair, part gaming rocker and part laptop deck. ... Each one might inspire you to say "Why didn't I think of that?" Of course, the answer is "Because University Loft already did!"²

* * *

... I am reminded of the **original and continuing innovation of University Loft Company and ULoft's student residence life furniture**. On a recent Shark Tank show, controversial millionaire owner of the Dallas Mavericks Mark Cuban made this statement: "First there's (sic) the innovators. Then there's the imitators. Then there's the idiots." Since the mid-1980s, University Loft Company has been an innovator, and, everyone else...well, you be the judge. I mean, how many other college furniture manufacturers continually innovate and bring to market ideas like ... the Wave Chair, part desk chair, notebook computer desk and part gaming rocker?³

² <http://uloft.com/blog/university-furniture/why-didnt-i-think-of-that-thankfully-university-loft-did/> (Nov. 12, 2012).

³ <http://uloft.com/blog/university-furniture/university-loft-is-built-on-innovation-the-shark-tank-sharks-might-love/> (Feb. 25, 2013).

* * *

If you know **University Loft Company** founder James Jannetides, you know that these aren't just words; they are his promise: "*We are always learning, always innovating, and always improving ... our environment, our products, and our service. We are University Loft Company.*" ... His singular visionary approach to constant innovation and improvement is a cornerstone of what sets University Loft apart from other student furniture companies. ... Through the years, Jannetides and ULoft have learned from the campus living experience and applied that learning to make better student residence furniture products. This learning has led to innovations like the Wave Chair ...⁴

* * *

38. The foregoing advertisements are materially false in a number of respects, including, but not limited to the following:

a. Stating or implying that ULC was the first to conceive of a chair which is part desk chair, part gaming rocker and part laptop desk when, in fact, it was Sauder who first conceived of such a product and ULC essentially copied it.

39. ULC's advertisements actually deceive or have the tendency to deceive a substantial segment of customers/consumers and/or potential customers/consumers as to their origination of product designs and integrity.

40. The false statements of fact contained in ULC's advertisements are material and are likely to influence the purchasing decisions of

⁴ <http://uloft.com/blog/general/james-jannetides-and-university-loft-commit-to-always-learning-always-innovating-and-always-improving/> (Mar. 18, 2013).

customers/consumers and/or potential customers/consumers, as well as to disparage or damage Sauder's reputation and good will.

41. On information and belief, ULC willfully made such statements knowing that they were false or with reckless disregard for the truth for at least the reason that Sauder previously informed UCL of Sauder's earlier patented innovations including by correspondence on June 27, 2012 and December 22, 2012. Further, UCL became aware of Sauder's Trey[®] chair during the pendency of its own application for design patent coverage.

42. ULC's false and erroneous claims have and continue to damage Sauder's reputation for integrity and the creation and introduction of innovative products by creating the false impression that Sauder's Trey[®] chair is a copy of ULC's "original" innovation—when in fact, it is ULC's "Wave" chair that mimics Sauder's prior innovation.

43. ULC's misleading and false statements constitute deceptive trade practices under O.R.C. §4165.02 and/or unfair competition under applicable state and/or federal statutes or common law.

44. Sauder has been or is likely to be injured as a result of the foregoing, either by direct diversion of sales to Defendant or by damage to Sauder's goodwill and/or reputation and/or confusion in the marketplace as to a rightful claim to originality in the convertible task chair concept.

45. ULC's engagement in deceptive trade practices and/or unfair competition entitle Sauder to injunctive relief, actual damages, and/or attorney's fees pursuant to O.R.C. §4165.03 and/or other damages as provided for under applicable state and/or federal statutes or common law.

FIFTH CLAIM FOR RELIEF

46. Sauder incorporates by reference as if herein fully written paragraphs 1-45 of this Complaint.

47. The Sauder Trey[®] chair has, by reason of appearance and function, a unique identity that creates initial and continuing interest among potential buyers and that indicates product source.

48. ULC has, by creating, building, having built, offering for sale and falsely describing its "Wave" chair, misled or deceived potential buyers as to the identity, origin, sponsorship or association of its "Wave" chair in violation of §1125(a) of the Lanham Act, 15 USC. Such actions have damaged or threatened to damage Sauder as to sales revenues and reputation.

PRAYER FOR RELIEF

WHEREFORE, Sauder prays for the following relief:

1. A judgment that ULC has infringed the '204 Patent in violation of 35 USC §271;

2. A judgment that ULC has infringed the ‘136 Patent in violation of 35 USC §271 and §154(d);

3. A judgment that ULC infringes and/or has infringed and will cause others to infringe Sauder’s Patent No. 8,960,787 under 35 USC §271 and §154(d);

4. A judgment prohibiting ULC, its affiliates and all others in privity therewith from using, selling or providing to others the tooling used to manufacture parts for any and all of the versions of the “Wave” and “Vector” chairs;

5. A finding that ULC has engaged in acts of deceptive trade practices and/or unfair competition in violation of state and/or federal law;

6. A finding that ULC has violated Section 1125(a) of the Lanham Act.

7. An Order and Judgment preliminarily and permanently enjoining ULC and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of Sauder’s ‘204 Patent and/or Sauder’s ‘136 and ‘787 Patents pursuant to 35 USC §283;

and/or an order requiring ULC to post a bond in the amount of Three Million (\$3,000,000) Dollars as security for past and future damages accrued or accruable against it for its acts of infringement;

8. An Order and Judgment preliminarily and permanently enjoining UCL and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from publishing and/or distributing material in printed or electronic form showing or making reference to any of the “Wave” or “Vector” chairs and from committing other and further acts of deceptive trade practices and/or unfair competition pursuant to applicable state or federal law;

9. An accounting of all damages sustained as a result of ULC’s acts as alleged herein;

10. A judgment awarding Sauder all damages adequate to compensate for ULC’s infringement of Sauder’s ‘204 Patent, its ‘136 Patent, and its ‘787 Patent as a result of ULC’s acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law, including ULC’s total profits under 35 USC §289, Sauder’s lost profits, and enhanced damages up to and

including treble damages based on any infringement found to be willful pursuant to 35 USC §284, and including pre-issuance royalties pursuant to 35 USC §154(d);

11. A judgment awarding Sauder all damages adequate to compensate for ULC's acts of deceptive trade practices and/or unfair competition, including all pre-judgment and post-judgment interest at the maximum rate permitted by law, including enhanced damages and/or attorney's fees based on any infringement or conduct found to be willful to the extent permitted by applicable law;

12. A judgment or order that this case be decreed an "exceptional case" within the meaning of 35 USC §285 or otherwise, and that reasonable attorney's fees and costs be awarded to Sauder; and

13. Such other and further relief as the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Sauder demands a trial by jury as to all issues so triable in this case.

Respectfully submitted,

YOUNG BASILE HANLON & MACFARLANE

PC

/s/Thomas N. Young

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Dated: November 30, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2016, I caused the foregoing to be filed with the Court using the ECF filing system, which will send notification of such filing to:

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