

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**KETTLER INTERNATIONAL, INC.,**

**Plaintiff,**

v.

**Civil Action No. \_\_\_\_\_**

**DYNACRAFT BSC, INC.**

**JURY TRIAL DEMANDED**

**SERVE: National Registered Agents, Inc., Registered Agent  
818 W. Seventh St., Ste. 930  
Los Angeles, California 90017**

**Defendant.**

**COMPLAINT**

Plaintiff KETTLER INTERNATIONAL, INC. (hereinafter referred to as “KETTLER Int.”) submits this Complaint against Defendant Dynacraft BSC, Inc. (“Dynacraft” and/or “Defendant”).

**THE PARTIES**

1. KETTLER Int. is a corporation established under the laws of the Commonwealth of Virginia, with its principal place of business at 1355 London Bridge Road, Virginia Beach, Virginia 23453.

2. Dynacraft is, upon information and belief, a corporation established under the laws of Massachusetts, having its principal place of business at 89 South Kelly Road, American Canyon, California, 94503. Dynacraft distributes and sells children’s “ride-on” vehicles, including trikes, directly to consumers and through retailers such as Kmart, Target, Walmart, and others. Upon information and belief, Dynacraft is manufacturing the accused products, and/or

importing the infringing products into, as well as marketing, offering for sale and selling the infringing products within, the United States.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. §§ 1331, 1332 and 1338.

4. This Court can properly exercise personal jurisdiction over Dynacraft because, upon information and belief, its agents do substantial business in, and have sold, continue to sell, market, continue to market and/or import infringing devices into the Commonwealth of Virginia, at a minimum for use, marketing and sale through multiple channels of distribution, including chain retailers, specialty and hobby wholesalers and retailers, including but not limited to by various stores located in Virginia, including in Norfolk.

5. Venue for the present action properly lies against Dynacraft in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

### **BACKGROUND**

6. This action is based upon Defendant's unauthorized appropriation and use of KETTLER Int.'s patented technology.

7. HEINZ KETTLER GMBH & CO., KG, formerly known as HEINZ KETTLER GMBH & CO. ("Heinz KETTLER") manufactures, among other things, numerous children's "ride-on" vehicles including various models of tricycles, bicycles and scooters.

8. Heinz KETTLER's children's "ride-on" vehicles, which have won numerous awards, are sold in many countries all over the world, including the United States. KETTLER Int. is a United States distributor of KETTLER products and is presently the sole owner of the patent-in-suit.

9. Heinz KETTLER previously obtained patents covering various features of its tricycles in countries throughout the world, including U.S. Patent No. 6,378,884, which issued in the United States on April 30, 2002.

10. U.S. Patent No. 7,487,988 (the “‘988 Patent”) issued on February 10, 2009 from a continuation of application of U.S. Patent No. 7,156,408 (the “‘408 patent”), which issued on January 2, 2007 from a U.S. continuation application of parent U.S. Patent No. 6,799,772 (the “‘772 patent”), which, in turn, issued on October 5, 2004 from a U.S. continuation application of parent U.S. patent No. 6,378,884 (the “‘884 patent”). The ‘988 Patent, the ‘408 Patent, the ‘772 Patent, and the ‘884 Patent are directed to a vehicle steering head, limited turn system, and/or steering lock system and were duly and legally issued to Heinz KETTLER. A true and correct copy of the ‘988 patent is attached hereto as **Exhibit 1**. A true and correct copy of the ‘772 patent is attached hereto as **Exhibit 2**.

11. U.S. Patent No. 8,201,840 (the “‘840 Patent”) issued to KETTLER Int. on June 19, 2012 from a continuation of the ‘988 Patent. A true and correct copy of the ‘840 patent is attached hereto as **Exhibit 3**.

12. U.S. Patent No. 8,511,701 (the “‘701 Patent”) issued to KETTLER Int. on August 20, 2013 from a continuation of the ‘840 Patent. A true and correct copy of the ‘701 patent is attached hereto as **Exhibit 4**.

13. U.S. Patent No. 8,950,770 (the “‘770 Patent”) issued to KETTLER Int. on February 10, 2015 from a continuation of the ‘701 Patent. A true and correct copy of the ‘770 patent is attached hereto as **Exhibit 5**.

14. KETTLER Int., including by virtue of the written assignment dated September 1, 2010, is presently the sole owner and exclusive holder of, and currently owns all

rights, title, and interest in and to, all of the above referenced patents, including the right to exclude others from making, using, offering for sale, or selling the invention disclosed in each of these patents, including but not limited to the right to sue for all past and future infringement and to bring this action for damages and other relief.

15. The '772 Patent, '988 Patent, '840 Patent, '701 Patent and '770 Patent are referred to herein as the "patents-in-suit."

### **COUNT I – PATENT INFRINGEMENT**

16. The patents-in-suit contains claims covering, among other things, a vehicle steering head and limited turn system, which can, among other things, prevent a child user from over-steering a vehicle (like a tricycle) and which allows an adult to lock the front wheel of a vehicle (like a tricycle) in a straight position.

17. The claims cover infringing products manufactured, imported, marketed, offered for sale and/or sold by Dynacraft in the United States.

18. Defendant has manufactured, imported, distributed, sold and offered for sale, and continues to import, distribute, sell, and offer for sale, tricycle models, through certain retailers and over the Internet, which include a limited turning system that infringes the patents-in-suit.

19. Defendant has in the past and continues to make, use, sell, and/or offer for sale in the United States, and/or import in the United States, products that directly and/or indirectly infringe one or more of the claims of the patents-in-suit by one or more trikes or tricycles made, used, offered for sale, sold and/or imported by Defendant in violation of 35 U.S.C. § 271(a), (b), (c), and/or (g).

20. Specifically, upon information and belief, Defendant has infringed and is presently infringing at least claims 24, 25, 50, 56, 59 and 62 of the '772 Patent, claims 20 and 24

of the '988 Patent, claims 1, 2, 4, 6, 9-14, 21, 24, 39-41, 46, 48 and 51 of the '840 Patent, claims 1-5, 7-18, 24, and 26 of the '701 Patent, and claims 36, 37, 39, 40, 42, 44, 45, 46 and 57 of the '770 Patent, literally and/or under the doctrine of equivalents, by making, having made, using, selling, offering for sale, and/or importing, without authority, products, including but not limited to a limited turn system used on one or more of the tricycle models manufactured, sold, offered for sale, and/or imported, etc., by Dynacraft, and used such system in at least one of Defendant's tricycle models, including but not limited to the Talking Thomas Trike model 8003-85 (referred to herein as the "accused product").

21. Defendant has also contributed to and/or induced, and will continue to contribute to and/or induce, the infringement of the patents-in-suit by others in this district and elsewhere in the United States, with the direct infringement being accomplished by retailers who purchase and resell the accused product, as well as consumers who purchase the accused product.

22. KETTLER Int. has been and continues to be damaged by Defendant's unauthorized use, adoption, appropriation and/or copying of KETTLER Int.'s patented technology.

23. On information and belief, Defendant knows and/or has known of the patents-in-suit and the subject matter of the patents-in-suit since as early as June 2009 and continued to infringe thereafter.

24. Upon information and belief, Defendant knew or should have known that the above mentioned accused products infringe the patents-in-suit and has willfully infringed the valid intellectual property of KETTLER Int., thus Dynacraft is liable for damages or lost profits in an amount to be proved at trial and for that amount to be trebled.

25. Defendant has made, used, offered to sell, and/or sold in the United States, and/or imported into the United States, trikes or tricycles covered by one or more claims of the patents-in-suit, without KETTLER Int.'s authorization.

26. Defendant continues to make, use, offer to sell, and/or sell in the United States and its territories, and/or import into the United States and its territories, trikes or tricycles covered by one or more claims of the patents-in-suit, without KETTLER Int.'s authorization.

27. Defendant does not have a license to make, use, sell, offer for sale or import products which incorporate the technology which infringes the patents-in-suit.

28. Defendant's infringement of the patents-in-suit has been, and continues to be, willful.

#### **PRAYER FOR RELIEF**

WHEREFORE, KETTLER Int. prays for the following relief and seek a judgment against Defendant:

1. Declaring that Defendant has infringed the '772 Patent, '988 Patent, '840 Patent, '701 Patent and '770 Patent;

2. Declaring that Defendant, its agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with Defendant be preliminarily and permanently enjoined and restrained from further infringing the patent-in-suit pursuant to 35 U.S.C. § 283;

3. Declaring KETTLER Int. is entitled to a reasonable royalty in accordance with 35 U.S.C. § 154(d).

4. Awarding KETTLER Int. royalty and lost-profit based damages for Defendant's infringement of the patent-in-suit;

5. Awarding KETTLER Int. a reasonable royalty in accordance with 35 U.S.C. § 154(d).

6. Awarding judgment in favor of KETTLER Int. on all counts of the Complaint;

7. Declaring that Defendant's infringement of the patent-in-suit is and has been willful;

8. Awarding KETTLER Int. increased damages in the amount of three times the damages found or assessed in accordance with 35 U.S.C. § 284;

9. Declaring the case exceptional and awarding KETTLER Int. their costs and attorney fees in accordance with 35 U.S.C. § 285;

10. Requiring Defendant to provide a full accounting of all tricycles, trikes, ride-on vehicles, and all other product(s) which infringe the patent-in-suit, including but not limited to the accused products;

11. Ordering Defendant to recall all infringing products, including but not limited to the accused products in the U.S. and its territories, which have not been sold and/or shipped to consumers from all retailers, re-sellers and shippers, and others in possession of such products; and

12. Awarding KETTLER Int. such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure 38(b), KETTLER Int. hereby demands trial by jury as to all claims in this litigation.

KETTLER INTERNATIONAL, INC.

By: /s/ Ethan G. Ostroff  
Of Counsel

John C. Lynch (VSB # 39267)  
Ethan G. Ostroff (VSB # 71610)  
TROUTMAN SANDERS LLP  
222 Central Park Avenue, Suite 2000  
Virginia Beach, Virginia 23462  
Telephone: (757) 687-7765  
Facsimile: (757) 687-1504  
E-mail: [john.lynch@troutmansanders.com](mailto:john.lynch@troutmansanders.com)  
E-mail: [ethan.ostroff@troutmansanders.com](mailto:ethan.ostroff@troutmansanders.com)

*Counsel for Plaintiff KETTLER International Inc.*