

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

HERMAN MILLER, INC., a Michigan  
corporation,

*Plaintiff,*

v.

Case No. 1:17-cv-00269-JTN-ESC

BLUMENTHAL DISTRIBUTING, INC. d/b/a  
OFFICE STAR PRODUCTS; JORNG WELL  
INDUSTRIAL CO., LTD.; NOVA ASIA INT'L  
INC.; NOVA INNOVATIONS INT'L LTD.; and  
KING HONG INDUSTRIAL CO., LTD.,

Hon. Janet T. Neff

*Defendants.*

---

**FIRST AMENDED COMPLAINT**

Plaintiff Herman Miller, Inc. (“Herman Miller”), by and through its attorneys, files this complaint for patent infringement, trade dress infringement and unfair competition against Defendants Blumenthal Distributing, Inc., d/b/a Office Star Products (“Office Star”); Jorng Well Industrial (“Jorng Well”); Nova Asia Int’l Inc. (“Nova Asia”); Nova Innovations Int’l Ltd. (“Nova Innovations”); and King Hong Industrial Co., Ltd. (“King Hong”).

**PARTIES**

1. Plaintiff Herman Miller, Inc. is a corporation organized and existing under the laws of the State of Michigan having a principal place of business at 855 East Main Avenue, Zeeland, Michigan 49464.

2. On information and belief, Office Star is a corporation organized and existing under the laws of the State of California having a principal place of business at 1901 South Archibald Avenue, Ontario, California 91761.

3. On information and belief, Jorng Well is a corporation organized and existing under the laws of Taiwan having a principal place of business at No. 6, Sec 3, Baoda Rd., Kuwi Jen Hsiang, Tainan City, Taiwan.

4. On information and belief, Nova Asia Int'l Inc. is a corporation organized and existing under the laws of Taiwan having a principal place of business at No. 148, Sec. 4, Chung Hsiao East Road, Taipei, Taiwan.

5. On information and belief, Nova Innovations is a corporation organized and existing under the laws of Taiwan having a principal place of business at No. 148, Sec. 4, Chung Hsiao East Road, Taipei, Taiwan. On information and belief, Nova Innovations also maintains an office at 18960 Bramhall Lane, Rowland Heights, CA 91748. On information and belief, Nova Innovations is either a successor or close affiliate (alter ego) entity of Nova Asia Int'l Inc., so the two will be jointly referred to herein as "Nova."

6. On information and belief, King Hong is a corporation organized and existing under the laws of Taiwan having a principal place of business at No.566 Fong Lin 2nd Road, Taliao, Kaohsiung 831, Taiwan.

### **JURISDICTION AND VENUE**

7. This is an action for patent infringement under U.S. Code Title 35 et seq, including §§ 271, 284 and 289. This is also an action for trademark infringement / false designations of origin under 15 U.S.C. § 1125(a); for unfair competition under Michigan Consumer Protection Act, Mich. Comp. Laws § 445.903; and for trademark infringement and unfair competition under Michigan common law.

8. This Court has subject matter jurisdiction over the claims pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a) and (b), and supplemental jurisdiction over the claims arising under the statutory and common law of the State of Michigan pursuant to 28

U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy. Furthermore, there is diversity jurisdiction as to the non-federal claims pursuant to 28 U.S.C. § 1332 because the Defendants are diverse from Herman Miller, and Herman Miller's damages hereunder exceed the statutory threshold.

9. On information and belief, this Court has personal jurisdiction over each of the Defendants not only because Herman Miller suffers injury from infringement and unfair competition in this district (where it is headquartered), but also because Defendants are engaged in large-scale national distribution of the accused infringing chairs identified herein with express knowledge and intent that those chairs would be offered for sale and sold in Michigan, and that Defendants would derive benefit from those Michigan sales. Office Star is a large, sophisticated office chair distributor with approximately \$180 million in revenue per year that has been distributing nationally in the United States (and overseas) for decades. Office Star has hundreds of distribution and retail partners across the United States, and a massive national-scale distribution network that reaches into every State, including Michigan. The accused infringing chairs are also sold through major online retail channels that include Amazon.com, Staples.com, and Wayfair.com, making the accused infringing chairs available for purchase in, and shipment to, Michigan. Office Star thus knows full well – and expressly intends – to take advantage of the Michigan market as part of its large-scale distribution network. Likewise, Jorng Well and King Hong are large, sophisticated manufacturers who have done business with Office Star for decades and are very familiar with Office Star's US distribution model, and the fact that it reaches Michigan. In a prior litigation, Office Star compared its relationship with these manufacturers to a "marriage," and indeed Office Star has exclusivity with King Hong and Jorng Well for the chair models that they manufacture. Likewise, Nova has been Office Star's liaison

to Jorng Well for decades, and Office Star is Nova's only client. Nova derives income from Jorng Well sales to Office Star, is involved in all significant purchase decisions by Office Star from Jorng Well, works jointly with Jorng Well to import accused products, and has actual knowledge that Office Star's accused infringing chairs are placed into a large-scale national distribution network that necessarily takes advantage of the Michigan market. Upon information and belief, all the Defendants expect and desire the accused chairs to be sold in Michigan..

10. Venue is proper in this district under 28 U.S.C. § 1391 (b) and (c). On information and belief, Defendants have transacted business in this district, a substantial part of the events giving rise to the claims occurred in this district, and this is the district where Herman Miller is headquartered and the harms to Herman Miller are felt. The Court is also empowered to exercise pendent venue over the patent claims because they arise from the same facts that support the other claims herein and from the relationships among Office Star and the foreign entities, Jorng Well, King Hong and Nova.

### **BACKGROUND**

11. Founded in Zeeland, Michigan in 1905, Herman Miller is a world-famous manufacturer of high-quality contemporary furniture. Herman Miller's iconic designs have not only generated billions of dollars of revenue for the company, but are also loved by their users, and have been recognized as works of art by industry professionals.

### **Caper**

12. In 2000, Herman Miller commissioned designer Jeff Weber to develop a distinctive-looking, inexpensive stacking chair. The result was the Caper chair, shown here, which was an immediate success.

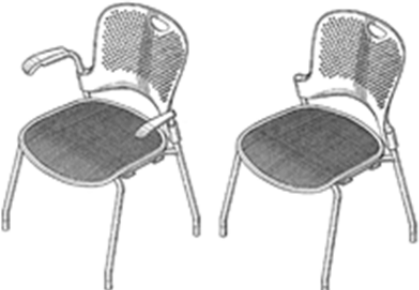



13. Shortly thereafter, building on the sales success, Herman Miller launched additional versions of Caper in the form of stools and a multi-purpose chair on casters.



14. Herman Miller has sold these chairs in a wide assortment of color combinations. The chairs are sold either with or without the armrests, and the stacking chairs come alternatively with straight bottom legs or caster wheels. Further images are included at **Exhibit A.1**, and also viewable at [www.hermanmiller.com](http://www.hermanmiller.com).

15. Herman Miller sought and obtained design patents on the Caper chair listed below, full versions of which are attached at **Exhibits A.2 and A.3**. Herman Miller is the lawful owner of all rights in these patents, including the right to collect damages for past infringement.

|  |   |  |   |
|--|---|--|---|
| <p>D449,938</p> <p><i>Issued</i><br/>11/6/2001</p> |  | <p>D455,571</p> <p><i>Issued</i><br/>4/16/2002</p> |  |
|--|---|--|---|

16. Herman Miller also has trade dress rights in the overall look of the Caper design. Those trade dress rights are infringed not only by literal copies of the chair, but also by chairs that mimic the overall look of the design. Because the Caper chair is a composite of many sub-elements, it is possible to achieve the same overall look with a differently shaped chair by designing the majority of the components to look similar to the corresponding components of Caper, or by designing certain prominent components to look very close to the corresponding Caper components.

17. The core elements of the Caper trade dress are a seat pan coupled with a distinctive bowler-hat-like backrest. A design that mimics these elements in a manner similar to how they appear in Caper will infringe the protected trade dress.

18. While not necessary to infringe the trade dress, the inclusion of the following secondary features will enhance the likelihood of confusion with Caper (and hence make a given design more likely to infringe): (a) two thin armrests supported by struts from the corners of the seat, (b) small rounded perforations across the backrest, (c) thin strut legs on a stacking chair version, and (d) an upside-down semicircular opening at the top of the backrest. The reason these features are not necessary to infringe the trade dress is because a chair with a backrest sufficiently similar to the Caper backrest - even if such a chair lacked elements (a)-(d) - would cause confusion among consumers, who would assume the chair was a variant of the Caper chairs sold by Herman Miller. This is because the shape of the Caper backrest is highly distinctive.

19. For avoidance of any doubt regarding the scope of accused infringement in the present case, Herman Miller accuses the following chairs, as well as any other model numbers that have the same appearance.



82710



82720



82740



8610



8620



8640



8455



86710



86724



86725



86740



STC866



STC865

20. On information and belief, Office Star maintains private listings of chairs that it sells to resellers. To the extent Office Star sells other model numbers of chairs that look like ones identified above, those would also be deemed infringing, as would any other chairs not yet known to Herman Miller that look even more similar to Caper than the chairs identified above.

21. The Caper trade dress styling is non-functional because it is not essential to the product's use, and does not affect its cost or quality. Furthermore, there is no utilitarian advantage to using the particular shapes claimed as trade dress. There are an infinite variety of alternative stylings and shapes that could have been chosen that would have achieved the same functional advantages. There is also no particularly simple or inexpensive manufacturing method that Herman Miller seeks to monopolize through these chairs. Of course, all chairs have some *de facto* functions, but the Caper chair has no *de jure* functions that would render it legally functional for purposes trade dress law. The overall styling and particular choice of combination of design elements reflects artistic flourish.

22. The Caper trade dress has acquired secondary meaning and has become recognizable as a distinctive design that a significant number of potential consumers of office chairs would recognize as coming from a single supplier. Caper has attained this status by virtue of its extreme popularity, high sales, and expansive marketing efforts by Herman Miller. More than 2 million Caper units have been sold (mostly stacking chairs) since the design was introduced in 2000, and Herman Miller has spent more than \$10 million marketing the chair. Caper has won design awards, and is ubiquitous in the marketplace. Because of its relatively low cost, a wide range of end users buy Caper chairs. Also, because it is used heavily as communal seating, any given Caper chair may be used and seen by exponentially more people than there are



chairs that have been produced. Each chair is stamped with a Herman Miller logo and name on the backrest.

23. On information and belief, Taiwanese manufacturer King Hong manufactures the accused infringing copies of Caper. Office Star is a major U.S. distributor of the accused chairs. Office Star sells to a vast network of dealers, distributors and eCommerce retailers, who then resell the chairs into the marketplace.

24. Caper is not the first Herman Miller chair that King Hong and Office Star have copied. In 2010, they began manufacturing copies of Herman Miller's famous Eames Aluminum Group chairs. In 2016, a jury determined that Office Star had engaged in willful infringement and dilution in selling King Hong's chairs, awarding \$8.4 million in damages to Herman Miller. *See Blumenthal Distributing, Inc. v. Herman Miller, Inc.*, C.D. Cal. Case No. 5:14-cv-01926-JAK-SP, Dkt. 344.

25. Upon information and belief, Office Star willfully sold copies of the Caper chair despite explicit knowledge that they were covered by Herman Miller intellectual property rights, including the patents asserted herein. Office Star has demonstrated a pattern of objective recklessness with respect to infringing Herman Miller intellectual property by failing to consult with competent counsel regarding known Herman Miller rights.

26. Upon information and belief, King Hong's infringement was also willful because it was done with knowledge that Herman Miller had intellectual property rights (and in particular patent rights) in the Caper design, and King Hong either (1) was willfully blind to the fact of its infringement by not consulting an attorney to confirm that its acts constituted infringement, or (2) knew that its acts constituted infringement of Herman Miller's trade dress but proceeded anyway.

### Mirra

27. Following the unprecedented success of the its Aeron office chair in the 1990s, Herman Miller commissioned Studio 7.5 in Berlin, Germany to design a lower cost alternative with a distinctive design all its own. In 2002, Studio 7.5 completed the design for the Mirra chair, and in 2003 it was released on the market. (The name MIRRA is trademarked at Reg. No. 2,935,525, but for cosmetic reasons, the ® symbol will not be used in this pleading.) Below is a sample image of a Mirra chair.





28. In 2013, Herman Miller updated the materials and construction of the Mirra chair, making it more lightweight and giving it a more advanced tilt mechanism. The structural look of the chair remained the same, except that the shape of the backrest support arms changed slightly. Below is a sample image of a Mirra 2 chair.

29. Further images of Mirra chairs are included at **Exhibit B.1**, and also viewable at [www.hermanmiller.com](http://www.hermanmiller.com).



30. Herman Miller sought and obtained the design patents on the Mirra chair shown below, full versions of which are attached at **Exhibits B.2 and B.3**. Herman Miller is the lawful owner of all rights in these patents, and they have been full force and effect since the day they each issued.

|  |  |
|--|--|
| <p>D494,792</p> <p><i>Issued</i><br/>8/24/2004</p> |  |
| <p>D490,994</p> <p><i>Issued</i> 6/8/2004</p>      |  |

31. Herman Miller also has trade dress rights in the overall look of the Mirra design. Those trade dress rights are infringed not only by literal copies of the chair, but also chairs that mimic the overall look of the design. Because the Mirra chair is a composite of many sub-elements, it is possible to achieve the same overall look with a differently shaped chair by designing the majority of the components to look similar to the corresponding components of Mirra, or by designing certain prominent components to look very close to the corresponding Mirra components.

32. Excluding the support base and wheels (which are common elements of office chairs and could be interchangeable) the core elements of the Mirra trade dress are a seat pan coupled with a butterfly-shaped backrest whose surface is covered by a large number of elongated perforations. A design that mimics these elements in a manner similar to how they appear in Mirra will infringe the protected trade dress. While Herman Miller does not claim trade dress rights in all chairs with backrests that have elongated perforations, the Mirra trade dress rights are infringed by those chairs with backrests that mimic the Mirra backrest design in such a way that there would be a likelihood of confusion among consumers.

33. While not necessary to infringe the trade dress, the inclusion of the following secondary features will enhance the likelihood of confusion with Mirra (and hence make a given design more likely to infringe the protected trade dress): (a) two floating, flattened, ellipsoidal armrests (irrespective of how mounted), or (b) a large Y-shaped backrest support column. The reason these features are not necessary to infringe the trade dress is because a chair with a backrest sufficiently similar to the Mirra backrest – even if such a chair lacked armrests or the Y-shaped support column – would cause confusion among consumers, who would assume the chair

was a variant of the Mirra chairs sold by Herman Miller. This is because the Mirra backrest is highly distinctive.

34. For avoidance of any doubt regarding the scope of accused infringement in the present case, Herman Miller accuses the following chairs, as well as any other model numbers that have the same appearance.



88-33BB918P



88-Y22BP91A8



88-Y33BP91A8

35. On information and belief, Office Star maintains private listings of chairs that it sells to resellers. To the extent Office Star sells other model numbers of chairs that look like ones identified above, those would also be deemed infringing, as would any other chairs not yet known to Herman Miller that look even more similar to Mirra than the chairs identified above.

36. The Mirra trade dress styling is non-functional because it is not essential to the product's use, and does not affect its cost or quality. Furthermore, there is no utilitarian advantage to using the particular shapes claimed as trade dress. There are an infinite variety of alternative stylings and shapes that could have been chosen that would have achieved the same functional advantages. There is also no particularly simple or inexpensive manufacturing method that Herman Miller seeks to monopolize through these chairs. Of course, all chairs have some *de facto* functions, but the Mirra chair has no *de jure* functions that would render it legally

functional for purposes trade dress law. The overall styling and particular choice of combination of design elements reflects artistic flourish.

37. The Mirra trade dress has acquired secondary meaning and has become recognizable as a distinctive design that a significant number of potential consumers of office chairs would recognize as coming from a single supplier. Mirra has attained this status by virtue of its extreme popularity, high sales, and expansive marketing efforts by Herman Miller. Approximately 1.5 million Mirra units have been sold since the design was introduced in 2003, and Herman Miller has spent more than \$13 million marketing the chair. Mirra has won design awards, and is ubiquitous in the marketplace. The perforated butterfly backrest design has become highly recognizable and distinctive in the market.

38. On information and belief, Taiwanese manufacturer Jorng Well manufactures the accused infringing copies of Mirra. Office Star is a major U.S. distributor of the accused chairs, which it purchased from Jorng Well with the help of its purchasing agent, Nova, which also works jointly with Jorng Well to import the chairs. On information and belief, Nova facilitates the inspection of chairs by Office Star, helps negotiate their purchase, and makes arrangements jointly with Jorng Well for their importation into the United States. Office Star sells to a vast network of dealers, distributors and eCommerce retailers, who then resell the chairs into the marketplace.

39. Mirra is not the first Herman Miller chair that Office Star has copied. In 2010, Office Star began selling copies of Herman Miller's famous Eames Aluminum Group chairs. In 2016, a jury determined that Office Star had engaged in willful infringement and dilution, awarding \$8.4 million in damages to Herman Miller. *See Blumenthal Distributing, Inc. v. Herman Miller, Inc.*, C.D. Cal. Case No. 5:14-cv-01926-JAK-SP, Dkt. 344.

40. Upon information and belief, Office Star has engaged in willful infringement of Herman Miller intellectual property rights, and has engaged in a pattern of recklessly selling look-alike chairs without getting a competent opinion of counsel. In particular, Office Star was actually aware of the Mirra patents asserted herein, but proceeded with its conduct regardless.

41. Upon information and belief, Jorng Well has similarly engaged in willful infringement because it was aware of the Herman Miller Mirra chair and understood that Herman Miller had intellectual property rights in the design, but either (1) was willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knew that its conduct was infringement but proceeded anyway. Upon information and belief, Jorng Well specifically knew of the Herman Miller patents asserted herein, but proceeded with its conduct without regard for them.

42. Upon information and belief, Nova has similarly engaged in willful infringement because it was aware of the Herman Miller Mirra chair and understood that Herman Miller had intellectual property rights in the design, but either (1) was willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knew that its conduct was infringement but proceeded anyway. Upon information and belief, Nova specifically knew of the Herman Miller patents asserted herein, but proceeded with its conduct without regard for them.

## COUNT I

### **INFRINGEMENT OF U.S. PATENT NO. D449,938**

43. The preceding paragraphs are incorporated herein by reference.

44. Herman Miller has valid and protectable patent rights in U.S. Patent No. D449,938 (“938 Patent”).

45. Office Star's importation, marketing and sale of at least chair model Nos. 8610, 8620, 8640, 8455 and STC 865 infringe on the '938 Patent. Office Star's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

46. King Hong's importation of at least chair model Nos. 8610, 8620, 8640, 8455 and STC 865 infringes on the '938 Patent. Upon information and belief, King Hong's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

47. King Hong also induces infringement by Office Star, knowing that Herman Miller owns the '938 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

48. Herman Miller loses sales for each of the accused chairs that are sold. Because the Caper design is so unique and distinctive, the entire reason that a customer would purchase a knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller would have sold Caper chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

49. Alternatively, Herman Miller seeks to recover all of Office Star and King Hong's infringing profits under 35 U.S.C. § 289.

50. Alternatively, Herman Miller seeks to recover a reasonable royalty.



51. Herman Miller seeks trebling of damages for willful infringement, as well as recovery of its attorneys' fees.

## COUNT II

### **INFRINGEMENT OF U.S. PATENT NO. D455,571**

52. The preceding paragraphs are incorporated herein by reference.

53. Herman Miller has valid and protectable patent rights in U.S. Patent No. D455,571 ("571 Patent").

54. Office Star's importation, marketing and sale of at least chair model Nos. 82710, 82710, 82740, 86710, 86724, 86725, 86740 and STC866 infringe on the '571 Patent. Office Star's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

55. King Hong's importation of at least chair model Nos. 82710, 82710, 82740, 86710, 86724, 86725, 86740 and STC866 infringes on the '571 Patent. King Hong's infringement was willful because, upon information and belief, it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

56. King Hong also induces infringement by Office Star, knowing that Herman Miller owns the '571 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

57. Herman Miller loses sales for each of the accused chairs that are sold. Because the Caper design is so unique and distinctive, the entire reason that a customer would purchase a

knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller would have sold Caper chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

58. Alternatively, Herman Miller seeks to recover all of Office Star and King Hong's infringing profits under 35 U.S.C. § 289.

59. Alternatively, Herman Miller seeks to recover a reasonable royalty.

60. Herman Miller seeks trebling of damages for willful infringement, as well as recovery of its attorneys' fees.

### COUNT III

#### **CAPER TRADE DRESS INFRINGEMENT – 15 U.S.C. § 1125(a)**

61. The preceding paragraphs are incorporated herein by reference.

62. Herman Miller has valid and protectable trade dress rights in the appearance of its Caper chairs.

63. Office Star's importation, marketing and sale of chair model Nos. 8610, 8620, 8640, 8455, STC 865, 82710, 82710, 82740, 86710, 86724, 86725, 86740 and STC866 infringe on Herman Miller's trade dress rights because the accused chairs are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the chairs; or as to the origin, sponsorship, or approval of the chairs. Such confusion can happen in at least three ways: (1) a consumer might purchase an accused chair believing it to be from the same source as Caper, or to be affiliated or approved by that source, (2) a consumer might have an initial interest in an accused chair believing it to come from the same source as Caper, or to be affiliated or approved by that source, even if that mistake is dispelled at the point of sale, or (3) a consumer might see an accused chair after it has already been purchased and be interested in purchasing

one believing it to come from the same source as Caper, or to be affiliated or approved by that source.

64. Confusion is likely because the accused chairs are similar products sold at relatively similar price points within the same sales channels to the same ultimate target end users. As examples, both Herman Miller and Office Star invest heavily in marketing through the Neo Con trade show, and are heavily featured in the industry publication Monday Morning Quarterback. Upon information and belief, Office Star targets and sells to Herman Miller dealers, and engages in numerous competitive bids against Herman Miller each year.

65. Upon information and belief, Office Star has willfully created a likelihood of confusion by deliberately selling copies of the Caper chair with full awareness that Herman Miller had intellectual property rights in the design, while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

66. Upon information and belief, King Hong actively participates in and induces this market confusion by importing accused chairs into the United States and generally supporting Office Star's acts of infringement. Upon information and belief, King Hong's infringement was willful because it was done with knowledge that Herman Miller had intellectual property rights in the Caper design, and King Hong either (1) was willfully blind to the fact of its infringement by not consulting an attorney to confirm that its acts constituted infringement, or (2) knew that its acts constituted infringement of Herman Miller's trade dress but proceeded anyway.

67. Herman Miller loses sales for each of the accused chairs that are sold. Because the Caper design is so unique and distinctive, the entire reason that a customer would purchase a knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller

would have sold Caper chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

68. Alternatively, Herman Miller seeks to recover all of Office Star and King Hong's infringing profits as a proxy for Herman Miller's lost sales.

69. Alternatively or additionally, Herman Miller seeks to recover a reasonable royalty.

70. Alternatively or additionally, Herman Miller seeks to recover the costs of remedial advertising.

71. Alternatively or additionally, Herman Miller seeks to recover a sum of money sufficient to compensate for harm to its goodwill and reputation, and other actual injuries.

72. Herman Miller seeks enhanced damages and attorneys' fees.

73. Herman Miller seeks injunctive relief to forestall the irreparable injury that it is suffering.

#### **COUNT IV**

##### **MICHIGAN COMP. LAWS § 445.903 – CAPER DESIGN**

74. Herman Miller hereby incorporates the allegation of Claim III for infringement under the Lanham Act.

75. The same facts that state a cause of action for infringement of the Caper trade dress under the Lanham Act also state a cause of action under the Michigan Consumer Protection Act, Michigan Comp. Laws §445.903.

76. Office Star's creation of willful likelihood of confusion constitutes unfair business practices under the statute.

77. King Hong's creation of willful likelihood of confusion constitutes unfair business practices under the statute.

78. Herman Miller will continue to suffer irreparable injury absent an injunction.

79. Herman Miller seeks damages in line with those sought under the Counts above.

#### COUNT V

##### **COMMON LAW UNFAIR COMPETITION – CAPER DESIGN**

80. Herman Miller hereby incorporates the allegation of Claim III for infringement under the Lanham Act.

81. The same facts that state a cause of action for infringement of the Caper trade dress under the Lanham Act also state a cause of action for common law unfair competition.

82. Office Star's creation of willful likelihood of confusion constitutes unfair competition.

83. King Hong's creation of willful likelihood of confusion constitutes unfair competition.

84. Herman Miller will continue to suffer irreparable injury absent an injunction.

85. Herman Miller also seeks damages to compensate for its lost sales, or alternatively or additionally, a reasonable royalty, or damages to compensate for harm to its reputation.

#### COUNT VI

##### **INFRINGEMENT OF U.S. PATENT NO. D494,792**

86. The preceding paragraphs are incorporated herein by reference.

87. Herman Miller has valid and protectable patent rights in U.S. Patent No. D494,792 (“’792 Patent”).

88. Office Star's importation, marketing and sale of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringe on the ’792 Patent. Upon information and belief, Office Star's infringement was willful because it was done with knowledge of

Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway. .

89. Jorng Well's importation of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringes on the '792 Patent. Upon information and belief, Jorng Well's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

90. Jorng Well also induces infringement by Office Star, knowing that Herman Miller owns the '792 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway. .

91. Upon information and belief, Nova acts as Office Star's purchasing agent who arranges and facilitates sales between Jorng Well and Office Star, and also assists Jorng Well in arranging the importation of the accused chairs to the United States such that both Jorng Well and Nova act in concert to cause such importation to occur.

92. Nova's importation (jointly with Jorng Well) of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringes on the '792 Patent. Upon information and belief, Nova's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

93. Upon information and belief, Nova also induces infringement by Office Star, knowing that Herman Miller owns the '792 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

94. Herman Miller loses sales for each of the accused chairs that are sold. Because the Mirra design is so unique and distinctive, the entire reason that a customer would purchase a knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller would have sold Mirra chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

95. Alternatively, Herman Miller seeks to recover all of Office Star, Jorng Well and Nova's infringing profits under 35 U.S.C. § 289.

96. Alternatively, Herman Miller seeks to recover a reasonable royalty.

97. Herman Miller seeks trebling of damages for willful infringement, as well as recovery of its attorneys' fees.

## COUNT VII

### **INFRINGEMENT OF U.S. PATENT NO. D490,994**

98. The preceding paragraphs are incorporated herein by reference.

99. Herman Miller has valid and protectable patent rights in U.S. Patent No. D490,994 ("994 Patent").

100. Office Star's importation, marketing and sale of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringe on the '994 Patent. Upon information and belief, Office Star's infringement was willful because it was done with knowledge of Herman Miller's patent while either (1) being willfully blind to the fact that its actions

constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

101. Jorng Well's importation of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringes on the '994 Patent. Upon information and belief, Jorng Well's infringement was willful because it was done with knowledge of Herman Miller's patent, and Jorng Well either (1) was willfully blind to the fact of its infringement by not consulting an attorney to confirm that its acts constituted infringement, or (2) knew that its acts constituted infringement but proceeded anyway.

102. Jorng Well also induces infringement by Office Star, knowing that Herman Miller owns the '994 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway. .

103. Upon information and belief, Nova acts as Office Star's purchasing agent who arranges and facilitates sales between Jorng Well and Office Star, and also assists Jorng Well in arranging the importation of the accused chairs to the United States such that both Jorng Well and Nova act in concert jointly to cause such importation to occur.

104. Nova's importation (jointly with Jorng Well) of at least chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringes on the '994 Patent. Upon information and belief, Nova's infringement was willful because it was done with knowledge of Herman Miller's patent, and Nova either (1) was willfully blind to the fact of its infringement by not consulting an attorney to confirm that its acts constituted infringement, or (2) knew that its acts constituted infringement but proceeded anyway.



105. Nova also induces infringement by Office Star, knowing that Herman Miller owns the '994 Patent while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

106. Herman Miller loses sales for each of the accused chairs that are sold. Because the Mirra design is so unique and distinctive, the entire reason that a customer would purchase a knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller would have sold Mirra chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

107. Alternatively, Herman Miller seeks to recover all of Office Star, Jorng Well and Nova's infringing profits under 35 U.S.C. § 289.

108. Alternatively, Herman Miller seeks to recover a reasonable royalty.

109. Herman Miller seeks trebling of damages for willful infringement, as well as recovery of its attorneys' fees.

### **COUNT VIII**

#### **MIRRA TRADE DRESS INFRINGEMENT - 15 U.S.C. § 1125(a)**

110. The preceding paragraphs are incorporated herein by reference.

111. Herman Miller has valid and protectable trade dress rights in the appearance of its Mirra chairs.

112. Office Star's importation, marketing and sale of chair model Nos. 88-33BB918P, 88-Y22BP91A8, and 88-Y33BP91A8 infringe on Herman Miller's trade dress rights because the accused chairs are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the chairs; or as to the origin, sponsorship, or approval of the chairs. Such confusion can happen in at least three ways: (1) a consumer might purchase

an accused chair believing it to be from the same source as Mirra, or to be affiliated or approved by that source, (2) a consumer might have an initial interest in an accused chair believing it to come from the same source as Mirra, or to be affiliated or approved by that source, even if that mistake is dispelled at the point of sale, or (3) a consumer might see an accused chair after it has already been purchased and be interested in purchasing one believing it to come from the same source as Mirra, or to be affiliated or approved by that source.

113. Confusion is likely because the accused chairs are similar products sold at relatively similar price points within the same sales channels to the same ultimate target end users. As examples, both Herman Miller and Office Star invest heavily in marketing through the Neo Con trade show, and are heavily featured in the industry publication Monday Morning Quarterback. Upon information and belief, Office Star targets and sells to Herman Miller dealers, and engages in numerous competitive bids against Herman Miller each year. Upon information and belief, there have also been instances of actual confusion, wherein potential customers have approached Office Star asking Office Star to sell or offer to sell them the Mirra chair.

114. Upon information and belief, Office Star has willfully created a likelihood of confusion by deliberately selling copies of the Mirra chair with full awareness that Herman Miller had intellectual property rights in the design, while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

115. Upon information and belief, Jorng Well actively participates in and induces this market confusion by importing accused chairs into the United States and generally supporting Office Star's acts of infringement. Upon information and belief, Jorng Well's infringement was

willful because it was done with knowledge that Herman Miller had intellectual property rights in the Mirra design while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

116. Upon information and belief, Nova acts as Office Star's purchasing agent who arranges and facilitates sales between Jorng Well and Office Star, and also acts jointly with Jorng Well to import the accused chairs to the United States such that both Jorng Well and Nova act in concert to cause such importation to occur.

117. Upon information and belief, Nova actively participates in and induces this market confusion by importing (jointly with Jorng Well) accused chairs into the United States and generally supporting Office Star's acts of infringement with a steady stream of infringing products. Nova's infringement is similarly willful because it was done with knowledge that Herman Miller has intellectual property rights in the design while either (1) being willfully blind to the fact that its actions constituted infringement by not consulting an attorney, or (2) knowing that its conduct was infringement but proceeded anyway.

118. Herman Miller loses sales for each of the accused chairs that are sold. Because the Mirra design is so unique and distinctive, the entire reason that a customer would purchase a knock-off is to get that iconic look. But for the availability of the accused chairs, Herman Miller would have sold Mirra chairs. Herman Miller therefore seeks recovery of all of its lost profits associated with the number of accused chairs sold.

119. Alternatively, Herman Miller seeks to recover all of Office Star, Jorng Well and Nova's infringing profits as a proxy for Herman Miller's lost sales.

120. Alternatively or additionally, Herman Miller seeks to recover a reasonable royalty.

121. Alternatively or additionally, Herman Miller seeks to recover the costs of remedial advertising.

122. Alternatively or additionally, Herman Miller seeks to recover a sum of money sufficient to compensate for harm to its goodwill and reputation, and other actual injuries.

123. Herman Miller seeks enhanced damages and attorneys' fees.

124. Herman Miller seeks injunctive relief to forestall the irreparable injury that it is suffering.

### COUNT IX

#### **MICHIGAN COMP. LAWS § 445.903 - MIRRA DESIGN**

125. Herman Miller hereby incorporates the allegation of Claim VIII for infringement under the Lanham Act.

126. The same facts that state a cause of action for infringement of the Mirra trade dress under the Lanham Act also state a cause of action under the Michigan Consumer Protection Act, Michigan Comp. Laws §445.903.

127. Office Star's creation of willful likelihood of confusion constitutes unfair business practices under the statute.

128. Jorng Well's creation of willful likelihood of confusion constitutes unfair business practices under the statute.

129. Nova's creation of willful likelihood of confusion constitutes unfair business practices under the statute.

130. Herman Miller will continue to suffer irreparable injury absent an injunction.

131. Herman Miller seeks damages in line with those sought under the Counts above.

**COUNT X**

**COMMON LAW UNFAIR COMPETITION - MIRRA DESIGN**

132. Herman Miller hereby incorporates the allegation of Claim VIII for infringement under the Lanham Act.

133. The same facts that state a cause of action for infringement of the Mirra trade dress under the Lanham Act also state a cause of action for common law unfair competition.

134. Office Star's creation of willful likelihood of confusion constitutes unfair competition.

135. Jorng Well's creation of willful likelihood of confusion constitutes unfair competition.

136. Nova's creation of willful likelihood of confusion constitutes unfair competition.

137. Herman Miller will continue to suffer irreparable injury absent an injunction.

138. Herman Miller also seeks damages to compensate for its lost sales, or alternatively or additionally, a reasonable royalty, or damages to compensate for harm to its reputation.

**PRAYER FOR RELIEF**

WHEREFORE, Herman Miller respectfully requests that the Court enter judgment as follows:

a) Permanently enjoining Defendants, their agents, representatives, employees, assigns, and suppliers, and all persons acting in concert or privity with them, from infringing the patents and trade dress for the Caper and Mirra designs, or using any other designs likely to cause confusion, to cause mistake, or to deceive with respect to Caper and Mirra, or otherwise competing unfairly with Herman Miller;

b) Finding that Defendants' conduct was willful;

c) Awarding Herman Miller all damages to and costs incurred by it because of Defendants' infringing activities and other conduct complained of herein, together with all of Defendants' infringing profits;

d) Awarding Herman Miller treble damages;

e) Declaring that this an exceptional case and awarding Herman Miller its reasonable attorneys' fees;

f) Awarding Herman Miller pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and

g) Granting Herman Miller such other and further relief as the Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Under Rule 38 of the Federal Rules of Civil Procedure, Herman Miller requests a trial by jury of any issues so triable by right.

Dated: May 26, 2017

Respectfully submitted,

By: /s/ Irina N. Kashcheyeva

Irina N. Kashcheyeva (P72575)  
FOLEY & LARDNER LLP  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226-3489  
Telephone: 313.234.7170  
Email: ikashcheyeva@foley.com

Jonathan E. Moskin, Esq.  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, NY 10016  
Telephone: 212.682.7474  
Email: jmoskin@foley.com

Richard J. McKenna (P41952)  
FOLEY & LARDNER LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
Telephone: 414.297.5723  
Email: rmckenna@foley.com

Jean-Paul Ciardullo, Esq.  
FOLEY & LARDNER LLP  
555 S. Flower St., Suite 3500  
Los Angeles, CA 90071  
Telephone: 213.972.4500  
Email: jciardullo@foley.com

*Attorneys for Plaintiff*  
*HERMAN MILLER, INC.*