

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AXTS, INC., an Oregon corporation,

Plaintiff,

vs.

F-1 FIREARMS, LLC, a Texas limited
liability company,

Defendant.

C.A. No. 19-2379

JURY TRIAL DEMAND

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, AXTS, Inc. (“AXTS”), brings this Complaint for patent and trade dress infringement, unfair competition, common law trademark infringement and breach of contract against Defendant F-1 Firearms, LLC (“F-1”):

NATURE OF THE ACTION

1. This is an action arising in part under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* This lawsuit pertains to Defendant’s infringement of AXTS’s U.S. Patent No. D694,354 (the “354 Patent”), a copy of which is attached as Exhibit 1; U.S. Patent No. D705,384 (the “384 Patent”), a copy of which is attached as Exhibit 2; and U.S. Patent No. D738,452 (the “452 Patent”), a copy of which is attached as Exhibit 3 (collectively, the “AXTS Patents”).

2. This action also arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* AXTS charging handles have a distinctive look and shape, having inclined and tapered arms extending in both directions from a center portion having a prominent arch. The trade dress at issue, which will be referred to as “The Inclined-T Trade Dress,” includes a charging handle having a center piece with a flat top, downwardly extending walls with semi-circular cut-outs and laterally-extending,

rounded members having a centrally-disposed symmetric arch extending there between, and inclined and tapered arms with inclined ends and rounded lower portions extending inwardly toward each other. An example of the AXTS charging handle with The Inclined-T Trade Dress is depicted in Exhibit 4. Exhibit 5 depicts an F-1 charging handle that F-1 had manufactured by another supplier that incorporates The Inclined-T Trade Dress. Another F-1 charging handle supplied by the same or yet another supplier that also incorporates The Inclined-T Trade Dress is depicted in Exhibit 6. The F-1 charging handles depicted in Exhibits 5 and 6 will collectively be referred to as “The Infringing Charging Handles.”

3. The industry has come to identify The Inclined T-Trade Dress with AXTS as a result of AXTS’s marketing, advertising, promoting, offering for sale and selling charging handles with The Inclined-T Trade Dress in the United States for over five years, long before F-1 began to infringe The Inclined T-Trade Dress by selling The Infringing Charging Handles. The Inclined-T Trade Dress has come to be associated exclusively with the AXTS brand and its products, and distinguishes its charging handles from those manufactured and sold by others. Through dedicated and consistent presentation of The Inclined-T Trade Dress, AXTS has developed a reputation and acquired substantial goodwill and secondary meaning in The Inclined-T Trade Dress.

4. AXTS has for many years been using the RAPTOR trademark to identify its charging handles. As a result of this prominent and continuous use of the RAPTOR trademark, AXTS has developed meaningful common law rights in the RAPTOR trademark throughout the United States with the purchasing and prospective purchasing public, and at least those segments of the public have come to associate the RAPTOR trademark with AXTS. While F-1 was purchasing charging handles from AXTS, F-1 was using the RAPTOR trademark in the marketing of its firearms. However, even after F-1 was no longer purchasing charging handles from AXTS

and was substituting knock-off charging handles, it continued to represent that its firearms included RAPTOR charging handles although, on information and belief, in many instances it was substituting charging handles manufactured by others. Exhibit 7 is a screen shot taken on May 15, 2019, showing F-1's use on its website of the RAPTOR trademark. This, again, was long after F-1 had terminated its purchases of charging handles from AXTS.

5. This lawsuit also includes a breach of contract count based on the fact that in between 2017 and 2018, F-1 purchased from AXTS and re-sold charging handles including The Inclined-T Trade Dress. Specifically, as shown in Invoice No. S3248, F-1 ordered and was shipped \$12,190.00 worth of charging handles in February of 2017. As shown in Invoice No. S5746, F-1 ordered and was shipped another \$5,500.00 worth of charging handles in April of 2018. These two invoices are collectively included in Exhibit 8. The first invoice for \$12,190.00 was apparently paid but the second, for \$5,500.00, remains due.

6. An example of the charging handles supplied by AXTS to F-1 is shown in Exhibit 9. Sales by F-1 of these AXTS charging handles bearing The Inclined-T Trade Dress from 2017 through 2018 inured to the benefit of AXTS, thus further building the recognition of The Inclined-T Trade Dress. The purchasing public recognized that such charging handles originated with AXTS because of The Inclined-T Trade Dress and the use of the RADIANT® trademark of AXTS.

7. As a result of the foregoing, AXTS seeks, among other relief, an injunction preventing F-1 from further infringing the AXTS Patents and The Inclined-T Trade Dress, together with damages, including AXTS lost profits and/or a disgorgement of F-1's profits from its infringing activity, as well as attorney fees and costs. AXTS also asks to be paid the \$5,500.00 that is still owing from the agreement to purchase and pay for the AXTS charging handles incorporating The Inclined-T Trade Dress and depicted in Exhibit 9.

THE PARTIES

8. Plaintiff AXTS, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Redmond, Oregon. AXTS owns The AXTS Patents and The Inclined-T Trade Dress.

9. On information and belief, Defendant F-1 Firearms, LLC is a Texas limited liability company having a principal place of business in Spring, Texas.

JURISDICTION AND VENUE

10. AXTS's cause of action for patent infringement arises under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* This Court has original jurisdiction over this subject matter pursuant to 28 U.S.C. §§ 1331, 1332(a), and 1338(a). AXTS's cause of action for trade dress infringement and unfair competition arises under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* This Court has original jurisdiction over this subject matter pursuant to 28 U.S.C. §§ 1331, 1332(a) and (c), and 1338(a) and (b). This Court has supplemental jurisdiction as to the common law trademark infringement claim based on F-1's infringement of the RAPTOR trademark and as to the breach of contract claim based on F-1 purchasing charging handles bearing The Inclined-T Trade Dress. By selling firearms incorporating The Infringing Charging Handles in association with the use of the RAPTOR trademark, the common law trademark count is so related to the Lanham Act claim that it forms part of the same case or controversy. By purchasing from AXTS and re-selling charging handles incorporating The Inclined-T Trade Dress rights, those trade dress rights were further strengthened. As such, the breach of contract cause of action is so related to the Lanham Act claim that it forms part of the same case or controversy.

11. This Court has personal jurisdiction over F-1 because F-1 resides in the State of Texas, regularly conducts business in the State of Texas, and continues to commit acts of patent

infringement in the State of Texas including by making, using, offering to sell, and/or selling infringing products within the State of Texas and this district.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(a), (b) and (c) because F-1 is registered in Texas and has a principal place of business in this district. Moreover, a substantial part of the events giving rise to the claims herein occurred in this district because, on information and belief, F-1 was selling The Infringing Charging Handles from this district. Venue is proper as to the common law trademark infringement and breach of contract causes of action because a substantial part of the events giving rise to those claims occurred in this district; that is, on information and belief, F-1 purchased charging handles incorporating The Inclined-T Trade Dress and resold such charging handles using the RAPTOR trademark from its place of business in this district.

FACTUAL BACKGROUND

AXTS and its Proprietary Design

13. AXTS is a leading innovator in the design of so-called charging handles that are used in semi-automatic rifles. While semi-automatic firearms re-cock or re-charge themselves automatically after firing, an operator must still manually re-charge the semi-automatic firearm at times. A charging handle is the part of the semi-automatic rifle that the operator uses to manually charge, when necessary. AXTS invented charging handles that not only work better than the charging handles originally sold with semi-automatic firearms (such as an after-market “ambidextrous” charging handle that the operator can manually charge using either hand), but are also cosmetically attractive to prospective purchasers.

A. The AXTS Patents

14. AXTS has patented its innovations and designs. Three of its design patents are the AXTS Patents. Each of the AXTS Patents was fully examined by the United States Patent and

Trademark Office (“PTO”) and was duly and legally issued after such examination. The AXTS Patents have been properly maintained by AXTS and have been enforced against infringers when appropriate. AXTS owns the right, title and interest in each of the AXTS Patents as reflected in the records of the PTO.

B. The Inclined-T Trade Dress

15. An AXTS charging handle having The Inclined-T Trade Dress is shown in Exhibit 4 and below.



16. The industry has come to identify The Inclined-T Trade Dress with AXTS as a result of AXTS marketing, advertising, promoting, offering for sale and selling its Inclined T-Trade Dress in the United States. F-1’s purchase and resale of charging handles bearing AXTS’s RADIANT and RAPTOR trademarks and The Inclined-T Trade Dress further strengthened the AXTS protection in its trade dress. The Inclined-T Trade Dress has come to be associated exclusively with the AXTS brand and its products and distinguishes its charging handles from those manufactured and sold by others. Through dedicated and consistent presentation of The Inclined-T Trade Dress, AXTS has developed a reputation and acquired substantial goodwill in

The Inclined-T Trade Dress. When AXTS has become aware of infringements of The Inclined-T Trade Dress, it has written cease and desist letters and sued to enforce its rights.

17. As a result of the AXTS efforts, The Inclined-T Trade Dress has acquired secondary meaning and distinctiveness among shooting enthusiasts and members of the industry, and it continues to have secondary meaning and distinctiveness. AXTS charging handles bearing The Inclined-T Trade Dress are now widely known and recognized by their unique, ornamental and distinctive appearance, which identifies to shooting enthusiasts and industry members that their source of origin is AXTS.

18. Based on the foregoing, The Inclined-T Trade Dress has become and now is a designation of origin of AXTS.

C. AXTS's RAPTOR Trademark

19. The industry has come to identify the RAPTOR trademark with AXTS as a result of AXTS marketing, advertising, promoting, offering for sale and selling its charging handles using the RAPTOR trademark in the United States. F-1's purchase and resale of charging handles bearing the RAPTOR trademark further strengthened the AXTS protection in the RAPTOR trademark. The RAPTOR trademark has come to be associated exclusively with the AXTS brand and its products and distinguishes its charging handles from those manufactured and sold by others. Through dedicated and consistent presentation of the RAPTOR trademark, AXTS has developed a reputation and acquired substantial goodwill in the RAPTOR trademark.

20. As a result of the AXTS efforts, the RAPTOR trademark has acquired secondary meaning and distinctiveness among shooting enthusiasts and members of the industry, and it continues to have secondary meaning and distinctiveness. AXTS charging handles bearing the RAPTOR trademark are now widely known and recognized, and the RAPTOR trademark

identifies to shooting enthusiasts and industry members that their source of origin is AXTS. Based on the foregoing, the RAPTOR trademark has become and now is a designation of origin of AXTS.

D. F-1's Infringing Activities

21. F-1 stopped purchasing charging handles with The Inclined-T Trade Dress from AXTS in early 2018 and sometime after that, on information and belief, located a supplier that would manufacture and supply knock offs of the charging handles with The Inclined-T Trade Dress. F-1 began selling these Infringing Charging Handles, on information and belief, in 2018 or early 2019. During this period, on information and belief, F-1 continued to use the RAPTOR trademark while it was selling its firearms with look-alike charging handles supplied by other charging handle suppliers.

COUNT I-

INFRINGEMENT OF UNITED STATES PATENT D705,384

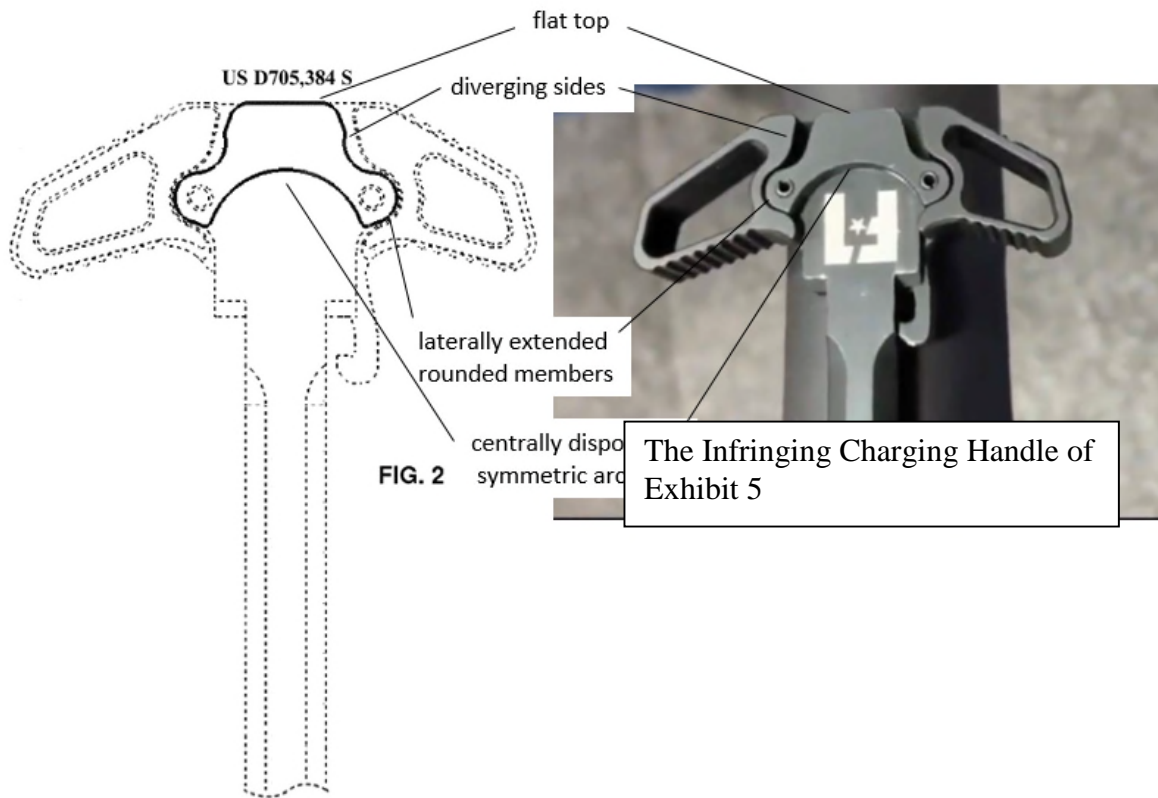
22. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-21, as if fully set forth herein.

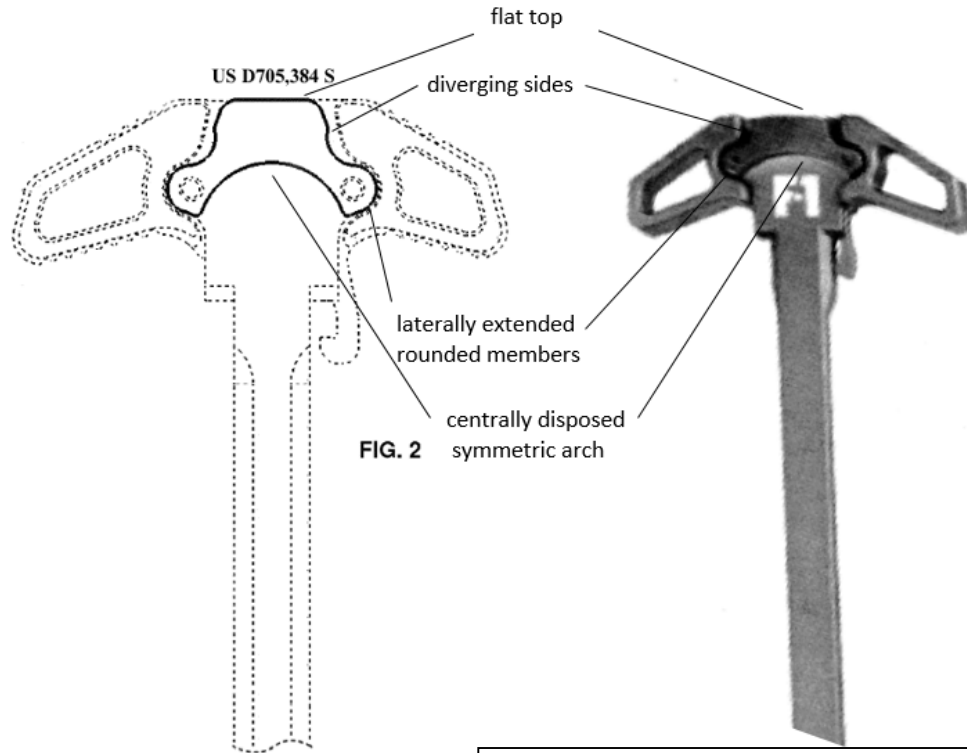
23. F-1 has infringed the '384 Patent within this judicial district by manufacturing or importing into, using, inducing others to use, selling and/or offering for sale The Infringing Charging Handles that embody the design claimed in the '384 Patent, in violation of 35 U.S.C. §§ 271 and 289.

24. F-1 is not licensed or otherwise authorized by AXTS to make, use, import, sell, or offer to sell any charging handle whose design is covered by the '384 Patent, and its conduct is, in every instance, without AXTS's consent.

25. The design of F-1's infringing charging handle so closely resembles the design disclosed in the '384 Patent that an ordinary observer will perceive the overall appearance of the

designs to be substantially the same. Comparisons between Figure 2 of the '384 Patent and The Infringing Charging Handles of Exhibits 5 and 6 show that both include a center piece having a flat top with sides that diverge to laterally-extending, rounded members with a centrally-disposed symmetric arch of a virtually identical radius extending between.





The Infringing Charging Handle of Exhibit 6

26. F-1 has refused to commit in writing that it will no longer infringe the '384 Patent in the future so, on information and belief, F-1 will continue to manufacture, import, sell, use and induce others to use The Infringing Charging Handles unless enjoined by this Court.

27. On information and belief, F-1's infringement of the '384 Patent has been willful. F-1 has for at least the past two years been aware of the '384 Patent because it was purchasing from AXTS and selling charging handles bearing the '384 patent number. The charging handle F-1 purchased from AXTS is shown in Exhibit 9 and below. If F-1 had doubts about the validity or infringement of the '384 Patent, it should not have sold The Inclined-T Charging Handles it purchased from AXTS prominently bearing the '384 Patent number.



D705,384 and D694,354

28. As a result of F-1's infringement of the '384 Patent, AXTS is entitled to recover from F-1 the profits AXTS would have made but for the infringement of the '384 Patent. In any event AXTS is entitled to damages adequate to compensate for the infringement, but in no event less than a reasonable royalty as provided for in 35 U.S.C. § 284. As an alternative remedy for F-1's infringement of the '384 patent, AXTS is entitled to recover F-1's total profits from the sale of The Infringing Charging Handles under 35 U.S.C. § 289. These total profits are not limited to profits on the F-1 charging handles themselves since, on information and belief, F-1 used the incorporation of The Infringing Charging Handles to sell firearms that included The Infringing Charging Handles.

29. Because of F-1's willful infringement of the '384 Patent, any damages assessed against F-1 should be increased up to three times the amount found. As a result of the willful infringement, this is an exceptional case, and AXTS should, pursuant to 35 U.S.C. § 285, be awarded its reasonable attorney fees in having to pursue this infringement.

30. Due to F-1's infringement of the '384 Patent, AXTS has suffered, is suffering, and will continue to suffer irreparable injury and damage for which AXTS has no adequate remedy at law. AXTS is therefore entitled to a permanent injunction against F-1's further infringing conduct.

COUNT II –

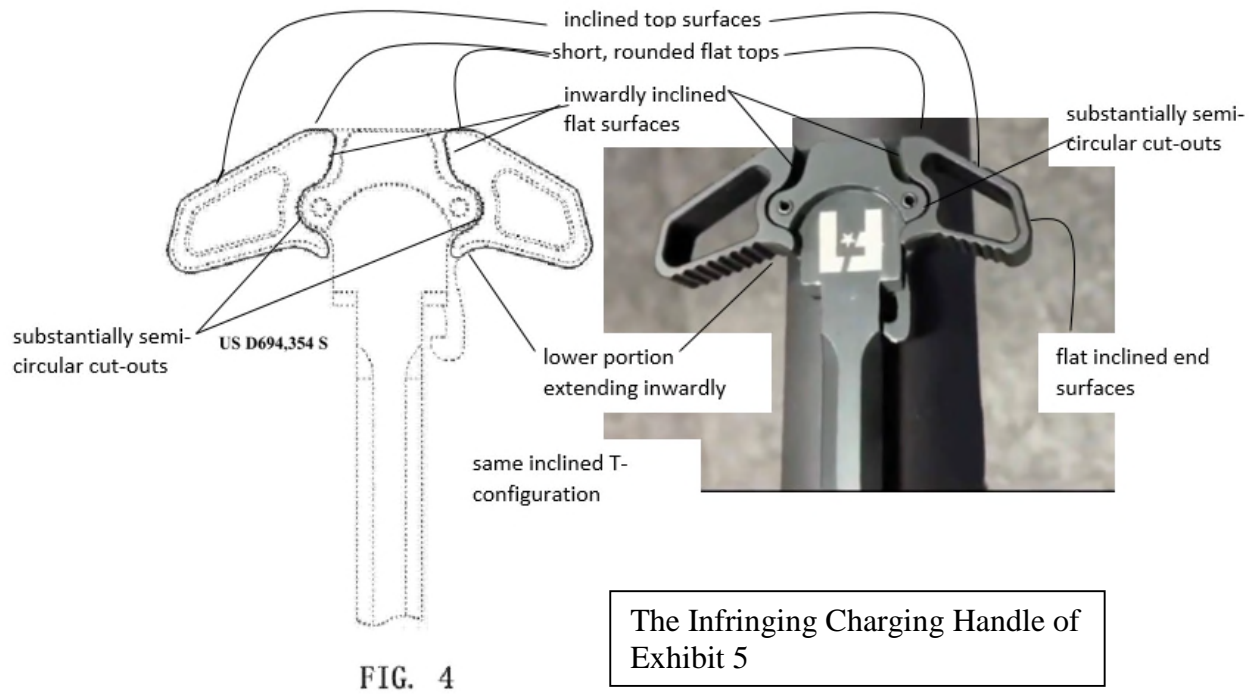
INFRINGEMENT OF UNITED STATES PATENT D694,354

31. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-30, as if fully set forth herein.

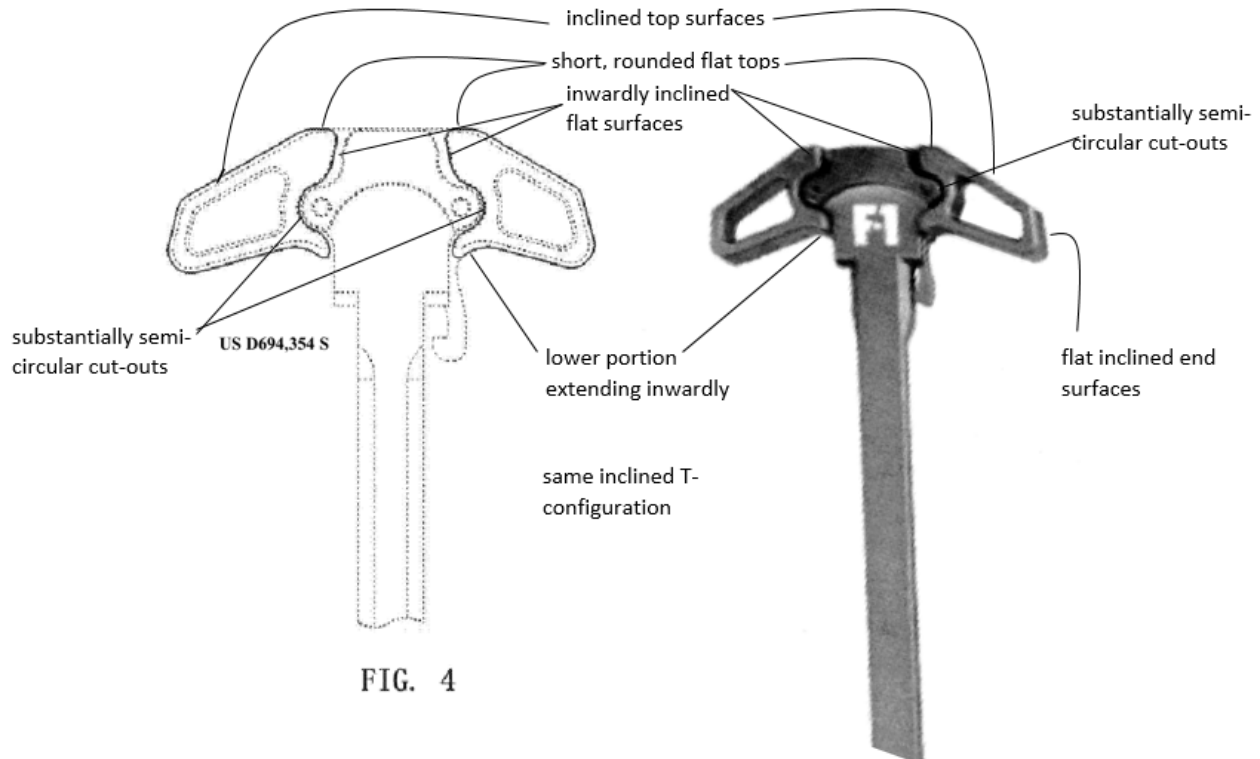
32. F-1 has infringed the '354 Patent within this judicial district by manufacturing or importing into, using, inducing others to use, selling and/or offering for sale The Infringing Charging Handles that embody the patented design claimed in the '354 Patent, in violation of 35 U.S.C. §§ 271 and 289.

33. F-1 is not licensed or otherwise authorized by AXTS to make, use, import, sell, or offer to sell any charging handle whose design is covered by the '354 Patent, and its conduct is, in every instance, without AXTS's consent.

34. The design of The Infringing Charging Handles so closely resembles the design disclosed in the '354 Patent that an ordinary observer will perceive the overall appearance of the designs to be substantially the same. For example, a comparison between Figure 4 of the '354 Patent and The Infringing Charging Handle of Exhibit 5 shows that both include inclined and tapered arms having inclined top surfaces that terminate in inclined end surfaces, inclined bottom surfaces that terminate in lower, rounded portions that extend inwardly, semi-circular cut-outs that extend upwardly to inclined flat surfaces, with short, rounded but flat tops that extend outwardly to the inclined top surfaces.



35. Comparing the design of Fig. 4 of the '354 Patent to The Infringing Charging Handle of Exhibit 6, it can be seen that both include inclined and tapered arms having inclined top surfaces that terminate in inclined end surfaces, inclined bottom surfaces that terminate in lower, rounded portions that extend inwardly, and semi-circular cut-outs that extend upwardly to inclined flat surfaces, with short, rounded but flat tops that extend outwardly to the inclined top surfaces.



The Infringing Charging Handle of Exhibit 6

36. F-1 has refused to commit in writing that it will no longer infringe the '354 Patent in the future so, on information and belief, F-1 will continue to manufacture, import, sell, use and induce others to use The Infringing Charging Handles unless enjoined by this Court.

37. On information and belief, F-1's infringement of the '354 Patent has been willful. F-1 was aware of the existence of the '354 Patent and the fact that it read on AXTS charging handles because AXTS has been marking its covered charging handles with the '354 Patent number. As shown in Exhibit 9, charging handles that F-1 purchased from AXTS and resold were prominently marked with the '354 Patent number. If F-1 had doubts about the validity or infringement of the '354 Patent, it should not have offered to sell and/or sold the charging handles it purchased from AXTS prominently bearing the '354 Patent number.

38. As a result of F-1's infringement of the '354 Patent, AXTS is entitled to recover from F-1 the profits AXTS would have made but for the infringement. In any event, AXTS is entitled to damages adequate to compensate for the infringement, but in no event less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284. As an alternative remedy for F-1's infringement of the '354 Patent, AXTS is entitled to recover F-1's total profits from the sale of The Infringing Charging Handles under 35 U.S.C. § 289. These total profits are not limited to F-1's profits on The Infringing Charging Handles themselves since, on information and belief, F-1 used the incorporation of The Infringing Charging Handles to sell firearms that included The Infringing Charging Handles.

39. Because of F-1's willful infringement of the '354 Patent, any damages assessed against F-1 should be increased up to three times the amount found. As a result of the willful infringement, this is an exceptional case, and AXTS should be awarded its reasonable attorney fees in having to pursue this infringement.

40. Due to F-1's infringement of the '354 Patent, AXTS has suffered, is suffering, and will continue to suffer irreparable injury and damage for which AXTS has no adequate remedy at law. AXTS is therefore entitled to a permanent injunction against F-1's further infringing conduct.

COUNT III –

INFRINGEMENT OF UNITED STATES PATENT D738,452

41. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-40, as if fully set forth herein.

42. F-1 has infringed the '452 Patent within this judicial district by manufacturing or importing into, using, inducing others to use, selling and/or offering for sale The Infringing

Charging Handles that embody the patented design shown in the '452 Patent, in violation of 35 U.S.C. §§ 271 and 289.

43. F-1 is not licensed or otherwise authorized by AXTS to make, use, import, sell, or offer to sell any charging handle whose design is covered by the '452 Patent, and its conduct is, in every instance, without AXTS's consent.

44. The design of The Infringing Charging Handles so closely resembles the design disclosed in the '452 Patent that an ordinary observer will perceive the overall appearance of the designs to be substantially the same. For example, a comparison between Figure 2 of the '452 Patent and The Infringing Charging Handle of Exhibit 5 shows that both include the same inclined and tapered arms, with a flat top and downwardly and outwardly extending portions, inclined end surfaces with rounded corners, and inwardly and upwardly inclined lower portions, and centrally disposed, symmetric arched portions extending between the two arms.

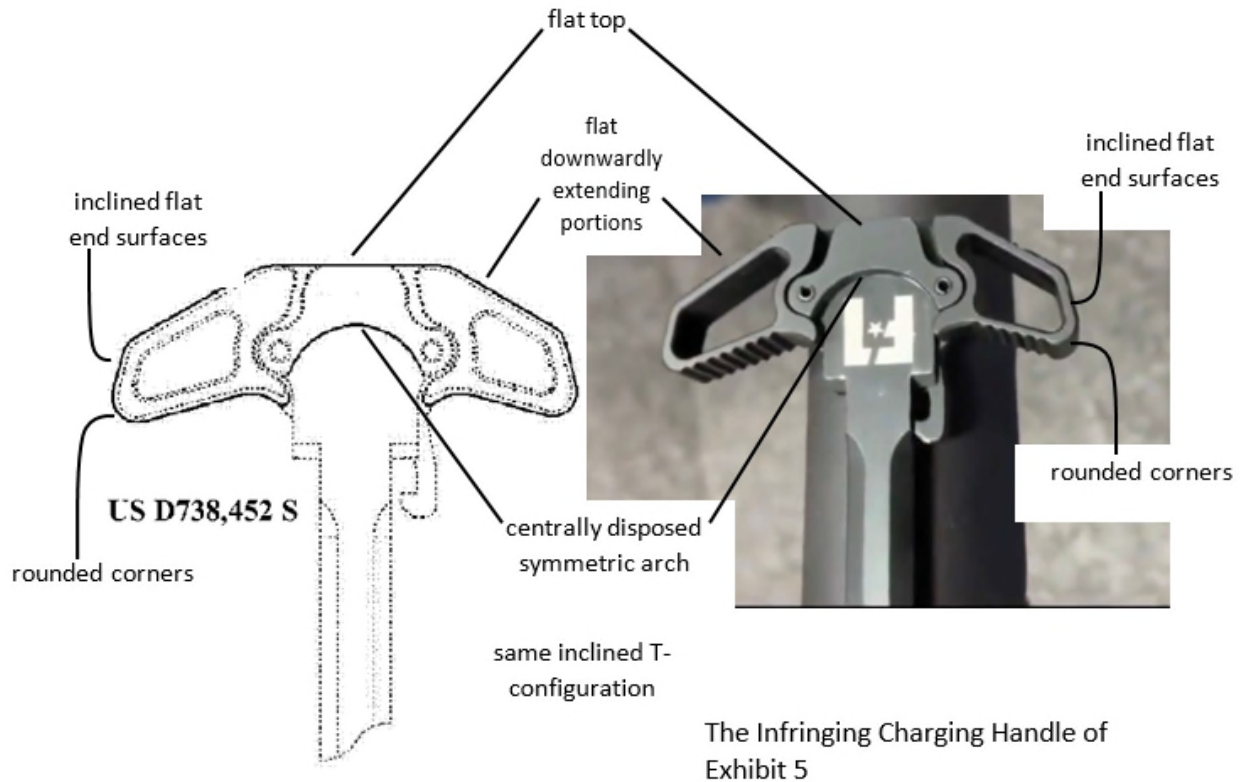
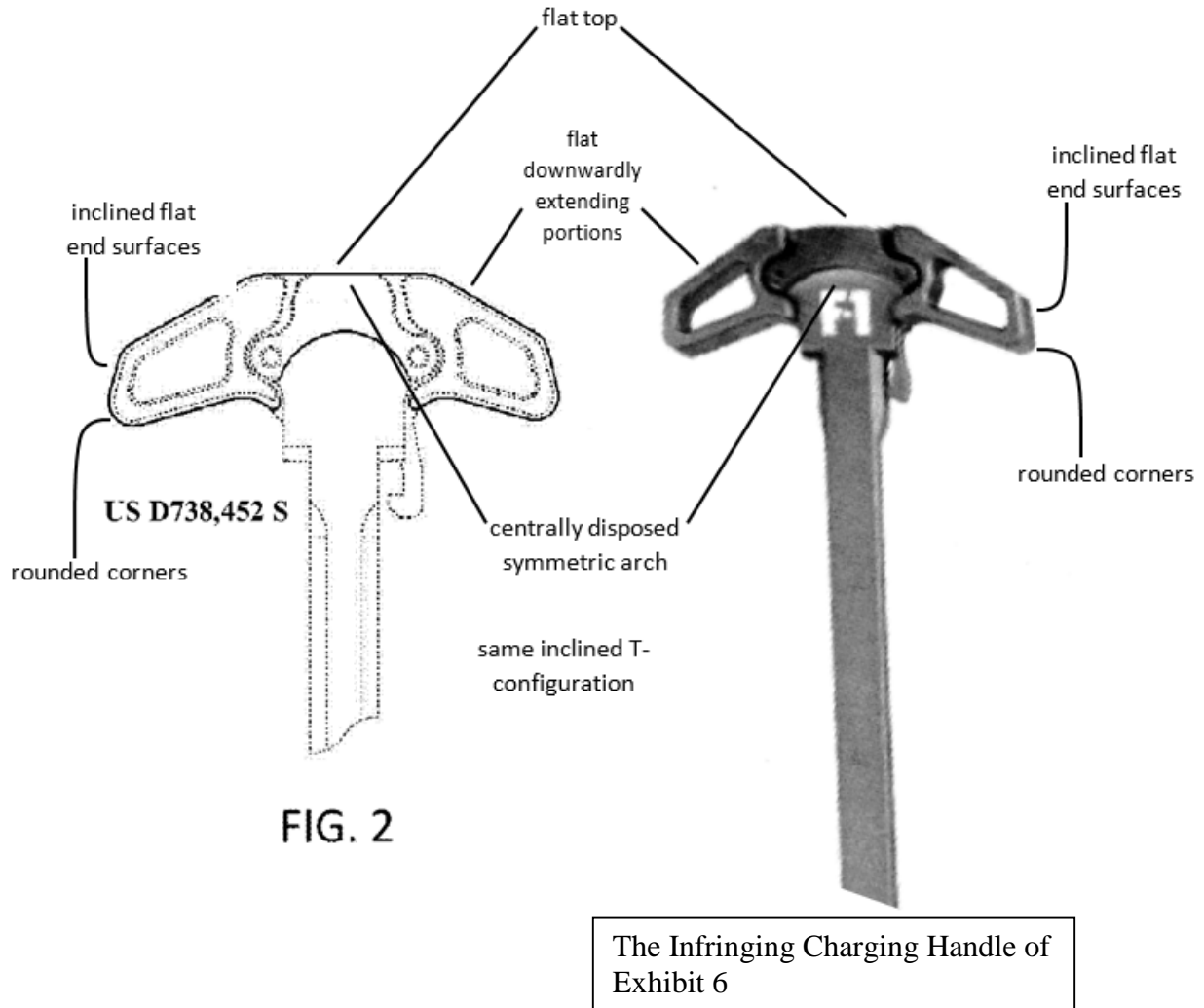


FIG. 2

45. Comparing the design of Fig. 2 of the '452 Patent to The Infringing Charging Handle of Exhibit 6, it can be seen that both include inclined and tapered arms with a flat top and having inclined top surfaces that terminate in inclined end surfaces with rounded corners, inclined bottom surfaces that terminate in lower, rounded portions that extend inwardly and upwardly, and centrally disposed, symmetric arched portions extending between the two arms.



46. F-1 has refused to commit in writing that it will no longer infringe the '452 Patent so, on information and belief, F-1 will continue to manufacture, import, sell, use and induce others to use The Infringing Charging Handles unless enjoined by this Court.

47. As a result of F-1's infringement of the '452 Patent, AXTS is entitled to recover from F-1 the profits AXTS would have made but for the infringement of the '452 Patent. In any event, AXTS is entitled to damages adequate to compensate for the infringement, but in no event less than a reasonable royalty as provided in 35 U.S.C. § 284. As an alternative remedy for F-1's infringement of the '452 Patent, AXTS is entitled to recover F-1's total profits from the sale of The Infringing Charging Handles under 35 U.S.C. § 289. These total profits are not limited to F-

1's profits on The Infringing Charging Handles themselves since, on information and belief, F-1 used the incorporation of The Infringing Charging Handles to sell firearms that included The Infringing Charging Handles.

48. Due to F-1's infringement of the '452 Patent, AXTS has suffered, is suffering, and will continue to suffer irreparable injury and damage for which AXTS has no adequate remedy at law. AXTS is therefore entitled to a permanent injunction against F-1's further infringing conduct.

COUNT IV –

**TRADE DRESS INFRINGEMENT, UNFAIR COMPETITION AND FALSE
DESIGNATION OF ORIGIN, PURSUANT TO THE LANHAM ACT, 15 U.S.C. § 1125(a)**

49. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-48, as if fully set forth herein.

50. F-1's use of The Inclined-T Trade Dress in connection with its products is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of F-1 or its products with AXTS or products sold under the AXTS RADIANT® and RAPTOR trademarks, or as to the origin, sponsorship, or approval of F-1's products by AXTS, in violation of 15 U.S.C. § 1125(a).

51. To any ordinary observer, and to shooting enthusiasts, consumers and members of the industry, the "look" of the F-1 charging handle incorporating The Inclined-T Trade Dress is confusingly similar to AXTS's Inclined-T Trade Dress and, in particular, the ornamental, distinctive appearance of The Inclined-T Trade Dress, which is unique in appearance, eye-catching and readily recognized among customers and members of the industry. In fact, as seen below, the trade dress of The Infringing Charging Handles is virtually identical to the AXTS Inclined-T Trade Dress.

52. As shown below, both the AXTS Inclined-T Trade Dress and The Infringing Charging Handle shown in Exhibit 5 include a center piece with flat top, diverging downwardly extending walls and laterally-extending, rounded members with a centrally-disposed symmetric arch extending there between, inclined and tapered arms having flat, inclined ends with rounded corners, semi-circular cut-outs to accommodate for the center piece, with rounded lower portions extending inwardly toward each other.



AXTS



Exhibit 5 F-1

53. As shown below, both the AXTS Inclined-T Trade Dress and The Infringing Charging Handle shown in Exhibit 6 include a center piece with flat top, laterally-extending, rounded members with a centrally-disposed symmetric arch extending there between, inclined and

tapered arms having flat, inclined ends with rounded corners, semi-circular cut-outs to accommodate for the center piece, and rounded lower portions extending inwardly toward each other.



AXTS

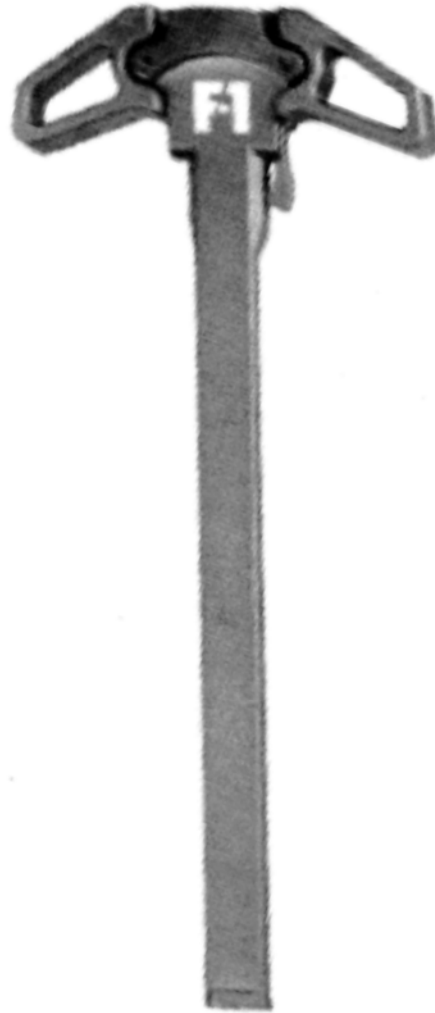


Exhibit 6 F-1

54. F-1's past, present and future use, distribution, sale and/or offer for sale of The Infringing Charging Handles using The Inclined-T Trade Dress constitutes trade dress infringement, unfair competition and false designation of origin under 15 U.S.C. § 1125(a).

55. F-1 is aware of AXTS's Inclined-T Trade Dress because F-1 purchased charging handles using this trade dress from AXTS and resold such charging handles.

56. AXTS has for many years been using the RAPTOR trademark to identify its charging handles. As a result of this prominent and continuous use of the RAPTOR trademark, the purchasing public has come to associate the RAPTOR trademark with AXTS.

57. While F-1 was purchasing charging handles from AXTS, F-1 was using the RAPTOR trademark in the marketing of its firearms. However, even after F-1 was no longer purchasing charging handles from AXTS and was substituting knock-off charging handles, it continued to represent that it was including RAPTOR charging handles in its firearms. Exhibit 7 is a screen shot taken on May 15, 2019, showing F-1's use on its website of the RAPTOR trademark. This, again, was long after F-1 had terminated its purchases of charging handles from AXTS. On information and belief, F-1 was using the RAPTOR trademark to sell its firearms that were being sold with look-alike charging handles provided by suppliers other than AXTS.

58. The use to AXTS's RAPTOR trademark constitutes unfair competition and false designation of origin, actionable under 15 U.S.C. § 1125(a) of the Lanham Act.

59. Due to F-1's trade dress infringement, unfair competition and false designation of origin, AXTS is entitled to recover damages from F-1 in an amount to be determined at trial, including F-1's profits and three times the amount of actual damages sustained by AXTS, together with costs and reasonable attorneys' fees. Again, these total profits are not limited to F-1's profits on The Infringing Charging Handles themselves since, on information and belief, F-1 used the incorporation of The Infringing Charging Handles and the use of the AXTS RAPTOR trademark to sell firearms that included The Infringing Charging Handles.

60. Furthermore, by these acts, F-1 has irreparably injured AXTS and caused AXTS to suffer a loss of goodwill and reputation, and such injury will continue unless F-1's activities are enjoined by this Court.

61. By reason of the above actions, AXTS is entitled to a range of relief under the Lanham Act, 15 U.S.C. §§ 1116-1118.

COUNT V

COMMON LAW TRADEMARK INFRINGEMENT

62. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-61, as if fully set forth herein.

63. As stated above, AXTS has for many years been using the RAPTOR trademark to identify its charging handles. As a result of this prominent and continuous use of the RAPTOR trademark, AXTS has developed meaningful common law rights in the RAPTOR trademark and the purchasing public has come to associate the RAPTOR trademark with AXTS.

64. While F-1 was purchasing charging handles from AXTS, F-1 was using the RAPTOR trademark in the marketing of its firearms. However, even after F-1 was no longer purchasing charging handles from AXTS and was substituting knock-off charging handles, it continued to represent that it was selling RAPTOR charging handles. Exhibit 7 is a screen shot taken on May 15, 2019, showing F-1's use on its website of the RAPTOR trademark. This, again, was long after F-1 had terminated its purchases of charging handles from AXTS. On information and belief, F-1 was selling its firearms with look-alike charging handles that were not supplied by AXTS but nonetheless was representing to the purchasing public that RAPTOR charging handles were being included in its firearms.

65. The use of AXTS's RAPTOR trademark constitutes common law trademark infringement.

66. Due to F-1's common law trademark infringement, AXTS is entitled to recover damages from F-1 in an amount to be determined at trial. The AXTS recovery is not to be limited to a recovery based solely on the value of the charging handles themselves since F-1 used the AXTS RAPTOR trademark to sell firearms themselves.

67. Furthermore, by these acts, F-1 has irreparably injured AXTS and caused AXTS to suffer a loss of goodwill and reputation, and such injury will continue unless F-1's activities are enjoined by this Court.

COUNT VI-

BREACH OF CONTRACT

68. AXTS restates and realleges each of the allegations, photographs and figures of paragraphs 1-67, as if fully set forth herein.

69. In 2017 and 2018, F-1 purchased charging handles from AXTS that included The Inclined-T Trade Dress. F-1 agreed to pay \$12,190.00 in February of 2017 and \$5500.00 in April of 2018. See Exhibit 8 hereto. The \$12,190.00 has apparently been paid but, despite repeated demands by AXTS, F-1 has not paid the last \$5,500.00, thus breaching its agreement to pay AXTS for these two orders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AXTS respectfully requests that the Court enter judgment in its favor against Defendant F-1, granting the following relief:

- A. A judgment and declaration that F-1 has infringed the AXTS Patents;
- B. A judgment and declaration that F-1 has infringed the common law trademark

rights in the RAPTOR trademark and in The Inclined-T Trade Dress, and have engaged in unfair competition and false designations of origin;

- C. A permanent injunction, pursuant to 35 U.S.C. § 283, enjoining F-1 and its agents, servants, officers, directors, employees, affiliated entities and all persons acting in concert or privity with it, from infringing each of the AXTS Patents;
- D. A permanent injunction, pursuant to 15 U.S.C. § 1116(a), enjoining F-1 and its agents, servants, officers, directors, employees, affiliated entities and all persons acting in concert or privity with it, from infringing The Inclined-T Trade Dress, and from engaging in unfair competition and false designations of origin;
- E. A judgment and order requiring F-1 to pay AXTS all damages caused by their infringement of each of the AXTS Patents (but in no event less than a reasonable royalty) pursuant to 35 U.S.C. § 284; or the total profits made by F-1 from its infringement of such patents pursuant to 35 U.S.C. § 289;
- F. A judgment and order requiring F-1 to pay AXTS all damages suffered by AXTS as a result of its infringement of the RAPTOR trademark, The Inclined-T Trade Dress, unfair competition and false designations of origin pursuant to 15 U.S.C. § 1117(a);
- G. A judgment and order requiring F-1 to pay AXTS any profits attributable to its infringement of the RAPTOR trademark, The Inclined-T Trade Dress, unfair competition and false designations of origin pursuant to 15 U.S.C. § 1117(a);
- H. A judgment and order requiring F-1 to pay AXTS supplemental damages or profits for any continuing post-verdict infringement up until the entry of a final judgment, with an accounting, if needed;

- I. A judgment and order requiring F-1 to pay AXTS increased damages up to three times the amount found or assessed pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117(a);
- J. A judgment and order requiring F-1 to pay AXTS pre-judgment and post-judgment interest on any damages or profits awarded;
- K. A determination that this action is an exceptional case pursuant to 35 U.S.C. § 285;
- L. A determination that this action is an exceptional case pursuant to 15 U.S.C. § 1117(a);
- M. An award of AXTS's attorney fees, costs and expenses incurred in bringing and prosecuting this action, pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117(a);
- N. A judgment and order that F-1 pay AXTS \$5,500.00 as damages to satisfy the breach of contract cause of action, plus interest.
- O. Such other and additional relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), AXTS respectfully requests a trial by jury of all issues so triable.

Dated this 2nd day of July, 2019.

Respectfully submitted,

By: /s/ Miranda Y. Jones

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