

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SKELL, INC. (d/b/a Bug-A-Salt); and
LOREN MAGGIORE,

Plaintiffs,

v.

DILLARD’S, INC.; and
WILLIAM E. CONNOR & ASSOCIATES
LTD.,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Skell, Inc. (doing business as “Bug-A-Salt”) (“Skell”) and plaintiff Loren Maggiore (“Mr. Maggiore”), collectively referred to herein as Plaintiffs, for their Complaint against Defendant Dillard’s Inc. (“Dillard’s”) and William E. Connor & Associates Ltd. (W.E. Connor), collectively referred to herein as “Defendants”, allege the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

The Parties

2. Skell is a corporation organized under the laws of the State of California with a place of business situated in the County of Los Angeles, State of California.

3. Loren Maggiore is an individual and inventor, residing in the County of Los Angeles, State of California.

4. Upon information and belief, Dillard’s is a corporation organized under the laws of the State of Delaware with a place of business at 1600 Cantrell Road, Little Rock, Arkansas

72201. Upon information and belief, Dillard's sells, offers to sell, and/or uses products and services throughout the United States, and introduced infringing products (procured through W.E. Connor) into the stream of commerce knowing that they would be sold and/or used in the State of Delaware, the judicial district in which it resides, and elsewhere in the United States.

5. Upon information and belief, W.E. Connor is an entity organized and existing under the laws of the Hong Kong. According to its website, W.E. Connor's corporate office is located at 10/F., Kader Building, 22 Kai Cheung Road, Kowloon Bay, Kowloon, Hong Kong. Upon information and belief, W.E. Connor sells, offers to sell, and/or uses products and services throughout the United States, and introduces infringing products and services into the stream of commerce knowing that they would be sold and/or used in this State and elsewhere in the United States.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. As to Dillard's, venue is proper in this judicial district under 28 U.S.C. § 1400(b).

9. Venue is proper in this judicial district under 28 U.S.C. § 1391, as applied to W.E. Connor, a resident of Hong Kong, in view of *In re HTC Corp.*, 889 F.3d 1349 (Fed. Cir. 2018).

10. This Court has personal jurisdiction over Dillard's under the laws of the State of Delaware, due at least to Dillard's incorporation in the State of Delaware and, by such incorporation, has purposely availed itself of the privileges and benefits of the laws of the State

of Delaware and because, upon information and belief, Dillard's does substantial business in this judicial district, directly and through intermediaries.

11. This Court has personal jurisdiction over W.E. Connor under the laws of the State of Delaware, due at least to W.E. Connor's sufficient minimum contacts within the State of Delaware and this District, pursuant to due process and/or the Delaware Long Arm Statute, because, upon information and belief, W.E. Connor purposefully availed itself of the privileges of conducting business in the State of Delaware and in this District, because, upon information and belief, W.E. Connor regularly conducts and solicits business within the State of Delaware and within this District, and because, upon information and belief, Plaintiffs' causes of action arise directly from W.E. Connor's business contacts and other activities in the State of Delaware and this District.

BACKGROUND

The Invention

12. Mr. Maggiore is the inventor of the inventions disclosed and claimed in the following patents: (i) U.S. Patent No. 8,251,051 ("the '051 patent"); and (ii) U.S. Design Patent No. D676,923 ("the '923 patent"), collectively, "the patents in suit".

13. A true and correct copy of the '051 patent is attached as Exhibit A. A true and correct copy of the '923 patent is attached as Exhibit B. A claim chart, attached hereto as Exhibit C, shows Plaintiffs' exemplary infringement analysis of Defendants' infringement certain claims of the '051 patent. A claim chart, attached hereto as Exhibit D, shows Plaintiffs' exemplary infringement analysis of Defendants' infringement the of the '923 patent.

14. On August 28, 2012, the '051 patent was duly and legally issued by the United States Patent and Trademark Office under the title "Bug killing gun."

15. On February 26, 2013, the '923 patent was duly and legally issued by the United States Patent and Trademark Office under the title "BUG-A-SALT GUN."

16. Skell holds an exclusive licensee to the patents in suit from Mr. Maggiore, such license including the right to assert all causes of action arising under the patents in suit and the rights to any remedies for infringement of them.

17. The inventions disclosed and claimed in the patents in suit resulted from the pioneering efforts of Mr. Maggiore. These efforts resulted in the development of an apparatus for a "bug killing gun" that has come to be known as the very commercially successful "Bug-A-Salt" gun, a product that has received numerous accolades in the press. See, e.g., <https://www.cnn.com/2019/05/23/self-made-millionaire-invented-bug-a-salt-gun-shoots-salt-at-flies.html> (CNBC, May 23 2019) (last visited October 19, 2020); <https://www.miamiherald.com/living/home-garden/article193246274.html> (Miami Herald, January 5, 2018) (last visited October 19, 2020); <https://www.wsj.com/articles/SB10000872396390444657804578048483443945820> (Wall Street Journal, Oct. 19, 2012). Mr. Maggiore designed a "gun" to use table salt as particulate projectiles to stun or kill insects, particularly flies. Using salt as the projectiles makes the product safe to use around food, and allows for stunning the insect rather than the smashing mess created by a fly swatter. The invention allows the user to get the insect off the table and other unwanted places. In 2018, Plaintiff sold nearly one million Bug-A-Salt guns. Mr. Maggiore explained the story of his innovation to CNBC as follows:

. . . [Mr. Maggiore] always had this idea to make a gun to kill flies. "It's fun, and it's ridiculous," Maggiore says. "I couldn't let it go." He tried to make and market one in the '90s, but it didn't go anywhere. "It was really crude." Then, in 2009, [Maggiore] . . . decided . . . to give the idea one last shot Maggiore maxed out his credit cards and went to China to spend two months working with a prototype toy maker. He would eventually spend \$70,000 of profits from his

wallpaper hanging business, along with about \$30,000 from an angel investor he met through a friend of the family. Finally, the prototype was completed. “I’m just sitting in the hotel looking at this thing that I’ve done,” he recalls, laughing. “It’s ready for the world, but I have nowhere to sell it. I have no plan!”

A friend suggested Maggiore make a video for Kickstarter to raise money for production. “I said, ‘What’s Kickstarter?’” In 2012, he put together a hilarious short video demonstrating the effectiveness of the Bug-A-Salt with a lot of slo-mo action shots. . . .

The original video has been viewed more than 3.5 million times. . . .

Finally, the Bug-A-Salt, a dream he’d had since he was a teenager, was a real thing. Over the last seven years, sales have grown as Maggiore continued to improve the product (and make more hilarious videos). The company says 2018 revenues reached \$27 million. Maggiore says most customers buy the weapon as a gimmick then discover it works, and then they become addicted to it. “They always say, ‘We don’t have any flies to shoot, so now we leave the doors and windows open.’ Now they want flies to come in,” he laughs. The company now has around 20 employees based in [Santa Monica], California Along the way, he spent \$80,000 on a patent

Source: <https://www.cnbc.com/2019/05/23/self-made-millionaire-invented-bug-a-salt-gun-shoots-salt-at-flies.html> (CNBC, May 23 2019) (last visited October 19, 2020).

18. At the time of Mr. Maggiore’s pioneering efforts, the most widely implemented mechanical tool to kill pesky flies was the fly swatter. But, as noted above, the fly swatter is a fundamentally inferior tool, requiring a high level of skill, timing and accuracy, that smashes flies and leaves an unsightly and unsanitary mess. Devices embodying Mr. Maggiore’s patented inventions are fast, accurate, and clean.

19. The authorized commercial products adopting Mr. Maggiore’s patented inventions far exceed any standard for measuring commercial success. The Bug-A-Salt 3.0 from Skell has an average customer review of 4.7 stars, with 95% of customers rating the product with four or more stars and 84% giving the maximum five-star rating. See, https://www.amazon.com/BUG-A-SALT-3-0-Yellow/dp/B089CDCCR1?ref_=ast_sto_dp (Amazon BUG-A-SALT 3.0 Customer reviews) (last visited October 19, 2020).

20. Unauthorized counterfeits, or knock-off, of Mr. Maggiore's patented inventions for a salt-shooting gun, targeted for killing flies, could threaten the reputation and success of Mr. Maggiore and his invention, as well as that of Skell and the BUG-A-SALT product.

Defendants' Infringing and Willful Activities

21. Sometime around December 3, 2019, Skell first became aware of the sales within the United States of the counterfeit "Salt War" product (the "Accused Instrumentalities") at Dillard's stores.

22. On December 3, 2019, Skell (d/b/a BUG-A-SALT) notified Dillard's legal department by email of this patent infringement issue as follows:

I am writing to you from BUG-A-SALT, the legit manufacturer and patent holder for the BUG-A-SALT insect eradication device. Please see below. One of our wholesale customers today notified us the "SALT WAR" gun is listed for sale at Dillard's. Since you are a legit business, we were rather shocked to find this is true. We have a room full of these "SALT WAR" guns here (we've had removed from Amazon + Ebay) . . .

Please cease & desist from selling this counterfeit product from China immediately. We'd love to sell to Dillard's in a legitimate fashion, so please let us know if you'd like to sign up for our wholesale program. We look forward to your prompt response & swift resolution to this matter. Please see below for proof of purchase.

(Exhibit E, at p. 10.)

23. On December 4, 2019, Dillard's acknowledged Skell's communication.

(Exhibit E, at p. 9.)

24. On December 13, 2019, Dillard's represented that it had ordered the removal of all unsold counterfeit "Salt War" products from Dillard's physical and online stores.

25. A week later, on December 20, 2019, Skell confirmed that Dillard's had, in fact, *not* removed all remaining "Salt War" guns from its stores. For example, Skell confirmed that Dillard's stores in Florida were still selling the counterfeit products. Skell again emailed

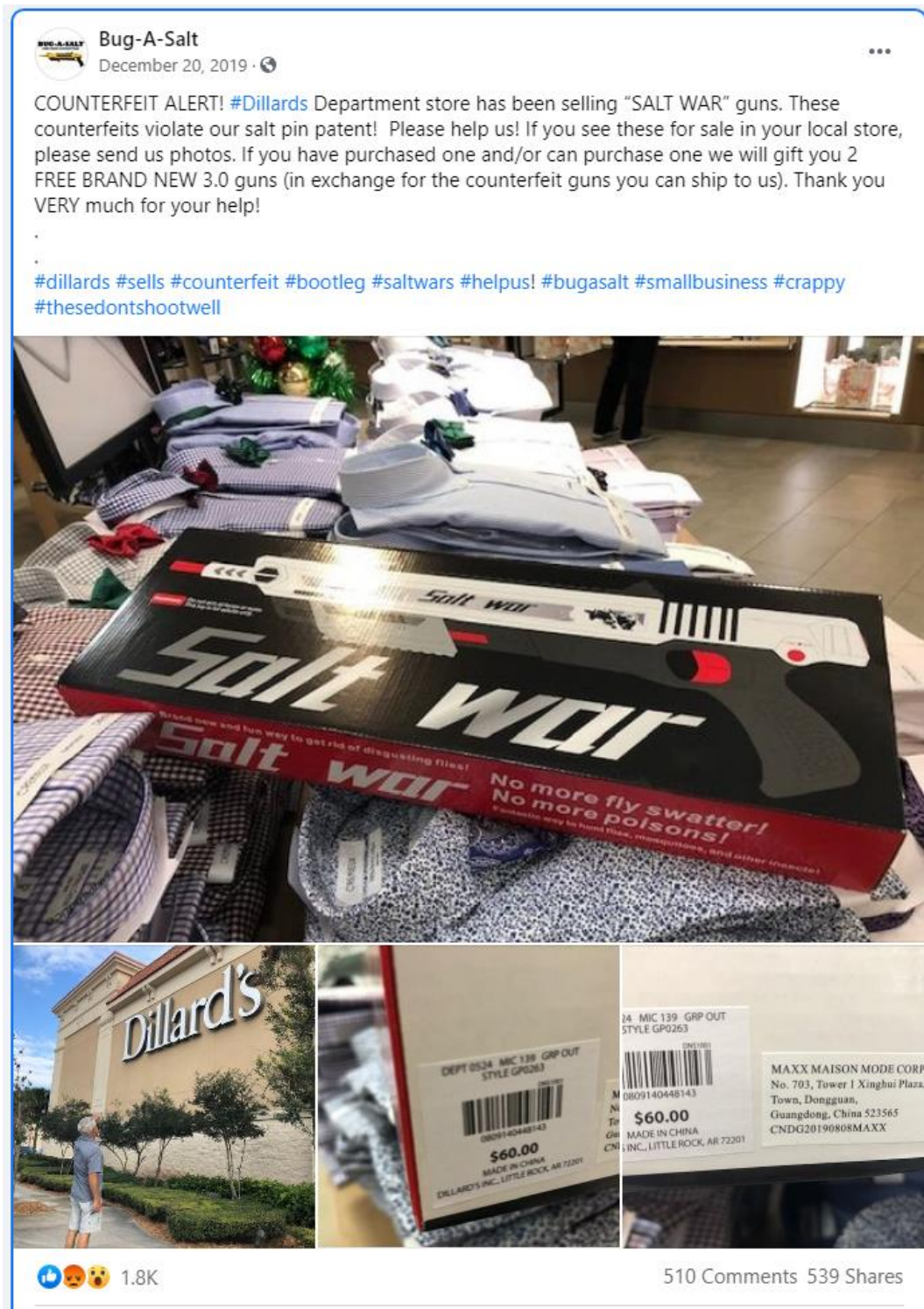
Dillard's legal department demanding that all remaining products be removed from Dillard's stores by the end of the day and for an updated accounting of sales of the counterfeit products. (Exhibit E, at p. 1.) The same day, Dillard's responded that there must have been a breakdown in communication with its stores. (Exhibit E, at p. 1.)

26. On January 16, 2020, having received no communications from Dillard's since the December 20, 2019 communications, Skell again contacted Dillard's, stating that it was aware that Dillard's had knowingly sold the counterfeit products in brick and mortar stores through the holiday season and demanded a current accounting of all counterfeit "Salt War" products sold to date. (Exhibit F, at p. 2.)

27. Later that day, January 16, 2020, Dillard's represented to Skell that the counterfeit product had been removed from the physical stores' sales floors and estimated that Dillard's still maintained approximately 2,000 units of the counterfeit product on-hand. Dillard's also estimated that it had, at that time, sold approximately 370 units, more than doubling its sales of the counterfeit product after representing that it would remove the counterfeit product from Dillard's stores. (Exhibit F, at p. 1.)

28. On January 31, 2020, Skell sent a letter to Dillard's demanding that all remaining products on-hand at Dillard's stores be mailed to Skell for proper destruction. (Exhibit G.)

29. Upon information and belief, Dillard's infringing sales of the "Salt War" products continued, *knowingly and willfully*, through December 2019 as evidenced by Skell's posting of the following "COUNTERFEIT ALERT!" waring on its Facebook page:



Source: <https://www.facebook.com/BugASalt/posts/counterfeit-alert-dillards-department-store-has-been-selling-salt-war-guns-these/3393580944048078/> (last visited Oct. 19, 2020).

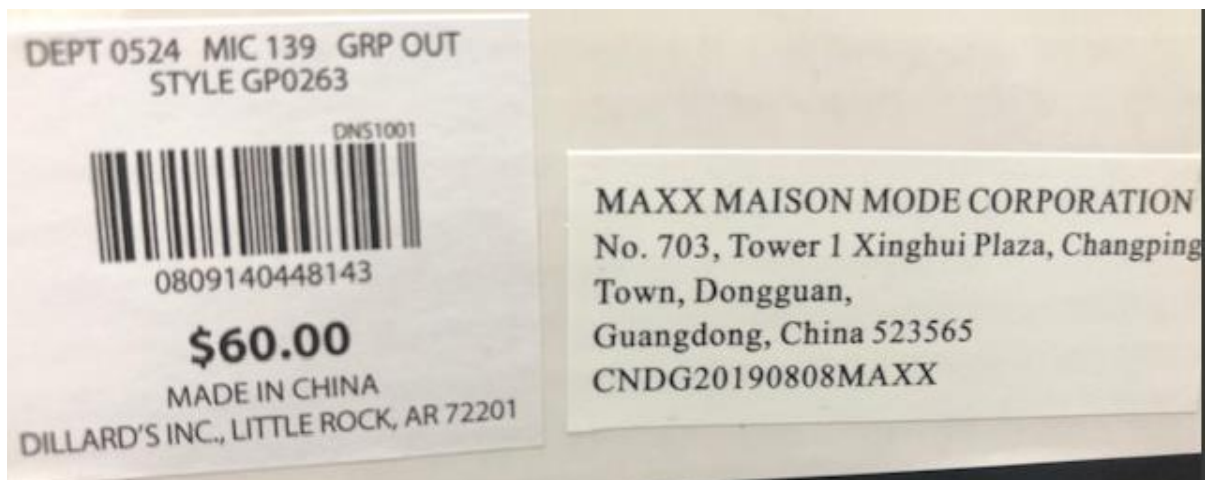
30. Upon information and belief, the counterfeit “Salt War” products were purchased for Dillard’s by Dillard’s buying agent, W.E. Connor.

31. Upon information and belief, W.E. Connor is a large distribution agent with clients and representatives in many states.

32. Upon information and belief, W.E. Connor is and was the agent, distributor, cohort, and associate of Dillard’s for the procurement of “Salt War” products at issue in his case.

33. Upon information and belief, all of W.E. Connor’s actions in connection with the procurement of “Salt War” products were ratified by Dillard’s.

34. Upon information and belief, W.E. Connor procured the “Salt War” products for Dillard’s from an entity known as “Maxx Maison” or “Maxx Maison Mode Corporation” (hereinafter “Maxx Maison”), as evidenced by a sticker on the “Salt War” product sold in Dillard’s stores, illustrated here.



Source: Source: <https://www.facebook.com/BugASalt/posts/counterfeit-alert-dillards-department-store-has-been-selling-salt-war-guns-these/3393580944048078/> (last visited Oct. 19, 2020).

35. Upon information and belief, Maxx Maison obtained and/or assisted in the distribution to Dillard's of the "Salt War" products, by working with a Chinese manufacturer known as "Xi'an Zoniu Electronics Technology Company, Ltd.," hereinafter "Xi'an Zoniu".

36. Upon information and belief, Xi'an Zoniu is the manufacturer of the "Salt War" products.

37. As demonstrated in the claim charts attached hereto as Exhibit C and D, the "Salt War" product infringes one or more claims of each of the patents in suit.

38. Defendants and their agents were on at least *constructive* notice of infringement of at least the '051 patent because the '051 patent has been and continues to be marked on Skell's BUG-A-SALT product, in a clear and continuous manner.

39. Specifically, the '051 patent has been and continues to be marked on the BUG-A-SALT gun since at least 2013, as evidence in this screenshot of a demonstration recorded on YouTube:



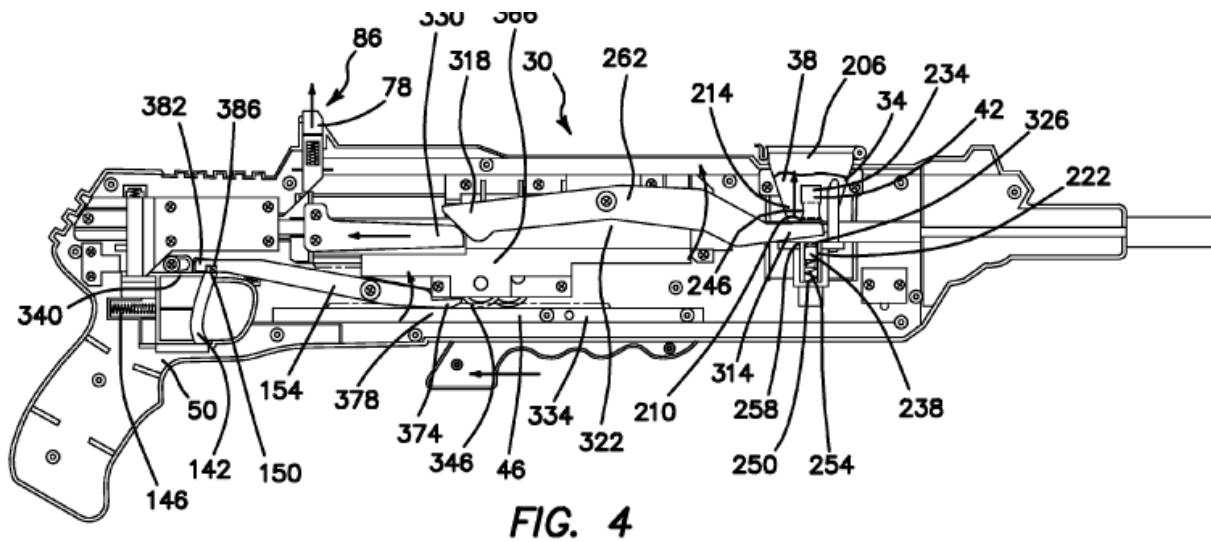
See https://www.youtube.com/watch?v=63K1_qB0J1I (last visited October 19, 2020).



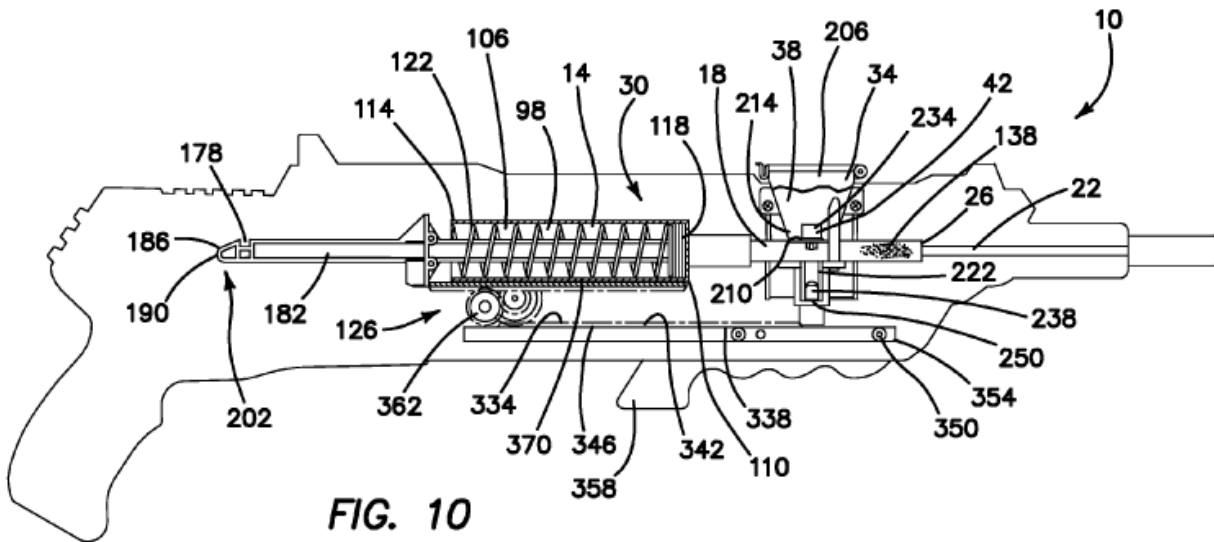
See https://www.northerntool.com/shop/tools/product_200829749_200829749 (last visited October 19, 2020).

40. By all objective measures, the “Salt War” product design was intentionally copied to create a counterfeit, or “knock-off”, of the popular Bug-A-Salt gun invented and patented by Maggiore and sold by Skell.

41. For example, the following is an illustrative comparison of Figure 4 of the '051 patent with a photograph of the internal components of the “Salt War” gun, revealing the striking similarity of the intricate internal design components and evidencing the degree of copying.



42. As yet another example, the following is an illustrative comparison of Figure 10 of the '051 patent with another photograph of the internal components of the “Salt War” product, this with the piston and spring exposed, to further reveal the striking similarity of the designs and further evidencing copying.



43. Upon information and belief, the foregoing reveal a knowledge of the patents in suit by the original designer/manufacture of the "Salt War" product, which knowledge, upon information and belief, was made know to Defendants before they sold and/or imported the "Salt War" products into the United States.

44. Specifically, upon information and belief, Dillard's was aware of at least the '051 patent before it sold any "Salt War" products in the United States.

45. Upon information and belief, W.E. Connor was aware of at least the '051 patent before it assisted Dillard's in acquiring "Salt War" products for importation and/or sale in the United States.

46. Upon information and belief, vendor Maxx Maison Mode Corporation, was aware of at least the '051 patent before it provided or assisted in providing "Salt War" products for importation and sale in the United States.

47. Upon information and belief, Xi'an Zoniu Electronics Technology Company, Ltd., was all aware of at least the '051 patent before it designed and/or made that "Salt Wars" products that were eventually sold by Dillard's within the United States.

48. As noted above, this awareness by Defendants, and their associates, is evidenced by on the closeness of the "Salt War" gun design to the designs disclosed in the patents in suit, which appear to be an intentional copy of the innovation disclosed in the patents in suit.

49. Notably, Skell demanded that Dillard's and W.E. Connor produce documents, including but not limited to, bills of lading, purchase orders, proof of purchase, and related writings to prove the (1) origin of the "Salt War" product, (2) the quantities purchased and (3) the stores to which W.E. Connor sold "Salt War" products.

50. None of these documents have been provided by either Defendant.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,251,051

51. The allegations set forth in the foregoing paragraphs are incorporated into this
COUNT I.

52. The '051 patent is valid and enforceable.

53. Upon information and belief, Dillard's has directly infringed at least claim 1 of the '051 patent by offering to sell and selling the "Salt War" gun during the pendency of the '051 patent.

54. Upon information and belief, W.E. Connor has directly infringed at least claim 1 of the '051 patent by selling and/or importing the "Salt War" products into the United States during the pendency of the '051 patent.

55. Upon information and belief, W.E. Connor has indirectly infringed at least claim 1 of the '923 patent by assisting Dillard's in its acquisition of the "Salt War" products to allow Dillard's to sell these products within the United States during the pendency of the '051 patent.

56. An exemplary infringement analysis showing infringement of at least claim 1 of the '051 patent is set forth in Exhibit C. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery in this action. Skell reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the chart attached as Exhibit C should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the '051 patent.

57. To the extent Dillard's continues to offer to sell or sells the "Salt War" gun going forward, such offers and sales of this Accused Instrumentality will continue to infringe at least claim 1 of the '051 patent.

58. Upon information and belief, both Dillard's and W.E. Connor's infringement of the '051 patent has been knowing and willful.

59. Skell has been harmed by the Dillard's infringing activities.

COUNT II – INFRINGEMENT OF U.S. DESIGN PATENT NO. D676,923

60. The allegations set forth in the foregoing paragraphs are incorporated into this COUNT II.

61. The '923 patent is valid and enforceable.

62. Upon information and belief, Dillard's has directly infringed the claim of the '923 patent by offering to sell and selling the "Salt War" gun during the pendency of the '923 patent.

63. Upon information and belief, W.E. Connor has directly infringed the claim of the '923 patent by selling and/or importing the "Salt War" products into the United States during the pendency of the '923 patent.

64. Upon information and belief, W.E. Connor has indirectly infringed the claim of the '923 patent by assisting Dillard's in its acquisition of the "Salt War" products to allow Dillard's to sell these products within the United States during the pendency of the '923 patent.

65. The overall appearance and placement of the "Salt War" product is substantially the same as the design claimed in the '923 Patent. For example, the overall appearance and placement of the exterior markings, muzzle brake etchings and mock-rifle components of the Salt War product are substantially the same as the design claimed in the '923 Patent. An ordinary observer will perceive the substantial similarity of the '923 patent and the corresponding design of the "Salt War" product.

66. Exemplary infringement analysis showing infringement of the claim of the '923 patent is set forth in Exhibit D. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery in this action. Skell reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the chart attached as

Exhibit D should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the '923 patent.

67. To the extent Dillard's continues to offer to sell or sells the "Salt War" gun going forward, such offers and sales of this Accused Instrumentality will continue to infringe the claim of the '923 patent.

68. Skell has been harmed by the Dillard's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Skell demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment for itself and against Defendants as follows:

- A. An adjudication that Defendants have infringed the patents in suit;
- B. An award of damages to be paid by Defendants adequate to compensate Plaintiffs for Defendants' past infringement of the patents in suit, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. An adjudication that Defendants' infringement the patents in suit was intentional and willful;
- D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Skell's reasonable attorneys' fees; and
- E. An award to Plaintiffs of such further relief at law or in equity as the Court deems just and proper.

Dated: November 20, 2020

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