

5. Upon information and belief, Defendant Robbins, III is an individual residing in Muscle Shoals, Alabama. Upon information and belief, Defendant Robbins, III was the owner and a principal shareholder in the now dissolved Centaur HTP Northeast Fencing Systems, Inc. Defendant Robbins, III is the president and principal shareholder of E.S. Robbins Corp.

6. This is a civil action for patent infringement and false patent marking arising out of the patent laws of the United States, false designation of origin and unfair competition arising under the Federal Trademark Act of 1946, as amended, commonly known as the Lanham Act and Common Law of the Commonwealth of Pennsylvania. Jurisdiction as to the subject matter of this action is founded upon 28 U.S.C. §§1331 and 1338 (a) and (b) and under the principle of supplemental jurisdiction pursuant to 28 U.S.C. §1367.

7. Venue is proper in this district under 28 U.S.C. §§1391(c) and 1400(b).

COUNT I
(Patent Infringement)

8. Plaintiffs repeat and reallege the averments contained in paragraphs 1 through 7 of this Complaint as if fully stated herein.

9. On August 13, 2002, United States Patent No. 6,431,487 (the '487 Patent) was duly and legally granted to John R. Wall. A copy of the '487 Patent is attached hereto and marked as Exhibit "A". John Wall, Inc. is licensed to make and sell products pursuant to the '487 Patent.

10. Upon information and belief, Defendant Centaur and/or Defendant Robbins, III have been and are still infringing as defined in 35 U.S.C. §271, the '487 Patent, by making, selling and offering to sell spoolers embodying the claimed invention, and will continue to do so unless enjoined by this Court. Upon information and belief, one infringing design is

shown and described in U.S. Patent Publication No. 2003/0218162A1, attached hereto as Exhibit "B" (the '162 Publication). A photo of a first spooler sold by Defendant Centaur and/or Defendant Robbins, III is attached hereto as Exhibit "C". The application which is the subject of the '162 Publication was abandoned on June 28, 2004, after final rejection by the U.S. Patent Office. Defendant Robbins, III was identified as an inventor on the '162 Publication.

11. Plaintiff John Wall, Inc. has marked its products with United States Patent No. 6,431,487 in accordance with 35 U.S.C. §287.

12. Upon information and belief, Defendants are willfully and knowingly infringing the '487 Patent to the irreparable damage of Plaintiffs, and will continue to do so unless enjoined by this Court.

COUNT II
(False Designation of Origin and Unfair Competition
in Violation of 15 U.S.C. §1125(a))

13. Plaintiffs repeat and reallege the averments contained in paragraphs 1 through 12 of this Complaint as if fully stated herein.

Case 2:05-mc-02025 Document 291-1 Filed 09/27/2005 Page 3 of 9

14. Defendant Robbins, III is the Assignee of U.S. Design Patent No. D 503,609 entitled "Fence Tightening Spool", covering at best only the new, original and ornamental features of design for this spooler. A copy of the '609 Patent is attached hereto as Exhibit "D". A photo of two additional spoolers sold by Defendant Centaur and/or Robbins, III is attached hereto as Exhibit E.

15. Upon information and belief, Defendant Centaur and/or Defendant Robbins, III is having made for them the fence spoolers of Exhibit E. These spoolers are imported in a finished or a nearly finished state into the United States from China. Notwithstanding these facts, Defendant Centaur and/or Defendant Robbins, III has obliterated

“Made in China” labeling from box packaging for said spoolers, by covering said indicia with white stickers. See Exhibit F.

16. Defendant Centaur and/or Defendant Robbins, III has stamped “Patent Pending” on the spoolers of Exhibit C. The Patent Application directed to this spooler (i.e., the ‘162 Publication), however, was let go abandoned after final rejection from the U.S. Patent Office on or about June 28, 2004. Upon information and belief, there is no further relevant patent application pending and Defendant Centaur and/or Defendant Robbins, III have nonetheless continued to produce said spoolers and have continued to include the “Patent Pending” stamping thereon.

17. Defendant Centaur and/or Defendant Robbins, III is placing a patent number, U.S. Patent No. 6,648,305 on the spoolers of Exhibit E. In fact, however, the claims of said patent in no way embrace those spoolers.

18. Plaintiffs are being damaged by the aforesaid acts of unfair competition in the form of lost good will and lost sales in the marketplace. Said acts are being carried out by Defendant Centaur and/or Defendant Robbins, III intentionally and with the result that confusion, mistake and/or deception is present among purchasers of said spoolers.

19. The conduct of Defendant Centaur and/or Defendant Robbins, III constitutes false designation of origin, false representation of fact and unfair competition, in violation of §43(a) of the Lanham Act 15 U.S.C. §1125(a). Plaintiffs are likely to suffer a loss of sales, profits, reputation and good will each time customers believe that the spoolers of Defendant Centaur and/or Defendant Robbins, III are not made in China, and/or are patent pending or patented.

COUNT III
(False Patent Marking Under 35 U.S.C. §292)

20. Plaintiffs repeat and reallege the averments contained in paragraphs 1 through 19 of this Complaint as if fully stated herein.

21. Defendant Centaur and/or Defendant Robbins, III have marked upon, affixed to or used in advertising in connection with spoolers of Exhibit C the words “Patent pending” when, in fact, the patent application which had been filed for said spooler is no longer pending. This act of the Defendants was done for the purpose of deceiving the public.

22. Defendants continued to manufacture spoolers of Exhibit C with the “Patent Pending” stamping, after having received actual knowledge that the patent application directed to said spoolers was no longer pending.

23. Defendants have marked upon, affixed to and/or used in advertising in connection with fence spoolers of Exhibit E the Patent No. 6,648,305.

24. U.S. Patent No. 6,648,305 does not in fact claim a fence spooler of the types shown in Exhibit F. Defendants are aware that the patent number does not cover the spooler on which it has been placed. Nonetheless, Defendants have placed the number on the spoolers for purposes of deceiving the public.

COUNT IV
(Common Law Unfair Competition)

25. Plaintiffs repeat and reallege the averments contained in paragraphs 1 through 24 of this Complaint as if fully stated herein.

26. The conduct of Defendant Centaur and/or Defendant Robbins, III, in connection with false and misleading misrepresentation of origin, false representation of the fact

of patent protection and false marking of patent numbers constitutes unfair competition at common law.

27. Defendants have engaged in a deliberate, anti-competitive pattern of conduct, consisting of acts of concealment, misrepresentation of patent status, false designation of origin and false patent marking.

28. Plaintiffs have been and are likely to continue to be irreparably harmed and damaged by the acts of Defendant Centaur and/or Defendant Robbins, III of unfair competition.

PERSONAL LIABILITY

29. Upon information and belief, Defendant Robbins, III is the principal shareholder of ES Robbins Corp.

30. Upon information and belief, Defendant Robbins, III was the principal shareholder of the now dissolved Centaur HTP Northeast Fencing Systems, Inc.

31. Defendant Robbins, III is a named inventor on the patents set forth in Exhibits B and D of the instant Complaint.

Case 2:05-mc-02025 Document 291-1 Filed 09/27/2005 Page 6 of 9

32. Upon information and belief, Defendant Robbins, III personally participated in the manufacture and sale of the spoolers herein alleged to constitute patent infringement.

33. Upon information and belief, Defendant Robbins, III was aware of Plaintiff Wall's patent claims, at or about the time Defendant Robbins, III began the manufacture and sale of the accused spoolers.

34. Upon information and belief, Defendant Robbins, III knowingly induced Defendant Centaur to infringe the '487 patent. Defendant Robbins', III's actions in this regard were willful and deliberate.

35. Upon information and belief, Defendant Robbins, III willfully and deliberately directed false patent markings to be placed on the accused spoolers, for purposes of deceiving the public and in order to unfairly compete with and cause damage to Plaintiffs.

36. Upon information and belief, Defendant Robbins, III was aware that the '162 patent publication was abandoned in the Patent Office, yet Defendant Robbins, III continued to direct that the "Patent Pending" marking be stamped on spoolers, as set forth in Exhibit C hereto.

37. Upon information and belief, Defendant Robbins, III knew that U.S. Patent No. 6,648,305 did not pertain to spoolers of the type set forth in Exhibit E, but Defendant Robbins, III willfully and deliberately directed that "Patent #6,648,305" be stamped on the spoolers as set forth in Exhibit E hereto.

Case 2:05-mc-02025 Document 291-1 Filed 09/27/2005 Page 7 of 9

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

A. that a Judgment be entered holding Defendants Centaur and Robbins, III jointly and severally liable for infringement of U.S. Patent No. 6,431,487;

B. that Defendants Centaur and Robbins, III be permanently enjoined from manufacturing, selling or using spoolers as claimed in U.S. Patent No. 6,431,487, or any spooler substantially similar thereto;

C. that Plaintiffs be awarded an accounting of damages pursuant to 35 U.S.C. §§284 and/or 289, including interest from the date of infringement, in an amount to be

determined, on account of Defendant Centaur's and Defendant Robbins, III's infringement of the '487 Patent;

D. that Plaintiffs' damages be trebled pursuant to 35 U.S.C. §284;

E. that Plaintiff be awarded reasonable attorney fees pursuant to 35 U.S.C. §285;

F. that Defendants pay Plaintiffs' costs of this action pursuant to 35 U.S.C. §284;

G. that Defendants and those persons in concert with them be preliminarily and permanently enjoined and restrained from obliterating "Made in China" labeling on packaging for spoolers;

H. that Defendants and those persons in active concert or participation with them be preliminarily and permanently enjoined and restrained from acts of false designation of origin, false and misleading representation of fact and unfair competition pursuant to 15 U.S.C. §1125, and common law;

Case 2:05-mc-02025 Document 291-1 Filed 09/27/2005 Page 8 of 9

I. that Defendants be ordered to pay damages to Plaintiffs for injuries sustained by Plaintiffs as a result of Defendants' false and misleading designation of origin, false and misleading misrepresentation of fact and unfair competition, in an amount to be determined at trial;

J. that Defendants be ordered to pay treble damages to Plaintiffs pursuant to 15 U.S.C. §1117(b);

K. that Plaintiffs be awarded the costs of this action including reasonable attorneys fees pursuant to 15 U.S.C. §1117, and common law;

L. that Defendants be ordered to pay \$500.00 for each falsely marked spooler pursuant to 35 U.S.C. §292(b), and that half of those proceeds be awarded to Plaintiffs.

M. that Plaintiffs be awarded such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs John Wall, Inc. and John R. Wall hereby demand a trial by jury for all issues triable by jury.

Respectfully submitted,

September 27, 2005



John W. McIlvaine III, PA ID NO. 56773
Kent E. Baldauf, Jr., PA ID NO. 70793
Nathan J. Prepelka, PA ID NO. 83742

THE WEBB LAW FIRM, P.C.

436 Seventh Avenue

700 Koppers Building

Pittsburgh, PA 15219-1845

Telephone: (412) 471-8815

Facsimile: (412) 471-4094

Counsel for Plaintiffs

John Wall, Inc. and John R. Wall

Case 2:05-mc-02025 Document 291-1 Filed 09/27/2005 Page 9 of 9