

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

SUBVERSIVE TOOLS, INC.,                     )  
   )  
                  Plaintiff,                     )  
   )  
v.   )  
   )  
JOHNNY’S SELECTED SEEDS,                 )  
   )  
                  Defendant.                 )

Case No.: \_\_\_\_\_

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Subversive Tools, Inc. (hereinafter, “Plaintiff”) as and for its Complaint against Defendant Johnny’s Selected Seeds (hereinafter, “Defendant”), alleges the following:

**PARTIES**

1. Plaintiff, Subversive Tools, Inc., is a corporation duly organized and existing under the laws of the State of New York, having its principal place of business at 635 Claryville Road, Claryville, New York 12725.

2. Upon information and belief, Defendant Johnny’s Selected Seeds is a corporation duly organized and existing under the law of the State of Maine, having its principal place of business at 955 Benton Avenue, Winslow, Maine 04901.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the Patent Laws of the United States as set forth in Title 35 of the United States Code Section 271, *et seq.*

4. The jurisdiction of this Court arises under 28 U.S.C. §§1331 and 1338(a).

5. Personal jurisdiction exists generally over Defendant pursuant to 14 M.R.S.A. § 704-A because it has sufficient minimum contacts with this forum as a result of its incorporation in the State of Maine and its regularly transacting, and regularly continuing to transact business in, and regularly soliciting and regularly continuing to solicit business within the State of Maine.

6. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) and (c), and 1400(b) as, for example, Defendant resides in the State of Maine by virtue of its incorporation in the State of Maine, has committed acts of infringement in the State of Maine and has a regular and established place of business in the State of Maine.

### **BACKGROUND**

#### *Plaintiff Subversive Tools, Inc.*

7. Plaintiff, which does business under the name Neversink Tools, manufactures and sells various farm products and tools. Plaintiff's tools and products are used in farming, for example, for vegetation bed preparation, transplanting, irrigation, soil manipulation and movement, crop protection, planting, seed starting, trellising, weeding, and harvested plant washing and packing.

8. Plaintiff's tools and products include, amongst other products, bed rollers, broadforks, tilthurs, gridders, bed dibblers, flame weeders, hoes, paperpot systems, humidity domes, plug poppers, seed trays, transplanters and other related items.

9. Plaintiff's tools and products are handmade in the United States at its facility in Tennessee. Plaintiff's tools and products are made of the highest quality materials and workmanship, and are designed and rigorously tested at its facility in Cookeville, Tennessee and/or its farm in Claryville, New York.

10. One type of tool Plaintiff manufactures and offers for sale is generally known as a transplanter. Transplanters are used to transplant plants from trays or small pots made of paper (“paperpots”) to the earth. Paperpots typically include a set of paper-shaped cells initially formed in a rectangle that are connected by paper strips to form a continuous strip of cells when stretched out and when transplanted using a transplanter.

11. One of the transplanters manufactured and sold by Plaintiff is called “the Subversive.” The Subversive is a wheeled transplanter which transplants plants from paperpots to the earth. The Subversive includes a frame which holds a tray of paperpots with plants therein. The frame includes a furrower, which furrows the soil. A set of wheels is connected to the frame as is a handle. A user pulls the Subversive transplanter via the handle which causes the furrower to furrow the soil. As the transplanter is pulled, the paperpots separate into a line of connected paper pots (each containing a plant therein) which travel down a chute towards the rear of the transplanter and into the furrow. The transplanter at the rear includes a structure which closes the furrow as the rear of the transplanter passes a transplanted cell. The Subversive transplanter includes a pair of parallel front wheels wherein the pace therebetween is adjustable.

12. Plaintiff owns all right, title and interest in and under United States Patent No. 11,871,693 (hereinafter “the ‘693 Patent”), titled TRANSPLANTER, which was duly, legally and validly issued on January 16, 2024. A true and correct copy of the ‘693 Patent is annexed hereto and incorporated herein as **Exhibit “A”**.

13. Plaintiff acquired all right, title and interest in and under the '693 Patent by an assignment from Neversink Tools, executed and recorded with the U.S. Patent Office on March 1, 2024 and recorded at reel 066618 frame 0361. Neversink Tools acquired all right, title and

interest in and under the '693 Patent by an assignment from inventors Carson McNeal and Conor Crickmore, executed and recorded with the U.S. Patent Office on June 23, 2023 and recorded at reel 064280 frame 0802.

14. The “Subversive” transplanter is covered by the ‘693 Patent, and features front guide wheels with adjustable spacing as shown in the ‘693 Patent.

15. Plaintiff marks its products including the Subversive transplanter in accordance with 35 U.S.C. §287(a).

*Johnny’s Selected Seeds Infringement*

16. Defendant manufactures, offers for sale and sells a paperpot transplanter, which includes amongst other features, front guide wheels with adjustable spacing, which is marketed under the name “Johnny’s Paperpot Transplanter”. See, example of Johnny’s Paperpot Transplanter’s guide wheels with adjustable spacing below:



17. Defendant imports, makes, uses, sells, and/or offers for sale transplanters, marketed under the name Johnny's Paperpot Transplanter, which infringe the '693 Patent.

18. Upon investigation and information, Defendant directly infringes the '693 Patent in violation of 35 U.S.C. §271(a). Specifically, Defendant's paperpot transplanter infringes at least claims 1 and 3-5 of the '693 Patent.

19. The '693 Patent recites as its invention of claim 1:

A transplanter comprising:

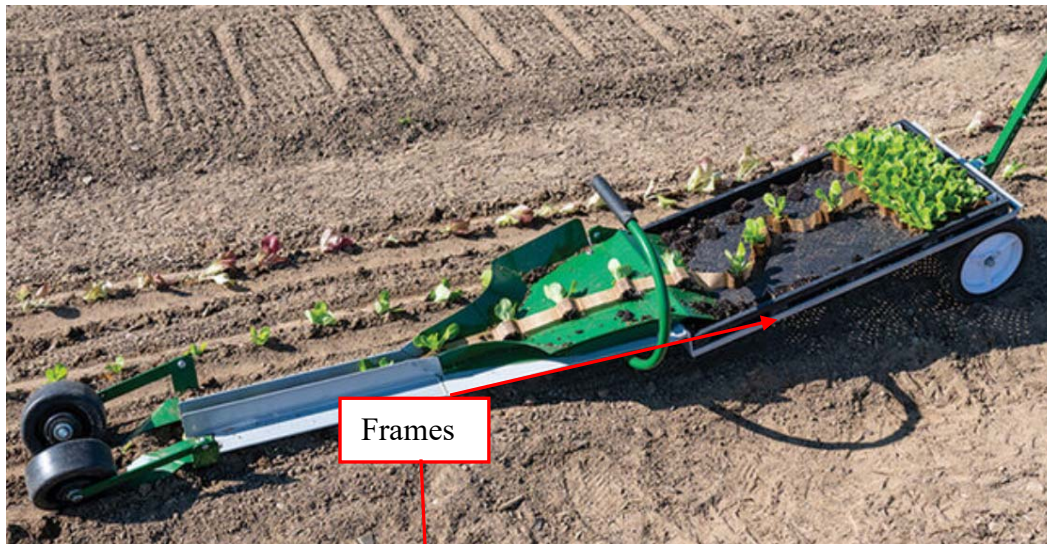
a guide wheel structure including a set of guide wheels, wherein the set of guide wheels includes two guide wheels configured to be selectively configured with any one of at least two preconfigured spacings there between;

a frame structure including a longitudinal support structure and a set of frames configured for supporting a tray including a chain of paper pots including a plurality of seedlings; an operating handle structure connected to the guide wheel structure and a first end of the longitudinal support structure, the operating handle structure including a grip for pulling the transplanter; and

a base structure connected to the longitudinal support structure and extending beyond a second end of the longitudinal support structure, the base structure including a back end, a funnel-like shaped back portion, and a chute, wherein the base structure is configured to support the tray against the back end and guide the chain of paper pots from the tray along the funnel-like shaped back portion to the chute and off the transplanter as the transplanter is pulled by a user to plant a single row of the seedlings in a field.

20. Defendant's "Johnny's Paperpot Transplanter" includes a guide wheel structure including a set of guide wheels including two guide wheels which may be selectively configured with any one of three preconfigured spacings there between. Specifically, Defendant's guide wheels can be set at widths of 4", 7.5", and 8.5". Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of the guide wheel structure including a set of guide wheels, wherein the set of guide wheels includes two guide wheels configured to be selectively configured with any one of at least two preconfigured spacings there between, as recited in claim 1 of the '693 Patent. *See* also paragraph 16 above.

21. Defendant's "Johnny's Paperpot Transplanter" also includes a longitudinal support structure and a set of frames configured for supporting a tray including a chain of paper pots. *See*:



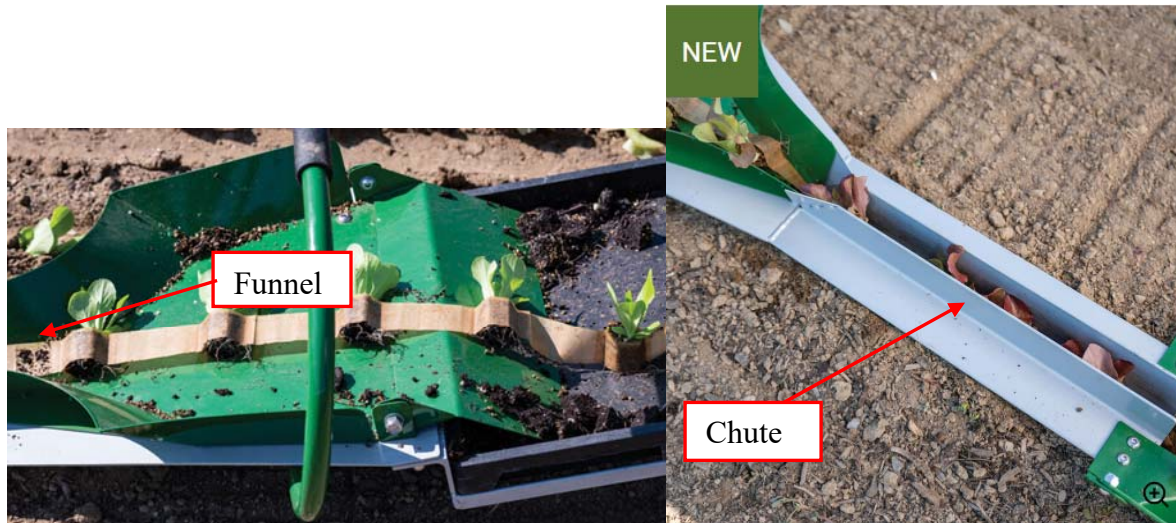
In the first image above, the longitudinal frame structure is covered by and supports a tray with a chain of paperpots therein. Below and supporting the tray, is the longitudinal support structure with a set of frames. Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element a frame structure including a longitudinal support structure and a set of frames configured for supporting a tray including a chain of paper pots including a plurality of seedlings, as recited in claim 1 of the '693 Patent.

22. Defendant's "Johnny's Paperpot Transplanter" also includes an operating handle structure which (1) is connected to both the guide wheels and one end of the longitudinal support structure, and (2) includes a grip for pulling the transplanter. *See:*



Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of an operating handle structure connected to the guide wheel structure and a first end of the longitudinal support structure, the operating handle structure including a grip for pulling the transplanter, as recited in claim 1 of the '693 Patent.

23. Defendant's "Johnny's Paperpot Transplanter" also includes a structure connected to the longitudinal support structure which (1) extends beyond a second end of the longitudinal support structure, (2) includes a funnel-like shaped back portion, and (3) includes a chute guiding the chain of paper pots from the tray through the funnel-like shaped back portion to the chute and off the transplanter. *See:*



Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of a base structure connected to the longitudinal support structure and extending beyond a second end of the longitudinal support structure, the base structure including a back end, a funnel-like shaped back portion, and a chute, wherein the base structure is configured to support the tray against the back end and guide the chain of paper pots from the tray along the funnel-like shaped back portion to the chute and off the transplanter as the transplanter is pulled by a user to plant a single row of the seedlings in a field, as recited in claim 1 of the '693 Patent. Also, the base structure is configured to support the tray against the back end and guide the chain of paper pots from the tray along the funnel-like shaped back portion to the chute and off the transplanter as the transplanter is pulled by a user to plant a single row of the seedlings in a field, as recited in claim1. *See* paragraph 21 above.

24. The '693 Patent recites as its invention of claim 3:

The transplanter of claim 1, wherein the frame structure further includes a furrower configured to form a furrow in soil, and wherein the transplanter further includes a

furrow closing structure configured for closing the furrow, wherein the furrow closing structure is mounted to the base structure at a location beyond an end of the chute.

25. Defendant's "Johnny's Paperpot Transplanter" includes a furrower configured to form a furrow in soil as well as a furrow closing structure mounted to the base structure. *See:*

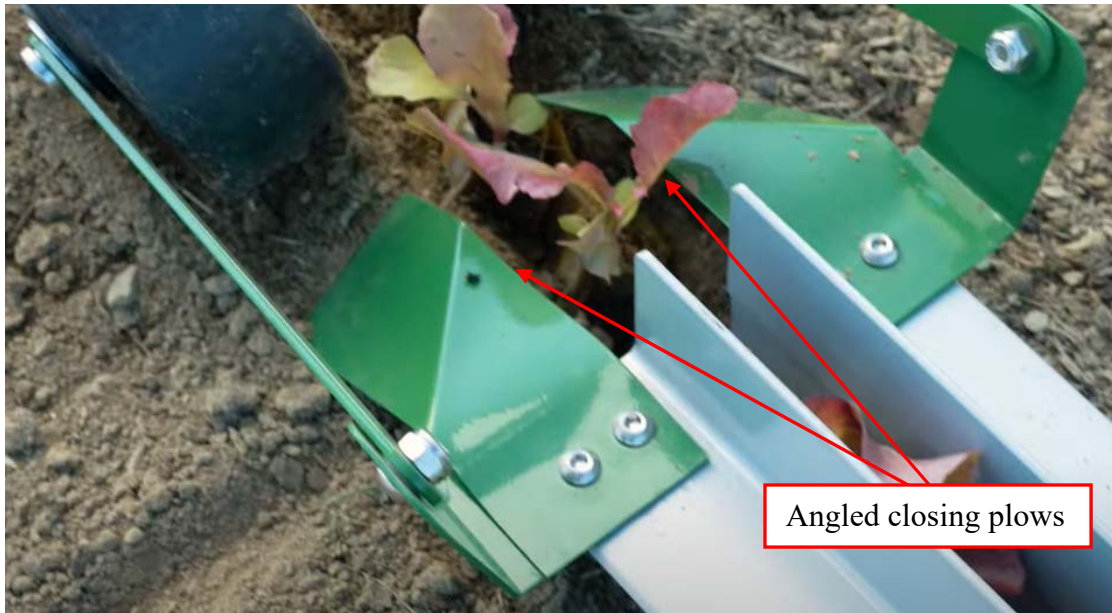


which show the furrower, and paragraphs 25 - 28 herein which show the furrow closing structure. Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of the furrower structure recited in claim 3 of the '693 Patent.

26. The '693 Patent recites as its invention of claim 4:

The transplanter of claim 3, wherein the furrow closing structure includes a pair of angled closing plows located on opposing sides of the chute.

27. Defendant's "Johnny's Paperpot Transplanter" includes a furrow closing structure with a pair of angled closing plows located on opposing sides of the chute. *See:*



Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of the furrow closing structure recited in claim 4 of the '693 Patent.

28. The '693 Patent recites as its invention of claim 5:

The transplanter of claim 3, wherein the furrow closing structure includes a pair of angled closing wheels located on opposing sides of the chute.

29. Defendant's "Johnny's Paperpot Transplanter" includes a pair of angled closing wheels on opposing sides of the chute. *See*:



Thus, Defendant's "Johnny's Paperpot Transplanter" includes the element of the closing wheels recited in claim 5 of the '693 Patent.

30. On January 16, 2024, Plaintiff notified Defendant of its infringement of the '693 Patent. A true and accurate copy of the January 16, 2024 letter is annexed hereto and incorporated herein as **Exhibit "B"**. On January 29, 2024, Defendant responded by stating its refusal to cease its infringing activities.

31. Defendant has previously advertised its adjustable guide wheels as a feature of its Johnny's Paperpot Transplanter. Specifically, Defendant stated in its advertising that "The front axle features adjustable guide wheels that can be set at 4", 7.5", and 8.5" widths allowing for tighter plant spacing." Such language may be found at:

- a. Screenshot of the Internet Archive's Wayback Machine screenshot of Defendant's website dated December 5, 2023 at <https://web.archive.org/web/20231205141833/https://www.johnnyseeds.com/tools-supplies/transplanters/paperpot-transplanter/johnnys-paperpot-transplanter-6220.html#pdpCarousel-6220>. See **Exhibit "C"**.

- b. Defendant's YouTube video dated November 15, 2023 titled "Johnny's Paperpot Transplanter" at <https://www.youtube.com/watch?v=Ghn2D4JhYh4>.

32. After Plaintiff notified Defendant of its infringement of the '693 Patent, Defendant removed the above cited language from its website. Also, after Plaintiff notified Defendant of its infringement of the '693 Patent, Defendant unlisted its YouTube video titled "Johnny's Paperpot Transplanter" and uploaded a new video with only the sentence noted in paragraph 30 removed.

33. Despite formal notification of infringement of the '693 Patent, Defendant continues to make, use, offer for sale and/or sell products including transplanters, which utilize the technology protected by the '693 Patent and knowing that such activities constitute infringement of the '693 Patent.

**FIRST CAUSE OF ACTION**  
**(Infringement of the '693 Patent by Defendant)**

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 33 above.

35. Defendant infringes, and continues to infringe the '693 Patent by making, using, offering for sale, importing and/or exporting transplanters which are covered by one or more claims of the '693 Patent.

36. Defendant has been infringing, and will continue to infringe, the '693 Patent.

37. Upon investigation and information, Defendant's infringement has been willful, deliberate and intentional.

38. As a result of Defendant's acts, Plaintiff has been damaged, and will continue to be damaged.

39. Defendant's infringement has damaged Plaintiff in an amount that is unknown and cannot, at the present time, be fully ascertained.

40. Unless enjoined by this court, Defendant will continue to infringe the '693 Patent causing irreparable injury to Plaintiff.

**DEMAND FOR JURY TRIAL**

41. Plaintiff hereby demands a trial by jury.

**DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiff, Subversive Tools, Inc., prays for the entry of judgment from this Court ordering:

(a) An injunction against the Defendant, and all persons acting in concert, or participation therewith, or persons acting or purporting to act on their behalf, including, but not limited to its officers, directors, partners, owners, agents, representatives, employees, attorneys, distributors, manufactures and resellers, successors and assigns and any and all persons acting in concert or privity therewith, from infringing the '693 Patent as provided in 35 U.S.C. §283;

(b) A finding that Defendant has infringed the '693 Patent;

(c) A finding that Defendant's infringement of the '693 Patent has been willful;

(d) An award to Plaintiff of its damages resulting from the past and any future infringement of the '693 Patent, as provided in 35 U.S.C. §284;

(e) An award to Plaintiff of treble damages as provided in 35 U.S.C. §284;

(f) An award to Plaintiff of prejudgment interest on all damages incurred;

(g) An award to Plaintiff for its costs in this action, together, with reasonable attorney's fees as provided in 35 U.S.C. §285;

(h) The recall and destruction of all materials within the control of Defendant, and its agents or distributors which in any way infringe upon the '693 Patent; and

(i) Such other and further relief against Defendant in favor of Plaintiff as this court deems just, equitable and proper.

SUBVERSIVE TOOLS, INC.

By its attorney,

Dated: March 14, 2024

/s/ Seth W. Brewster  
Seth W. Brewster, Bar No. 3741  
Attorney for Plaintiff, Subversive Tools, Inc.

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*Applications for Pro Hac Vice Admission Forthcoming*

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