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|-----------------------------|---|-------------------------|
| PALLISER FURNITURE LTD.,    | ) |                         |
|                             | ) |                         |
| Plaintiff,                  | ) |                         |
|                             | ) |                         |
| v.                          | ) | Civil Action No. 08-743 |
|                             | ) |                         |
| COASTER COMPANY OF AMERICA, | ) |                         |
|                             | ) |                         |
| Defendant.                  | ) |                         |
|                             | ) |                         |
|                             | ) |                         |

Plaintiff Palliser Furniture Ltd. (“Palliser” or “Plaintiff”), by and through counsel,  
for its Complaint against Coaster Company of America (“Coaster” or “Defendant”),  
alleges on personal knowledge as to its actions, and upon information and belief as to the  
actions of others, as follows:

1. This is an action for patent infringement (arising under the Patent Laws, 35 U.S.C. § 1 *et seq.*), for trade dress infringement (arising under the Lanham Act, 15 U.S.C. § 1125(a)), for common law trade dress infringement, for violation of the Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1), and for common law unfair competition.

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3. Coaster has imported into the United States, offered to sell, and sold substantially and confusingly similar furniture products, namely its 7575 Promenade Leather Theater Storage Ottoman. In doing so, Coaster has sought to benefit from Plaintiff's goodwill and to mislead and deceive Plaintiff's customers and others in the marketplace into believing that Coaster's infringing products are Plaintiff's products when, in fact, they are not.

#### **THE PARTIES, JURISDICTION, AND VENUE**

4. Plaintiff Palliser Furniture Ltd. is a federal corporation organized and existing under the laws of Canada, with a principal place of business in Winnipeg, Manitoba, Canada. Palliser also conducts business in this State and District, namely, High Point, North Carolina, where it regularly offers for sale and sells its products to distributors and retailers.

5. Upon information and belief, Defendant Coaster Company of America is a corporation organized and existing under the laws of the State of California, having a principal place of business at 12928 Sandoval Street, Santa Fe Springs, California 90670. Defendant can be served with Summons and a copy of this Complaint through its registered agent, Lisa Kao, 1821 Country Knoll Place, Hacienda Heights, California, 91745.

6. This Court has subject matter jurisdiction over this action upon at least the following grounds:

- (a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;

- (b) 28 U.S.C. § 1338(a), this being a civil action arising under the Patent Laws of the United States, namely, Title 35 U.S.C. § 1 *et seq.*;
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under the trademark laws of the United States, namely, the Lanham Act, 15 U.S.C. §§ 1051-1127;
- (d) Section 39 of the Lanham Act, 15 U.S.C. § 1121, this being an action arising under that act;
- (e) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce;
- (f) 28 U.S.C. § 1338(b), this being a civil action asserting a claim of unfair competition joined with a substantial and related claim under the patent and trademark laws; and
- (g) 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

7. This Court has personal jurisdiction over Coaster under the provisions of N.C. Gen. Stat. § 1-75.4 and consistent with the principles underlying the U.S. Constitution inasmuch as Coaster is doing business in this State and District; Coaster has significant contacts with this State and District; Coaster has offered for sale and sold infringing products in High Point, North Carolina and elsewhere in this State and District;

and Coaster has committed acts in this State and District that are the subject of the allegations set forth herein.

8. Venue is proper in this District under the provisions of 28 U.S.C. § 1391(b) and (c) and § 1400(b) insofar as Coaster has committed acts of infringement in this District, and Coaster has a regular and established place of business in High Point, North Carolina.

### **THE RIGHTS AND ACTIVITIES OF PLAINTIFF**

9. The distinctive appearance of the total image and overall appearance of the Tracer Ottoman, including the size, shape, combinations, and textures, serves to identify such products as emanating from Plaintiff. As a result, the total image and overall appearance of the Tracer Ottoman, including the size, shape, combinations, and textures, constitutes a distinctive trade dress that is proprietary to Plaintiff. Plaintiff's trade dress in the Tracer Ottoman consists of the nonfunctional features of the product that, taken together, make up its total image. The Tracer Ottoman trade dress is a "sign" to Plaintiff's customers and the relevant public that the furniture with that distinctive appearance comes from Plaintiff and has associated with it the superior quality and excellent reputation of Plaintiff's furniture products. Thus, the Tracer Ottoman trade dress is itself a valuable intellectual property right of Plaintiff.

10. The Tracer Ottoman also embodies new, original and ornamental designs for the furniture. This design, at the time of its creation, was a new and non-obvious advance in the furniture design art, meriting the protection of United States Design Patents. Thus, the design of the Tracer Ottoman is a valuable intellectual property right of Plaintiff.

11. Through significant advertising and marketing efforts, Plaintiff's Tracer Ottoman has enjoyed wide acceptance and popularity in the marketplace with sales that have accompanied furniture pieces not only from Palliser's TRACER furniture series, but also from Palliser's other furniture lines, including, but not limited to, Palliser's ARIA, BENSON, CARINA, DALEY, DANE, DORADO, DURANT, HARLOW, MARQUISE, PEMBINA, PICARD, REGENT, and TAURUS furniture lines.

**COUNT I**  
**PATENT INFRINGEMENT**  
**(UNITED STATES DESIGN PATENT NO. D493,966)**

12. On August 10, 2004, United States Design Patent No. D493,966, entitled "Ottoman" ("the '966 Patent") was duly and legally issued to Palliser, as assignee of the inventor, Bryan W. Rach. A true and correct copy of the '966 Patent is attached hereto as Exhibit A.

13. Plaintiff is the lawful owner of all right, title, and interest in and to the '966 Patent, including the right to sue for and recover for past infringement thereof.

14. Pursuant to 35 U.S.C. § 282, the '966 Patent is presumed valid.

15. Upon information and belief, Coaster is engaged in the business of making, using, selling, offering to sell, and/or importing into the United States products that infringe the '966 patent. Specifically, upon information and belief, at least Coaster's 7575 Promenade Leather Theater Storage Ottoman infringes the '966 patent.

16. Coaster has made, used, sold, offered to sell, and/or imported into the United States such infringing products, including in the Middle District of North Carolina, and has knowingly, purposefully, and willfully put the infringing products into commerce for sale and use in this District and elsewhere.

17. Upon information and belief, Coaster is directly infringing, is contributing to the infringement of, and/or is inducing the infringement of the '966 Patent.

18. Coaster has had actual knowledge of the '966 Patent and its infringing activities since at least as early as January 4, 2008.

19. Coaster's infringement of the '966 patent has been and continues to be willful and deliberate, and without license.

20. The unlawful activities of Coaster described herein have caused or will cause, and if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiff, to Plaintiff's intellectual property rights, and to the business reputation and goodwill of Plaintiff.

**COUNT II**  
**TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

21. Plaintiff incorporates by reference Paragraphs 1 through 20 above as if set forth verbatim.

22. The Tracer Ottoman trade dress is inherently distinctive and/or has acquired secondary meaning such that it is perceived as identifying and distinguishing the source as originating from Plaintiff. As evidence of such inherent distinctiveness and/or secondary meaning, Coaster and certain third parties have directly and intentionally copied Plaintiff's trade dress in the Tracer Ottoman. Further, the Tracer Ottoman trade dress is a "sign" to Plaintiff's customers and the relevant public that the product bearing the trade dress features originates from Plaintiff and has associated with it the superior quality and excellent reputation of Plaintiff's furniture products.

23. Pursuant to 15 U.S.C. § 1125(a), the acts of Coaster, including the advertisement, promotion, and sale of at least its 7575 Promenade Leather Theater

Storage Ottoman, constitute a false designation of origin and a false or misleading description or representation of its products in violation of Section 43(a) of the Lanham Act. More particularly, Coaster's use in its advertisements and on its products of a trade dress identical to, or at least similar to, that of Plaintiff's Tracer Ottoman tends falsely to associate in the mind of Plaintiff's customers and the public the products of Coaster with the business and products of Plaintiff, and tends to describe, represent, and designate that Coaster and its products in some manner enjoy the sponsorship of Plaintiff, or some manner of association with Plaintiff or its products, to the damage or likely damage of Plaintiff.

24. Upon information and belief, Coaster's actions are willful, deliberate and done with knowledge of Plaintiff's exclusive proprietary trade dress rights and with knowledge that these actions are likely to confuse, mislead and deceive Plaintiff's customers and the public.

25. The unlawful activities of Coaster described herein have caused or will cause, and if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiff, to Plaintiff's intellectual property rights, and to the business reputation and goodwill of Plaintiff.

**COUNT III**  
**COMMON LAW TRADE DRESS INFRINGEMENT**

26. Plaintiff incorporates by reference Paragraphs 1 through 25 above as if set forth verbatim.

27. The acts of Coaster complained of herein constitute infringement of the common law rights of Plaintiff in its Tracer Ottoman trade dress.

28. The unlawful activities of Coaster described herein have caused or will cause, and if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiff, to Plaintiff's intellectual property rights, and to the business reputation and goodwill of Plaintiff.

**COUNT IV**  
**VIOLATION OF N.C. GEN. STAT. § 75-1.1**

29. Plaintiff incorporates by reference Paragraphs 1 through 28 above as if set forth verbatim.

30. In its activities in and directed to the State of North Carolina, Coaster deliberately and willfully: (a) has caused and/or threatens to cause confusion or misunderstanding as to the affiliation, connection, or association of its business and products with the business and products of Plaintiff; and (b) otherwise has engaged in conduct designed to create or cause confusion, mistake, or deceit.

31. Coaster's actions are unethical and unscrupulous and constitute unfair methods of competition in or affecting commerce and/or unfair or deceptive acts or practices in or affecting commerce in violation of N.C. Gen. Stat. §75-1.1 *et seq.*

32. Coaster's actions have caused, and will continue to cause, Plaintiff serious economic damage and irreparable injury unless enjoined. Coaster has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiff. Coaster's unlawful actions have caused Plaintiff monetary damages in an amount presently unknown, but in an amount to be determined at trial.

33. Plaintiff, therefore, is entitled to relief under N.C. Gen. Stat. §75-1.1 *et seq.*



**COUNT V**  
**UNFAIR COMPETITION**

34. Plaintiff incorporates by reference Paragraphs 1 through 33 above as if set forth verbatim.

35. Upon information and belief, Coaster, with full knowledge of the novelty, unobviousness, distinctiveness and source-identifying attributes associated with the proprietary design and trade dress of Plaintiff's Tracer Ottoman, intended to trade and has traded on the goodwill associated with Plaintiff's Tracer Ottoman. Coaster has copied the Tracer Ottoman design and passed off its products, or at least has attempted to pass off its products, as those of Plaintiff or as those approved or sponsored by Plaintiff. Coaster has misled and will continue to mislead Plaintiff's customers and the unsuspecting public into assuming that a connection exists between Coaster's products and those of Plaintiff due to Coaster's advertising, promoting, offering and selling of its products in connection with unauthorized imitations or reproductions of Plaintiff's proprietary designs and trade dress. Thus, Coaster's activities adversely affect the interest of the public in being free from such deceptive and misleading practices. Coaster's use of reproductions, counterfeits, copies, and colorable imitations of Plaintiff's proprietary design and designations is likely to and does permit Coaster to palm off its unauthorized products as those of Plaintiff for the unjust enrichment of Coaster.

36. The unlawful activities of Coaster described herein have caused or will cause, and if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiff, to Plaintiff's intellectual property rights, and to the business reputation and goodwill of Plaintiff.

WHEREFORE, Plaintiff prays for entry of a judgment by this Court against Coaster, providing and ordering:

- (a) That Coaster has infringed the '966 Patent;
- (b) That Coaster, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with it, be permanently enjoined and restrained from further infringing the '966 Patent during its term;
- (c) For a monetary award of the greater of no less than a reasonable royalty (35 U.S.C. § 284) or the total profits (35 U.S.C. § 289) of Coaster for its infringing activities, together with interest, to compensate Plaintiff for the past and willful infringement by Coaster of the '966 Patent, and that in light of the nature of that willful infringement, such award be increased three times the amount of the damages or profits found or assessed;
- (d) That the Court declare this case "exceptional" within the meaning of 35 U.S.C. § 285, and award to Plaintiff its costs and reasonable attorney fees in respect thereto;
- (e) That the Court issue preliminary and permanent injunctions enjoining Coaster, its agents, servants, employees, and attorneys, and any other persons or entities in active concert or participation with it, from continuing the acts complained of herein and, more particularly, that Coaster and such other persons or entities be preliminarily and permanently enjoined and restrained from:
  - (i) Using or employing, directly or indirectly, in any manner the Tracer Ottoman trade dress;

(ii) Falsely representing or causing confusion in any manner such that the public would tend to falsely associate Coaster's business or products as being the same as, related to, approved by, sponsored by, affiliated with, or otherwise having any relationship with Plaintiff or its business and products; and

(iii) Unfairly competing with Plaintiff in the matters complained of herein, passing off Coaster's products as and/or for products of or sponsored by Plaintiff, injuring the business reputation of Plaintiff in any manner, and falsely describing, representing, advertising, or designating the origin of Coaster's products, or otherwise engaging in unfair competition or deceptive trade practices.

(f) Coaster to recall from each distributor, dealer, and other customer or recipient thereof all 7575 Promenade Leather Theater Storage Ottoman pieces or any colorable imitations;

(g) Coaster to destroy all 7575 Promenade Leather Theater Storage Ottoman pieces or any colorable imitations in its possession, custody, or control, including all products returned pursuant to the foregoing paragraph;

(h) Coaster to destroy all of its promotional literature, catalogs, advertisements, sales aids, stationery, unexecuted business forms, business cards, and other material, in all tangible or intangible media, in its possession, custody, or control, and to deactivate or modify each website, on which appears Coaster's 7575 Promenade Leather Theater Storage Ottoman or any colorable imitations, either individually or as a collection;

(i) Coaster to publish and publicize to all manufacturers, distributors, recipients and purchasers of the 7575 Promenade Leather Theater Storage Ottoman or

any colorable imitations thereof, or any recipients of any promotional literature, catalogs, advertisements, sales aids, stationery, business forms, business cards and other material, in all tangible or intangible media, a corrective notice affirming the rights of Plaintiff in its intellectual property and directing all manufacturers, distributors, recipients and purchasers to Plaintiff for genuine and authorized Tracer Ottoman furniture, and to do so with the same prominence and in all media and distribution channels and for the same duration for which Coaster offered, advertised, marketed or sold the infringing 7575 Promenade Leather Theater Storage Ottoman;

(j) Coaster to file with this Court and serve on Plaintiff within thirty (30) days after the entry of any preliminary injunction or permanent injunction granted in this lawsuit, a report in writing and under oath, setting forth in detail the manner and form in which Coaster has complied with the injunction;

(k) That an accounting be had and Coaster be required to disgorge to Plaintiff the greater of no less than a reasonable royalty or the total profits Coaster has earned as a result of its unlawful conduct as described herein;

(l) That Coaster be required to pay Plaintiff actual, enhanced, and treble damages in light of Coaster's unlawful actions as set forth herein;

(m) That Coaster be required to pay Plaintiff the costs of this action and the reasonable attorneys' fees and expenses Plaintiff incurs in connection with this action consistent with the provisions of 15 U.S.C. § 1117, N.C. Gen. Stat. §75-16.1, and any other applicable law; and

(n) That Plaintiff be awarded such other and further relief, whether general, special, at law or in equity, to which Plaintiff may be entitled.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

This 15th day of October, 2008.

/s/ Benjamin F. Sidbury  
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