

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION**

BARKER COMPANY, LIMITED,	)	
	)	
Plaintiff,	)	
	)	JURY TRIAL DEMANDED
vs.	)	
	)	Case No.
AIR INNOVATIONS, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW Plaintiff Barker Company, Limited (“Barker”), by and through counsel, and for its complaint for declaratory judgment against Air Innovations, Inc. (“Air Innovations”), states:

**Nature of Claim**

1. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*, Rule 57 of the Federal Rules of Civil Procedure, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

**Parties**

2. Barker is a corporation organized and existing under the laws of the State of Iowa with its principal place of business in Van Buren County, Iowa, in this judicial district and division.

3. Air Innovations is a corporation organized and existing under the laws of the State of New York with its principal place of business at 7000 Performance Drive, North Syracuse, NY, 13212.

**Jurisdiction and Venue**

4. This Court has personal jurisdiction over Air Innovations because, upon information and belief, Air Innovations regularly conducts business in the State of Iowa with customers located in the State of Iowa.

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 as the claim involves questions of federal law under the Patent Laws of the United States and the Declaratory Judgment Act.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

**The New York Complaint**

7. On or about December 4, 2008, Air Innovations filed a Complaint against Barker in the United States District Court for the Northern District of New York, case number 5:08-CV-01305 GTS-GHL (the “NY Complaint”). A true and accurate copy of the NY Complaint is attached as Exhibit A.

8. In the NY Complaint, Air Innovations:

- a. alleged infringement of United States Patent No. D496,053 (the “‘053 Patent”) by Barker;
- b. mentioned United States Patent No. D400,030 (the “‘030 Patent”), without specifically making an allegation of infringement by Barker;
- c. alleged violations of Section 43(a) of the Lanham Act by Barker;
- d. alleged trade dress infringement by Barker; and,
- e. alleged common law infringement by Barker pursuant to Restatement, Third, Unfair Competition §16 & §20.

9. The Northern District of New York cannot exercise personal jurisdiction over Barker under any provision of the New York long-arm statute or the Due Process Clause of the United States Constitution, as Barker is an Iowa corporation, with its principal place of business in Van Buren County, Iowa, and, further, Barker has no sales in New York; no real property in New York; and no employees in New York. Thus, Barker does not have sufficient contacts with the state of New York for personal jurisdiction to attach.

**Count I – Declaratory Judgment: Non-Infringement of the ‘053 Patent**

10. Barker restates paragraphs 1 through 9 as if set forth herein.

11. Barker is not infringing and has not infringed, either directly, contributorily, or by inducement, the ‘053 Patent, either literally or under the doctrine of equivalents. A true and accurate copy of the ‘053 Patent is attached as Exhibit B.

12. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding the purported infringement of the ‘053 Patent by Barker.

**Count II – Declaratory Judgment: Non-Infringement of the ‘030 Patent**

13. Barker restates paragraphs 1 through 9 as if set forth herein.

14. Barker is not infringing and has not infringed, either directly, contributorily, or by inducement, the ‘030 Patent, either literally or under the doctrine of equivalents. A true and accurate copy of the ‘030 Patent is attached as Exhibit C.

15. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy

between Barker and Air Innovations regarding any purported infringement of the '030 Patent by Barker.

**Count III – Declaratory Judgment: Invalidity of the '053 Patent**

16. Barker restates paragraphs 1 through 9 as if set forth herein.
17. The '053 Patent is invalid as anticipated under 35 USC §102.
18. The '053 Patent is invalid as obvious in light of the prior art under 35 USC §103.
19. The '053 Patent is invalid due to inequitable conduct during patent prosecution thereof, including but not necessarily limited to failure to comply with the duty of disclosure requirements, specifically the failure by the patent applicant to cite the previously-filed '030 Patent, which was highly relevant to patentability, and of which the applicant was fully aware, during the prosecution of the '053 Patent application.
20. The '053 Patent is invalid for otherwise failing to comply with the U.S. Patent Laws, including 35 USC §101-103, 111-113 and 133.
21. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding the validity of the '053 Patent.

**Count IV – Declaratory Judgment: Invalidity of the '030 Patent**

22. Barker restates paragraphs 1 through 9 as if set forth herein.
23. The '030 Patent is invalid as anticipated under 35 USC §102.
24. The '030 Patent is invalid as obvious in light of the prior art under 35 USC §103.
25. The '030 patent is invalid for otherwise failing to comply with the U.S. Patent Laws, including 35 USC §101-103, 111-113 and 133.

26. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding the validity of the '030 Patent.

**Count V – Declaratory Judgment: False Designation of Origin**

27. Barker restates paragraphs 1 through 9 as if set forth herein.

28. Barker's purported conduct does not and has not caused actual confusion, mistake, or deception as to the source and quality of Air Innovations' goods.

29. Barker's purported conduct does not and has not caused actual confusion, mistake, or deception concerning commercial association between Barker and Air Innovations.

30. Barker's purported conduct does not and has not falsely implied that Barker's floral display cabinets are sponsored by, authorized by, emanate from, or are affiliated with Air Innovations.

31. Barker's purported conduct does not and has not caused Air Innovations to suffer irreparable injury.

32. Air Innovations does not own or possess a protectable mark with respect to its floral display cabinets under Section 43(a) of the Lanham Act.

33. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding alleged violations of Section 43(a) of the Lanham Act, to wit, 15 USC §1125(a) by Barker.

**Count VI – Declaratory Judgment: Trade Dress Infringement**

34. Barker restates paragraphs 1 through 9 as if set forth herein.

35. Barker's purported conduct has not and will not cause confusion, mistake or deception as to the source and quality of Air Innovations' goods, and does not constitute trade dress infringement.

36. Air Innovations does not own or possess protectable trade dress with respect to its floral display cabinets under Section 43(a) of the Lanham Act.

37. Air Innovations does not own or possess a protectable mark with respect to its floral display cabinets under Section 43(a) of the Lanham Act, specifically in that any marks associated with its floral display cabinets are non-distinctive, functional, and/or descriptive.

38. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding alleged trade dress infringement by Barker.

**Count VII – Declaratory Judgment: Common Law Infringement**

39. Barker restates paragraphs 1 through 9 as if set forth herein.

40. Air Innovations does not own or possess protectable trade dress with respect to its floral display cabinets under Iowa common law.

41. Air Innovations does not own or possess a protectable mark with respect to its floral display cabinets under Iowa common law, specifically in that any marks associated with its floral display cabinets are non-distinctive, functional, and/or descriptive.

42. Barker has not infringed any protectable Air Innovations trade dress under Iowa common law.

43. Barker has not infringed any protectable Air Innovations mark under Iowa common law.

44. Pursuant to the Declaratory Judgment Act, 28 USC §2201 *et seq.*, as a result of the filing of the NY Complaint by Air Innovations against Barker, there is an actual controversy between Barker and Air Innovations regarding alleged common law infringement under Iowa common law or under Restatement, Third, Unfair Competition §16 or §20, or any other section thereof.

**Demand for Jury Trial**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Barker hereby demands a jury trial of all issues so triable.

**Prayer for Relief**

WHEREFORE, Barker respectfully requests this Court:

- (a) declare that Barker does not infringe the '053 Patent;
- (b) declare that Barker does not infringe the '030 Patent;
- (c) declare that the '053 Patent is invalid and unenforceable;
- (d) declare that the '030 Patent is invalid and unenforceable;
- (e) declare that Barker has not violated Section 43(a) of the Lanham Act;
- (f) declare that Barker has not falsely designated the origin of its products;
- (g) declare that Barker has not infringed any valid trade dress of Air Innovations;
- (h) declare that Barker has committed no common law infringement under Iowa common law or Restatement, Third, Unfair Competition §16 or §20, or any other section thereof, with respect to any Air Innovations product;
- (i) award reasonable attorneys' fees and costs pursuant to 35 U.S.C. §285; and

(j) grant any and all further relief as this Court may deem just, necessary or proper.

Respectfully submitted,

BY:

/s/ Myron L. Gookin

Myron L. Gookin

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