

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Sun Hill Industries, Inc.

(b) County of Residence of First Listed Plaintiff Hartford County, CT
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Barry L. Cohen, Esquire - Thorp Reed & Armstrong, LLP
2005 Market Street, St. Ste. 1000, Phila. PA 19103 215-640-8500

DEFENDANTS

Aldi, Inc.

County of Residence of First Listed Defendant Batavia, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Reremanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. § 271, et al seq

Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$**
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 5/14/2010 SIGNATURE OF ATTORNEY OF RECORD 

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**
CASE MANAGEMENT TRACK DESIGNATION FORM

SUN HILL INDUSTRIES, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
ALDI, INC.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>May 14, 2010</u>	<u>Barry L. Cohen, Esquire</u>	<u>Sun Hill Industries, Inc.</u>
Date	Attorney-at-law	Attorney for
<u>215-640-8500</u>	<u>215-640-8501</u>	<u>bcohen@thorpreed.com</u>
Telephone	FAX Number	E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUN HILL INDUSTRIES, INC.,

Plaintiff,

v.

ALDI, INC.,

Defendant.

C.A. No.

VERIFIED COMPLAINT

Sun Hill Industries, Inc. (“Sun Hill”) by and through its undersigned counsel, hereby files its Complaint for patent infringement against Aldi, Inc. (“Aldi”) and alleges as follows:

Parties

1. Sun Hill is a corporation organized under the laws of the State of Delaware, with its principal place of business at 85 Farmington Avenue, Fairfield, Connecticut, 06825. Sun Hill is in the business of, among other things, designing, manufacturing, importing and selling seasonal decorations and novelty items, including but not limited to lawn and garden themed products. Sun Hill is the owner of all rights and interest in U.S. Patent No. D589,719 entitled “Heart-Shaped Plant Hanger” (the “719 Patent”).

2. Upon information and belief, Aldi is a corporation organized under the laws of the State of Kansas with its principal place of business at 1200 N. Kirk Road, Batavia, IL 60510 and is in the business of, among other things, the retail sale of grocery and related products at a discount price.

Jurisdiction and Venue

3. This action arises under the patent laws of the United States, Title 35 of the United States Code.

4. This Court has subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338.

5. Aldi is subject to personal jurisdiction in this judicial district.

6. Venue is proper in this judicial district pursuant to the provision of 28 U.S.C. §§1391 and 1400(b). Aldi has offered for sale and has sold the infringing product in this judicial district.

Background Facts

7. Sun Hill is the owner of all rights, title and interest to the '719 Patent. A copy of the '719 Patent is attached as Exhibit "A" to Sun Hill's Motion for T.R.O. and Preliminary Injunction ("Sun Hill's Motion"), which is being filed simultaneously with this Verified Complaint.¹

8. The '719 Patent was duly issued to Sun Hill on April 7, 2009, and remains in full force and effect.

9. Sun Hill designs, manufactures, markets and sells to retailers certain lawn and garden themed decorative objects, including the Heart-Shaped Plant Hanger, which is protected by the '719 Patent ("Sun Hill Plant Hanger").

¹ Also attached to Sun Hill's Motion as Exhibit "B" is a Declaration from Sun Hill's President Joseph Cute.

10. Over the last three years, Sun Hill has sold over 280,000 units of the Sun Hill Plant Hanger to Home Depot and over 13,000 units to SuperValu (Acme Markets, Albertsons, Jewel-Osco).

11. For the past three years, the Sun Hill Plant Hangers were sold in the same vicinity as the location of the Aldi Stores.

12. Upon information and belief, Aldi has offered for sale, sold, distributed and/or imported a folding plant stand (basket hanger) in the shape of a heart (the "Accused Product"). An example of the Accused Product sold by Aldi is attached as Exhibit "C" to Sun Hill's Motion.

13. Aldi has offered to sell and has sold the Accused Product in the Commonwealth of Pennsylvania and in this judicial district. A copy of a receipt for the Accused Product from an Aldi store located within this judicial district is attached as Exhibit "D" to Sun Hill's Motion.

14. Upon information and belief, Aldi has over 1,000 stores located in 31 states. A copy of fact information from Aldi's website is attached as Exhibit "E" to Sun Hill's Motion.

15. Upon information and belief, Aldi did not begin selling the Accused Product in all of its stores throughout the United States until May of 2010.

16. Sun Hill did not learn that Aldi was offering for sale and selling the Accused Product until May 10, 2010, when a copy of the Aldi circular advertisement (identified as "Special buys begin Wednesday, May 12 [2010]") was brought to the attention of Sun Hill's President. A copy of the Aldi circular, which features the Accused Product is attached as Exhibit "F" to Sun Hill's Motion.

17. Upon information and belief, Aldi also began featuring the Accused Product on its website www.aldi.com. A print-out of the Accused Product from Aldi's website is attached at Exhibit "C" to Sun Hill's Motion.

COUNT I – PATENT INFRINGEMENT

18. Sun Hill incorporates as if fully set forth herein the allegations of all preceding paragraphs of this Complaint.

19. Aldi's activities, described in the preceding paragraphs, constitute direct infringement, contributory infringement and/or actively inducing infringement of the '719 Patent.

20. Aldi's acts of infringement have been willful and deliberate, with full knowledge of Sun Hill's patent rights.

21. As a result of Aldi's willful infringement of the '719 Patent, Sun Hill has been damaged and will continue to be damaged in an amount to be determined at trial. Sun Hill has suffered and will continue to suffer irreparable injury unless the infringing activities of Aldi are enjoined.

22. By virtue of Aldi's willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. § 285.

WHEREFORE, Sun Hill prays for the following relief:

- A. Judgment for Sun Hill on its cause of action for patent infringement;
- B. Preliminary and permanent injunction enjoining Aldi, its officers, directors, agents, employees, subsidiaries, affiliates and all those in active concert or

participation with them who receive actual notice of the judgment by personal service or otherwise from offering for sale, selling, importing or inducing others to import and/or sell the Accused Products and/or from otherwise infringing, contributing to infringe and/or actively inducing infringement of the '719 Patent;

C. An award of compensatory and punitive damages to Sun Hill by reasons of the wrongs committed by Aldi, including an award of increased damages pursuant to 35 U.S.S. § 284 for Aldi's willful and deliberate patent infringement;

D. An award of costs of this action, together with Sun Hill's attorneys fees pursuant to 35 U.S.S. § 285;

E. An assessment of interest on the damages so computed;

F. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

THORP REED & ARMSTRONG, LLP

Dated: May 14, 2010

By: /s/ Barry L. Cohen
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