

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

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WAYNE-DALTON CORP.,
One Door Drive
Mt. Hope, Ohio 44660

Plaintiff,

v.

AMARR COMPANY
165 Carriage Court
Winston-Salem, N.C. 27105

Defendant

Case No.:

5:06 CV 1768

Judge:

JUDGE NUGENT

COMPLAINT

(Jury Demand

Endorsed Hereon)

MAG. JUDGE BAUGHMAN

Plaintiff, Wayne-Dalton Corp. ("Wayne-Dalton"), complains of Defendant, Amarr Company ("Amarr"), as follows:

Parties

1. Wayne-Dalton Corp. is an Ohio corporation having its principal place of business at One Door Drive, Mt. Hope, Ohio 44660.
2. Upon information and belief, Amarr is a corporation of the state of North Carolina, having its principal place of business at 165 Carriage Court, Winston-Salem, N.C. 27105.
3. Upon information and belief, Amarr transacts or has transacted business and advertises or has advertised for sale infringing products within this state and within this judicial district for its gain and benefit, and is subject to the jurisdiction of this Court.

Jurisdiction and Venue

4. This is a Complaint for patent infringement arising under the patent laws of the United States, Title 35, United States Code, Sections 271 and 281.
5. This is also a Complaint for false and misleading advertising arising under the Lanham Act,

Title 15, United States Code, Section 1125(a).

6. This Court has jurisdiction over the claims of Wayne-Dalton under 28 U.S.C. Sections 1331 and 1338(a) and venue is proper pursuant to 28 U.S.C. Section 1400(b).

Factual Background

7. U.S. Patent No. 6,640,872 (hereafter “the ‘872 patent”) was duly and legally issued on November 4, 2003, a copy of which is attached hereto as Exhibit A.

8. Wayne-Dalton is the owner of all right, title and interest in the ‘872 patent by virtue of an assignment duly recorded in the United States Patent and Trademark Office Record of Assignments, and Wayne-Dalton has granted no license or sublicense for others to manufacture products under such patent.

Patent Infringement

9. Wayne-Dalton repeats the allegations set forth in paragraphs 1-8 above, as if fully set forth herein.

10. Upon information and belief, Amarr has infringed and continues to infringe the ‘872 patent by making, using, selling and/or offering to sell products that infringe at least certain of the claims of the ‘872 patent, which include, but are not necessarily limited to, Amarr’s “WeatherGuard” brand garage door.

11. Upon information and belief, Amarr has induced and continues to induce others to infringe certain of the claims of the ‘872 patent through the sale of such products as “private label” garage doors.

12. Upon information and belief, Amarr had knowledge of Wayne-Dalton’s ownership of the ‘872 patent, but, despite such knowledge, has manufactured, used, sold or offered the infringing

doors for sale.

13. Accordingly, Amarr's infringement has been and shall continue to be willful, wanton and in deliberate disregard of Wayne-Dalton's rights under the '872 patent.

14. Amarr will continue to infringe and induce infringement by others of the '872 patent unless enjoined by the Court.

15. As a consequence of Amarr's actions, Wayne-Dalton has suffered and will continue to suffer irreparable harm.

16. As a consequence of Amarr's actions, Wayne-Dalton has suffered and will continue to suffer damages in an amount to be determined herein.

False and Misleading Advertising

17. Wayne-Dalton repeats the allegations set forth in paragraphs 1-8 above as if fully rewritten.

18. Wayne-Dalton makes and sells garage doors in interstate commerce in the United States.

19. Amarr also manufactures and sells garage doors in interstate commerce in the United States.

20. Wayne-Dalton and Amarr are direct competitors in the United States market for garage doors.

21. In its marketing campaign for its garage doors sold under at least the "WeatherGuard," "Classica," "Heritage" and "Stratford" brand names, Amarr has made in the past and continues to make the false and misleading claims that these garage doors comply with Standard 116 of DASMA, that they are "pinch resistant," "child safe" and have "finger protecting panels."

22. This claim appears at least in Amarr's advertising, including Amarr's website, and on the

packaging literature for at least Amarr's "WeatherGuard," "Classica," "Heritage" and "Stratford" brand garage doors.

23. This claim also appears on the packaging literature for garage doors made by Amarr for "private label" sale by others.

24. This claim communicates to consumers that at least the "WeatherGuard," "Classica," "Heritage," and "Stratford" brand garage doors made and sold by Amarr, and the "private label" garage doors made by Amarr and sold by others, comply with Standard 116 of DASMA relating to pinch-resistant construction.

25. In fact, the "WeatherGuard," "Classica," "Heritage," and "Stratford" brand garage doors made and sold by Amarr, and the "private label" garage doors made by Amarr for sale by others, do not comply with Standard 116 of DASMA relating to pinch-resistant construction.

26. Amarr's claim of compliance with Standard 116 of DASMA constitutes a false and misleading description of fact, and false and misleading representation of fact, made in connection with goods, and containers for goods, sold in interstate commerce in violation of 15 U.S.C. Section 1125(a).

27. Amarr's claim of compliance by certain of the garage doors made by it with Standard 116 of DASMA constitutes a false and misleading description of fact, and false and misleading representation of fact, in commercial advertising and promotion, misrepresenting the nature, characteristics and qualities of Amarr's goods.

28. Amarr's false and misleading description of fact and false and misleading representation of fact are willful and intentional, and made with deceptive intent, making this an exceptional case.

29. Amarr's false and misleading claim has caused and will continue to cause irreparable harm to Wayne-Dalton's business reputation, injury to its goodwill, loss of competitive advantage and pecuniary damages.

30. Wayne-Dalton has no adequate remedy at law.

WHEREFORE, Wayne-Dalton prays for:

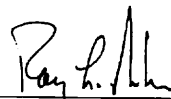
- a. A finding by this Court that Amarr has made, used, offered to sell and sold products that have infringed certain of the claims of the '872 patent;
- b. A finding by this Court that Amarr has induced others to infringe at least certain of the claims of the '872 patent through their offer for sale and sale of the products made by Amarr;
- c. A finding by this Court that Amarr's infringement was and/or is willful;
- d. An order permanently enjoining Amarr and its affiliated companies, officers, agents, servants, employees and all other persons and entities acting in concert and participating with Amarr, from engaging in acts of infringement and from inducing others to infringe any of the claims of the '872 patent;
- e. An award against Amarr of damages suffered by Wayne-Dalton as the result of Amarr's acts of patent infringement, with prejudgment interest thereon;
- f. An award against Amarr for treble damages or other form of exemplary damages as a consequence of Amarr's willful acts of patent infringement, with prejudgment interest thereon;
- g. An award to Wayne-Dalton of attorneys' fees pursuant to 35 U.S.C. Section 285;
- h. An order permanently enjoining Amarr, and its affiliated companies, officers, agents, servants, employees and all other persons and entities acting in concert and participating

with Amarr, including those for whom Amarr has manufactured “private label” garage doors, from distributing advertising or packaging literature containing any false and misleading claim relating to compliance by garage doors manufactured by Amarr with Standard 116 of DASMA;

- i. An order instructing Amarr to recall all advertising and packaging literature containing any false and misleading claim relating to compliance by garage doors manufactured by Amarr with Standard 116 of DASMA;
- j. An order instructing Amarr to publish corrective advertising to dispel the false and deceptive impressions created by its advertising and packaging literature;
- k. An award against Amarr for treble damages as the result of Amarr’s false descriptions and misrepresentations;
- l. An award to Wayne-Dalton of costs and expenses reasonably related to this action; and
- i. An order granting such other and further relief as this Court deems just and proper.

Jury Demand

Wayne-Dalton requests a jury trial herein.



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