

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

COLT DEFENSE LLC,)
)
 Plaintiff,)
)
 v.) Civil Action Docket No. _____
)
 BUSHMASTER FIREARMS, INC.,)
)
 Defendant.)

**PLAINTIFF COLT DEFENSE, LLC'S COMPLAINT
FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL
(INJUNCTIVE RELIEF SOUGHT)**

Plaintiff Colt Defense LLC [hereinafter "Colt"] hereby complains against Defendant Bushmaster Firearms, Inc. ["Bushmaster"] as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code.

THE PARTIES

2. Colt is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Hartford, Connecticut. Colt has manufactured firearms in and around Hartford, Connecticut for over 150 years.

3. Bushmaster is a business corporation organized under the laws of the State of Maine, with its principal place of business at 999 Roosevelt Trail, Windham, Maine 04062. Bushmaster is also a firearm manufacturer.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Bushmaster because Bushmaster is a corporation that is organized under the laws of Maine and does business in Maine, and, upon

information and belief, Bushmaster regularly and continuously engages in substantial sales and other business transactions in this District and has committed acts of infringement in this District.

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338 (patents) and 28 U.S.C. § 1331 (federal question).

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) and (c), and 28 U.S.C. § 1400(b), because the events giving rise to the claim occurred in this District and Bushmaster is subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

7. On May 12, 1987, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 4,663,875 [the “‘875 patent”], entitled “Rifle Handguard Assembly Having Outer Shell With Outer And Inner Liners,” to Colt as assignee of inventor Henry J. Tatro for an invention related to a generally round handguard assembly for a rifle barrel that has substantially identical bottom and top mating sections.

8. Colt is the owner of all right, title, and interest in the ‘875 patent, including all rights to recover for any and all past infringement thereof.

COUNT I (Patent Infringement)

9. Bushmaster repeats and realleges the allegations set forth in each of the paragraphs above, as if fully set forth herein.

10. Bushmaster without authority has made, used, offered for sale, and/or sold in the United States a “dual-shield handguard” that is covered by one or more claims in the ‘875 patent during the term of the patent therefor, and currently continues to do so.

11. Bushmaster's past and present manufacture, use, offer for sale, and sale of those handguards directly infringe the '875 patent.

12. Bushmaster has been and is actively inducing infringement of the '875 patent and contributing to the infringement of the '875 patent by third parties, including, but not limited to, advertisers, agencies, and publishers, by making, using, offering for sale, and selling in the United States the dual-shield handguard knowing the same to be especially made for use in an infringement of the '875 patent, and not a staple article of commerce suitable for a substantial non-infringing use.

13. Bushmaster's infringement of the '875 patent has been and continues to be willful, wanton, deliberate, and with full knowledge and awareness of Colt's patent rights and without license from Colt.

14. As a direct and proximate result of Bushmaster's conduct, Colt has suffered and will continue to suffer substantial and irreparable injury, for which Colt has no adequate remedy at law. Unless enjoined by this Court, Bushmaster will continue such acts of infringement to Colt's substantial and irreparable damage.

15. As a direct and proximate result of Bushmaster's conduct, Colt has also been damaged and will continue to be damaged in its business and reputation in an amount yet to be determined. Moreover, the willful and deliberate nature of Bushmaster's infringement renders this an exceptional case, thereby entitling Colt to treble damages, as well as costs and attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Colt requests that the Court:

A. Enter a judgment that Bushmaster has infringed the '875 patent;

B. Preliminarily and permanently enjoin and restrain Bushmaster, its officers, directors, employees, agents, servants, successors, and assigns, and any and all persons acting in privity or concert with Bushmaster, from further infringement of the '875 patent;

C. Award Colt damages, including lost profits due to infringement, plus prejudgment interest and costs, and increasing said damages to three times the amount found or assessed as provided by 35 U.S.C. § 284;

D. Declare this an exceptional case within the meaning of 35 U.S.C. § 385 and award Colt its reasonable attorney fees, costs, and disbursements in this action; and

E. Grant to Colt such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 38, Colt respectfully demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

Dated: May 16, 2005

Respectfully submitted,

Of Counsel:

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