

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT DIESEL CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

FEDERAL MOGUL CORPORATION,
a Delaware corporation,

Defendant.

03-72202

HONORABLE

PAUL D. BORMAN
CIVIL ACTION NO.

MAGISTRATE JUDGE SCHEER

JURY TRIAL DEMANDED

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U.S. DISTRICT COURT OF ENCL.
EAST DIST. MICH.
DETROIT
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COMPLAINT AND JURY DEMAND

Plaintiff, Detroit Diesel Corporation hereby alleges for its complaint against the
defendant, Federal Mogul Corporation, as follows:



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I. THE PARTIES AND JURISDICTION

1. Plaintiff, Detroit Diesel Corporation (hereinafter "DDC") is a Delaware corporation, having its principal offices at 13400 West Outer Drive, Detroit, Michigan 48239-4001.

2. On information and belief, defendant, Federal Mogul Corporation, is a Delaware corporation, having its World Headquarters at 26555 Northwestern Highway, Southfield, Michigan 48034.

3. The Court has subject matter jurisdiction over the claims herein pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1338, and 28 U.S.C. § 1331, as this case arises under the patent and trademark laws of the United States.

4. The Court has general and specific personal jurisdiction over the defendant because the defendant is conducting business in the State of Michigan and its district, including the infringing acts set forth in this complaint.



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II. BACKGROUND

5. DDC is the manufacturer of internal combustion engines and parts therefor.

A. Detroit Diesel Corporation's Patents At Issue

6. On December 17, 1991, U.S. Patent No. 5,072,654, entitled "Piston And Bearing Assemblies" was duly and legally issued. (*See* Exhibit A, U.S. Patent No. 5,072,654, hereinafter the '654 patent.)

7. On May 12, 1992, U.S. Patent No. 5,112,145, entitled "Piston And Bearing Assemblies" was duly and legally issued. (*See* Exhibit B, U.S. Patent No. 5,112,145 hereinafter the '145 patent.)

8. On April 5, 1994, U.S. Patent No. 5,299,538, entitled "Internal Combustion Engine Block Having A Cylinder Liner Shunt Flow Cooling System And Method Of Cooling Same" was duly and legally issued. (*See* Exhibit C, U.S. Patent No. 5,299,538, hereinafter the '538 patent.)

9. DDC is the owner of all right, title and interest in U.S. Patent Nos. 5,072,654, 5,112,145 and 5,299,538. The '654, '145, and '538 patents are hereinafter collectively referred to as the "patents-in-suit."

10. DDC has never granted the defendant a license under any one of the patents-in-suit.



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B. Detroit Diesel Corporation's Trademark At Issue

11. DDC is the owner of the Spinning Arrows design used continuously from 1972 to the present by DDC as a trademark for use with internal combustion engines and parts therefor.

12. The Spinning Arrows Trademark was duly and lawfully registered on October 30, 1990 in Class 12 and is currently registered on the principal registry of the United States Patent and Trademark Office as U.S. Registration No. 1,619,750. (See Exhibit D, U.S. Registration No. 1,619,750, hereinafter the '750 registration.) The '750 registration is subsisting and incontestible.

13. The Spinning Arrows Trademark symbolizes the business goodwill of DDC and its intangible assets of substantial commercial value.

14. Since 1972, long prior to the acts of the defendant herein alleged, DDC and its authorized distributors, dealers, and licensees have used the Spinning Arrows Trademark alone or in combination, or in connection with its internal combustion engines, parts and accessories, and numerous automotive products and services for sale throughout the world, including the United States and this district. These products and services are hereinafter collectively referred to as the "DDC Products and Services."

15. Sales, advertising and promotion of the DDC products and services since 1972 have amounted to many millions of dollars.



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16. As a result of such continuous use and extensive sales, advertising and promotion of the Spinning Arrows Trademark by DDC, its authorized dealers, licensees, and distributors throughout the world, the marks and products associated with the Spinning Arrows trademark enjoy worldwide recognition and a world-famous reputation, and are recognized by the public as emanating from DDC.



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III. COUNT I
PATENT INFRINGEMENT OF THE '654 PATENT

17. The allegations of paragraphs 1-16 are incorporated herein by reference.

18. Defendant has made, used, offered for sale and sold in the United States, and continues to make, use, offer for sale and sell in the United States diesel engine rebuilding kits and parts therefor, which activities infringe, induce others to infringe, and/or contributorily infringe the '654 patent.

19. DDC has suffered damages, reduced sales and/or lost profits as a result of the infringing activities of the defendant, and will continue to suffer such damage as long as those infringing activities continue.

20. The defendant's infringement of the '654 patent has been and continues to be willful, wanton, and deliberate, and with full knowledge and awareness of DDC's patent rights and without license from DDC.

21. DDC has no adequate remedy at law. Unless enjoined by this Court, defendant will continue such acts of infringement to DDC's substantial and irreparable damage.



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IV. COUNT II
PATENT INFRINGEMENT OF THE '145 PATENT

22. The allegations of paragraphs 1-21 are incorporated herein by reference.

23. Defendant has made, used, offered for sale and sold in the United States, and continues to make, use, offer for sale and sell in the United States diesel engine rebuilding kits and parts therefor, which activities infringe, induce others to infringe, and/or contributorily infringe the '145 patent.

24. DDC has suffered damages, reduced sales and/or lost profits as a result of the infringing activities of the defendant, and will continue to suffer such damage as long as those infringing activities continue.

25. The defendant's infringement of the '145 patent has been and continues to be willful, wanton, and deliberate, and with full knowledge and awareness of DDC's patent rights and without license from DDC.

26. DDC has no adequate remedy at law. Unless enjoined by this Court, defendant will continue such acts of infringement to DDC's substantial and irreparable damage.



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V. COUNT III
PATENT INFRINGEMENT OF THE '538 PATENT

27. The allegations of paragraphs 1-26 are incorporated herein by reference.

28. Defendant has made, used, offered for sale and sold in the United States, and continues to make, use, offer for sale and sell in the United States diesel engine rebuilding kits and parts therefor, which activities infringe, induce others to infringe, and/or contributorily infringe the '538 patent.

29. DDC has suffered damages, reduced sales and/or lost profits as a result of the infringing activities of the defendant, and will continue to suffer such damage as long as those infringing activities continue.

30. The defendant's infringement of the '538 patent has been and continues to be willful, wanton, and deliberate, and with full knowledge and awareness of DDC's patent rights and without license from DDC.

31. DDC has no adequate remedy at law. Unless enjoined by this Court, defendant will continue such acts of infringement to DDC's substantial and irreparable damage.



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**VI. COUNT IV
FEDERAL TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1114**

32. The allegations of paragraphs 1-31 are incorporated herein by reference.

33. Subsequent to DDC's use of the Spinning Arrows Trademark as above alleged, and with actual knowledge of DDC's use of the Spinning Arrows Trademark and with the intent to misrepresent the source of defendant's goods, defendant copied, adopted and is using the Spinning Arrows Trademark in connection with the advertising, offering for sale and sale of defendant's products in the United States, in the State of Michigan, and this District.

34. Defendant has no consent, license, approval or other authorization to use the Spinning Arrows Trademark in connection with its products.

35. Defendant's use of the famous Spinning Arrows Trademark as alleged in the foregoing paragraphs clearly shows the willful intent of the defendant to misrepresent the source of defendant's goods so as to cause confusion, mistake or to deceive as to defendant's connection or association with DDC.

36. Despite DDC's well-known prior rights in the Spinning Arrows Trademark, defendant has, without the consent of DDC, used and continues to use in commerce, the Spinning Arrows Trademark or counterfeits, copies, reproductions or colorable imitations thereof in connection with the sale, offering for sale, distribution, and advertising of the defendant's products.



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37. Defendant's actions constitute willful infringement of DDC's exclusive rights in the Spinning Arrows Trademark in violation of 15 U.S.C. § 1114.

38. Defendant's use of the Spinning Arrows Trademark, counterfeits, copies, reproductions, or colorable imitations thereof has been and continues to be done with the intent to cause confusion, mistake, and to deceive customers concerning the source and/or sponsorship of defendant's products. Defendant has used counterfeits of the Spinning Arrows Trademark in connection with its products with the knowledge that the mark is counterfeit and with the intent to use counterfeits. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

39. As a direct and proximate result of defendant's conduct, DDC has suffered irreparable harm to the valuable Spinning Arrows Trademark. Unless defendant is restrained from further infringement of the Spinning Arrows Trademark, DDC will continue to be irreparably harmed.

40. DDC has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if defendant's acts are allowed to continue.

41. As a direct and proximate result of defendant's conduct, DDC has suffered damages to the valuable Spinning Arrows Trademark, and other damages in an amount to be proved at trial.



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**VII. COUNT V
FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,
FALSE ADVERTISING, AND TRADE DRESS
INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

42. The allegations of paragraphs 1-41 are incorporated herein by reference

43. Defendant has knowingly used and continues to use in commerce the Spinning Arrows Trademark, or counterfeits, reproductions, copies, or colorable imitations thereof, in connection with the products and services that the defendant manufactures, advertises, promotes, and sells. Defendant has used counterfeits of the Spinning Arrows Trademark knowing that the marks used are counterfeits and with the intent to use counterfeits of the Spinning Arrows Trademark. Defendant's actions render this case exceptional within the meaning of 15 U.S.C. § 1117(a).

44. Defendant's use of the Spinning Arrows Trademark alleged above is likely to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of defendant's products and services, and is likely to cause such people to believe in error that defendant's products and services have been authorized, sponsored, approved, endorsed, or licensed by DDC or that the defendant is in some way affiliated with DDC.

45. Defendant's acts constitute false and misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of defendant's goods, and constitute trade dress infringement in violation of 15 U.S.C. § 1125(a).



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46. By reason of defendant's actions, DDC has suffered irreparable harm to the valuable Spinning Arrows Trademark. Unless defendant is restrained from its actions, DDC will continue to be irreparably harmed.

47. DDC has no remedy at law that will compensate for the continued and irreparable harm that will be caused if defendant's acts are allowed to continue.

48. As a direct and proximate result of defendant's conduct, DDC has suffered damages to the valuable Spinning Arrows Trademark, and other damages in an amount to be proved at trial.



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VIII. DEMAND FOR RELIEF

WHEREFORE, DDC demands entry of a judgment granting relief against the defendant as follows:

A. Patents At Issue

1. Preliminarily and permanently enjoining and restraining defendants, its officers, directors, employees, agents, servants, successors and assigns, and any and all persons acting in privity or in concert with the defendants, from further infringement of the '145, '654, and '538 patents;

2. Awarding DDC its damages, together with prejudgment interest and costs, and increasing those damages four times the amount found or assessed as provided by 35 U.S.C. § 284;

3. Declaring this an exceptional case within the meaning of 35 U.S.C. § 285, and awarding DDC its reasonable attorney's fees and costs and disbursements in this action;

4. Granting to DDC such other and further relief as this Court deems reasonable;

B. Trademark At Issue

1. A determination that the defendant has willfully and deliberately violated 15 U.S.C. § 1114, that DDC has been damaged by such violation, and that the defendant is liable to DDC for such violation;



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2. A determination that the defendant has violated 15 U.S.C. § 1125(a), that DDC has been damaged by such violations, and that the defendant is liable to DDC for such violations;

3. Under all claims for relief, that injunction be temporarily, preliminarily, and permanently issued enjoining defendant, its employees, agents, successors and assigns, and all those in active concert and participation with it, and each of them who receives notice directly or otherwise of such injunctions, from:

(a) imitating, copying, or making any unauthorized use of the Spinning Arrows Trademark;

(b) importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any service or product using any simulation, reproduction, counterfeit, copy, or colorable imitation of the Spinning Arrows Trademark;

(c) using any simulation, reproduction, counterfeit, copy or colorable imitation of the Spinning Arrows Trademark in connection with the promotion, advertisement, display, sale, offer for sale, manufacture, production, circulation or distribution of any product or service;

(d) using any false designation of origin or false description (including, without limitation, any letters, symbols, or designs constituting the Spinning Arrows trademark) or performing any act, which can, or is likely to, lead members of the trade or public to believe that any service or product manufactured, distributed or sold by defendant is in any manner associated or connected with DDC or the Spinning



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Arrows Trademark, or is sold, manufactured, licensed, sponsored, approved or authorized by DDC.

4. For an order directing that defendant deliver for destruction all products labels, tags, signs, prints, packages, videos, and advertisements in their possession or under their control, bearing or using the Spinning Arrows Trademark or any simulation reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making the same, pursuant to 15 U.S.C. § 1118;

5. For an order directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any service or product manufactured, sold or otherwise circulated or promoted by defendant is authorized by DDC or related in any way to the Spinning Arrows Trademark.

Respectfully submitted,

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By: 

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