

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MONSTER CABLE PRODUCTS, INC.;
MONSTER LLC,

Plaintiff,

vs.

TRIPPE MANUFACTURING CO.,

Defendant

Case No.: 9:07-cv-286

JURY TRIAL DEMANDED

**AMENDED COMPLAINT FOR PATENT TRADEMARK AND TRADE DRESS
INFRINGEMENT**

Plaintiffs, Monster Cable Products, Inc. and Monster LLC, bring this action against defendants, and each of them, as follows:

JURISDICTION AND VENUE

1. This action arises, inter alia, under 15 U.S.C. §1125 et seq. and 35 U.S.C. §1 et seq. Jurisdiction is therefore proper under 28 U.S.C. §1331. Jurisdiction is also proper under 28 U.S.C. §1332.

2. Supplemental jurisdiction of this Court exists for the state law claims stated herein, each of which arise out of a common nucleus of operative facts with those from which the federal claims arise.

3. Venue in this judicial district is proper under 28 U.S.C. §1391 (b) and (c). Defendant has on a continual basis committed infringing acts alleged below within the District of this Court, in business interactions purposefully elicited by defendants with or directed to residents of said District, including, inter alia, actively soliciting and causing infringing and other wrongful sales directed into the District as well as directing internet website advertising and promotion and other promotion and advertising within and toward this District.

THE PARTIES

4. Plaintiff Monster Cable Products, Inc. (also referred to herein as “Monster Cable”) is a corporation existing under the laws of California, with its principal place of business in Brisbane, California.

5. Plaintiff Monster LLC is a limited liability corporation, organized under the laws of Nevada, with a principal place of business at 7251 Lake Mead Boulevard West, Las Vegas, Nevada, 89128.

6. Plaintiffs are both part of the same family of companies and have a close business relationship. Plaintiff Monster Cable Products, Inc. has at all relevant times operated as the licensee of patent nos. 6,456,091, 446,504 and 446,189 and trademark registration 2,647,550 and the other rights asserted in this action, with the consent of Monster LLC, which reserved for itself the right also to use and enforce such rights.

7. Plaintiff is informed and believes, and based thereon alleges, that defendant Trippe Manufacturing Company, aka, Tripp Lite, aka Unison Technologies, is an Illinois corporation having its principal place of business in Chicago. Upon information and belief, Trippe Manufacturing Company may be served with process by its registered agent Illinios Corporation Service C at 801, Adlai Stevenson Dr., Springfield, IL 62703.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

8. Since 1978, plaintiff Monster Cable has been doing business in the United States, designing, manufacturing, and selling a broad array of electronic products and accessories, with a particular focus on superior cables and power protection devices for high-end audio and video components.

9. Monster Cable is now the world's leading manufacturer of high performance cables that connect audio/video components for home, car and professional use as well as computers and computer games. Through its Monster Power division, Monster also focuses on

delivering clean AC power to A/V components and computer products and high capacity surge protection for maximum performance.

10. On information and belief, Plaintiffs allege that defendant has, inter alia, sold various products, including the HTPOWERBAR10 (aka HTISOBAR10), HT500PC, HT3100PC, and HT7100PC, that infringe utility and design patent and trade dress rights held by Monster. Since at least September 2005, this infringement has been undertaken willfully and with notice.

COUNT I

INFRINGEMENT OF U.S. PATENT No. 6,456,091

11. Plaintiffs reallege and incorporate therein by reference paragraphs 1 through the immediately preceding paragraph, inclusive, as if fully set forth herein.

12. On September 24, 2002, United States Patent No. 6,456,091 (“the ‘091 patent”) was duly and legally issued to Noel and Kendrew Lee for a Power Line Conditioner with Voltage and Current Amplitude Tracking. The inventors assigned all right and interest in the ‘091 patent to Monster Cable Products, Inc. upon issuance. Monster Cable thereafter assigned said patent to plaintiff Monster LLC, which has been and still is the owner of the ‘091 patent. A true and correct copy of the ‘091 patent is attached hereto as Exhibit A.

13. Defendant has infringed and continues to infringe the ‘091 patent by selling products, including the HTPOWERBAR10 (aka HTISOBAR10), HT3100PC, and HT7100PC, embodying the patented invention, and will continue to do so unless enjoined by this court.

14. Plaintiffs have been damaged in an unascertained amount and will seek leave to amend this Complaint when the sum has been ascertained.

15. On information and belief, Plaintiffs allege that the aforesaid acts were committed with willful intent, with knowledge of the lack of right to do so, and said acts have caused plaintiff damage.

Wherefore, Plaintiffs pray for judgment as hereafter set forth.

COUNT II

INFRINGEMENT OF U.S. DESIGN PATENT No. 446,504

16. Plaintiffs reallege and incorporate therein by reference paragraphs 1 through the immediately preceding paragraph, inclusive, as if fully set forth herein.

17. On August 14, 2001, United States Design Patent No. 446,504 (“the ‘504 patent”) was duly and legally issued to designer Kendrew Lee for a design for a powerline conditioner. Mr. Lee assigned all right and interest in the ‘504 patent to Monster Cable Products upon issuance. Monster Cable thereafter assigned said patent to plaintiff Monster LLC, which has been and still is the owner of the ‘504 patent. A true and correct copy of the ‘504 patent is attached hereto as Exhibit B.

18. Defendant has infringed and continues to infringe the ‘504 patent by selling products embodying the patented design, and will continue to do so unless enjoined by this court.

19. On information and belief, Plaintiffs allege that the aforesaid acts were committed with willful intent, with knowledge of the lack of right to do so, and said acts have caused plaintiff damage.

Wherefore, Plaintiffs pray for judgment as hereafter set forth.

COUNT III

INFRINGEMENT OF U.S. DESIGN PATENT No. 446,189

20. Plaintiffs reallege and incorporate therein by reference paragraphs 1 through the immediately preceding paragraph, inclusive, as if fully set forth herein.

21. On August 7, 2001, United States Design Patent No. 446,189 (“the ‘189 patent”) was duly and legally issued to designer Noel Lee for an ornamental design for a package. Mr. Lee assigned all right and interest in the ‘189 patent to Monster Cable Products upon issuance. Monster Cable thereafter assigned said patent to plaintiff Monster LLC, which has been and still

is the owner of the '189 patent. A true and correct copy of the '189 patent is attached hereto as Exhibit C.

22. Defendant has infringed and continues to infringe the '189 patent by selling products embodying the patented design, and will continue to do so unless enjoined by this court.

23. Plaintiff has been damaged in an unascertained amount and will seek leave to amend this Complaint when the sum has been ascertained.

24. On information and belief, Plaintiffs allege that the aforesaid acts were committed with willful intent, with knowledge of the lack of right to do so, and said acts have caused plaintiff damage.

Wherefore, Plaintiffs pray for judgment as hereafter set forth.

COUNT IV

TRADE DRESS INFRINGEMENT

25. Plaintiffs reallege and incorporate therein by reference paragraphs 1 through the immediately preceding paragraph, inclusive, as if fully set forth herein.

26. Section 43(a) of the Lanham Act prohibits conduct that constitutes a false designation of origin, a false or misleading description of fact, and/or a false or misleading representation of fact which is likely to cause confusion. 15 U.S.C. §1125(a).

27. Plaintiffs promote and sell distinctive goods well known to customers interested in high performance audio/video and power technology. The design and packaging of Monster's surge suppressor and power conditioning product line has become recognized in the industry as symbols uniquely associated with Plaintiffs. By copying the designs of Plaintiffs' products, Tripp Lite has engaged in trade dress infringement by falsely representing the origin of the relevant products, among other things, in violation of Section 43(a) of the Lanham Act.

28. The aforesaid acts are intended to and likely to cause confusion in the marketplace as to the source, sponsorship, affiliation or authorization of the products being offered and distributed by Tripp Lite.

29. At all relevant times, both plaintiffs Monster LLC and Monster Cable have had standing to bring this action against Defendants under 15 U.S.C. §1125(a). Under said statute, both have a commercial interest to protect and are likely to be damaged by misuse of said trade dress, irrespective of ownership of said trade dress. Plaintiffs have been damaged in an unascertained amount and will seek leave to amend this Complaint when the sum has been ascertained.

30. On information and belief, Plaintiffs allege that the aforesaid acts were committed with willful intent for the purpose of trading upon plaintiff's goodwill and business reputation, with knowledge of the lack of right to do so, and said acts have caused plaintiff damage.

Wherefore, Plaintiffs pray for judgment as hereafter set forth.

COUNT V

INFRINGEMENT OF TRADEMARK NO. 2,647,550

31. Plaintiffs reallege and incorporate therein by reference paragraphs 1 through the immediately preceding paragraph, inclusive, as if fully set forth herein.

32. Monster Cable began using in commerce and thereafter filed for United States trademark protection for the mark POWERBAR on October 31, 2001, and the application matured into a registered trademark on November 5, 2002. A copy of said trademark registration is attached as Exhibit D. While reserving all rights to use and enforce the mark POWERBAR, Monster Cable thereafter assigned ownership of the mark to Monster LLC.

33. Plaintiffs have produced, promoted, distributed and sold POWERBAR home theater products for years and, consequently, has developed secondary meaning and substantial good will in the mark. Specifically, the POWERBAR mark has been used in commerce in

connection with surge protection and power conditioner outlet strip to protect entertainment systems from various harmful electric anomalies.

34. Defendant markets and sells an outlet product for home entertainment centers that also uses the mark "POWERBAR," in violation of the Lanham Act within the meaning of 15 U.S.C. §1125.

35. Defendant's deliberate acts to use Plaintiffs' goodwill in the POWERBAR mark for its own profit has caused damage to Plaintiffs in an unascertained amount, including damages based on the wrongful profits obtained by Defendants.

36. At all times, Defendant acted in bad faith, oppressively and maliciously toward Plaintiffs, with intent to injure them, thereby entitling Plaintiffs to treble damages against Defendant, in an unascertained amount. Plaintiffs will seek leave to amend this Complaint when such damages have been ascertained.

37. The above described acts of Defendant has caused and is continuing to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law, and Defendant will continue to do so unless enjoined by this Court.

Wherefore, Plaintiffs pray for judgment as hereafter set forth.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment as follows:

1. For damages, including plaintiff's lost profits, defendants' profits, disgorgement, restitution or other compensation or monetary remedy, according to proof;
2. For punitive, exemplary and/or treble damages, according to proof;
3. For an award of attorneys' fees and costs;
4. For preliminary and permanent injunctive relief, enjoining defendants, and each of them, from continuing to engage in the practice of unauthorized sales and infringement of Monster's patents and trade dress.

5. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues triable before a jury.

Dated this 9th day of September, 2008

/s/ Eric H. Findlay

Eric H. Findlay (Lead Counsel)

TX Bar No. 00789886

Ramey & Flock, P.C.

100 E. Ferguson, Suite 500

Tyler, Texas 75702

(903) 510-5213

ericf@rameyflock.com

Robert W. Payne (Lead Counsel)

TX Bar No. 24061375

Alan E. Engle (Pro Hac Vice)

CA Bar No. 224779

LaRiviere Grubman & Payne, LLP

19 Upper Ragsdale Drive, Suite 200

PO Box 3140

Monterey, CA 93942

(831) 649-8800

rpayne@lgpatlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of September, 2008, a true and correct copy of the foregoing instrument was served upon all parties via electronic mail.

/s/ Eric H. Findlay

Eric H. Findlay