

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

FILED

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S. F. BOOT BRUSH ENTERPRISES, LTD.,
A Canadian Limited Partnership,

Plaintiff,

v.

GRAND GENERAL ACCESSORIES
MANUFACTURING, a Corporation,

Defendant.

U.S. DISTRICT COURT
ANN ARBOR
Case No. 03-70577
Hon. Roberts

AMENDED COMPLAINT

The above-named Plaintiff, by and through his attorneys, YOUNG & BASILE,
P.C., for his complaint against the Defendant, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a limited corporation formed under the laws of the Province of Ontario, Canada. Further, the Plaintiff is the owner, by assignment, of U.S. Patent No. Des. 374,650, hereinafter referred to as the "'650 patent", and entitled "BRACKET".
2. The Defendant, on information and belief, is a California corporation, having its principal place of business at 901 West Walnut Street, Compton, California 90220.
3. This Court has jurisdiction over this dispute by virtue of the provisions of 28 U.S.C. § 1332, the Plaintiff being a resident of a foreign state, and the Defendant being a United States corporation. Further, this Court has jurisdiction pursuant to 28 U.S.C. § 1338, providing to the district court's

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original jurisdiction of any civil action arising under any act of Congress relating to patents, copyrights and trademarks.

4. Venue is proper in this Court, pursuant to the provisions of 28 U.S.C. § 1391, in that the Defendant has committed substantial and continuous acts of patent infringement within the judicial district of the State of Michigan.

PATENT INFRINGEMENT

5. Plaintiff realleges and incorporates by reference the allegations of the Complaint as set forth in Paragraphs 1-4 above, and as if fully set forth herein.
6. The Plaintiff is the owner of U.S. Patent No. Des. 374,650, being a design patent for a bracket.
7. The Plaintiff's invention has provided to the Plaintiff substantial commercial advantage in the manufacture, sale and distribution of brackets found on motor vehicles for the purpose of holding brushes.
8. Plaintiff's patent represents a new, original and ornamental design for an article of manufacture, and as a result, Plaintiff was awarded the '650 patent on October 15, 1996. A copy of Plaintiff's patent is attached hereto as Exhibit A.
9. Upon introduction of the Plaintiff's "Boot Brush" product incorporating the ornamental design of the designed patent to the marketplace, the Plaintiff commenced marking the product with the appropriate designation "patent pending". Since the time of the issuance of the patent, the

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Plaintiff has marked the Plaintiff's product with the Plaintiff's U.S. patent number or the designation "patent pending".

10. The Defendant, accordingly, has, at all times, had constructive notice of the Plaintiff's patent.
11. The Defendant has infringed the Plaintiff's patent through the manufacture, use, sale, or offer for sale of the Defendant's "Boot Brush" product.
12. The Defendant is not authorized or licenced by the Plaintiff to utilize the invention of the '650 patent.
13. As a result of the actions of the Defendant in infringing the Plaintiff's patent, the Plaintiff has been injured.
14. Pursuant to the provisions of 35 U.S.C. § 289, Plaintiff is entitled to damages in an amount not less than \$250 for each infringing act of the Defendant.

COPYRIGHT INFRINGEMENT

15. Plaintiff realleges and incorporates by reference the allegations of the Complaint as set forth in Paragraphs 1-14 above, and as if fully set forth herein.
16. The Plaintiff engaged the services of an artist to prepare artwork for the Plaintiff's product instruction sheet, a sample of which is attached hereto as Exhibit B.
17. The artistic work of Exhibit B constitutes a work made for hire, for which

Plaintiff paid valuable consideration, resulting in the acquisition by the Plaintiff of all rights in and to the art.

18. The Plaintiff has caused Plaintiff's copyright in the art to be registered with the Library of Congress pursuant to the applicable provisions of the copyright statute.
19. The Defendant has copied the Plaintiff's copyrighted artwork for its version of the infringing product, without license, authorization or permission from the Plaintiff.
20. As a result of the actions of the Defendant, the Plaintiff has been damaged, entitling Plaintiff to recover monetary damages in an amount up to \$100,000 per infringement.

TRADEMARK INFRINGEMENT

21. Plaintiff realleges and incorporates by reference the allegations of the Complaint as set forth in Paragraphs 1-20 above, and as if fully set forth herein.
22. Beginning as early as 1992, the Plaintiff has adopted the trademark "Boot Brush" to identify its product.
23. As a result of the Plaintiff's widespread and continuous use of the trademark "Boot Brush", the Plaintiff's mark has become widely accepted and identified in the trade.
24. The Defendant has infringed the Plaintiff's trademark, by adoption of the identical trademark "Boot Brush" for the Defendant's products, without

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license, permission or authorization from the Plaintiff.

25. As a result of the actions of the Defendant, the Plaintiff has been damaged, in that there has been created confusion and likelihood of confusion in the marketplace, resulting in substantial lost profits to the Plaintiff.

UNFAIR COMPETITION

26. Plaintiff realleges and incorporates by reference the allegations of the Complaint as set forth in Paragraphs 1-25 above, and as if fully set forth herein.
27. The Plaintiff has adopted a particular product configuration, packaging configuration, trademark and product design which is unique and valuable.
28. The Defendant has adopted identical product design, identical packaging, an identical trademark, and identical instructions which are likely to cause confusion or mistake, or to deceive the public into believing that Defendant's products are somehow affiliated with Plaintiff's, all in violation of 15 U.S.C. § 1125, being Section 43(a) of the Lanham Act.
29. As a result of the wrongful actions of the Defendant, the Plaintiff has been damaged.

WHEREFORE, Plaintiff prays for an order of this Court as follows:

- A. A preliminary injunction enjoining the Defendant, and those acting in

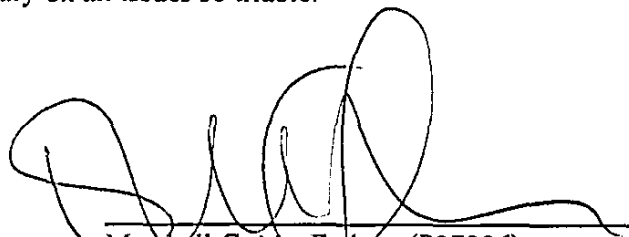
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concert with the Defendant, from further acts of intellectual property infringement or unfair competition;

- B. A permanent injunction, forever enjoining the Defendant, and those acting in concert with it, from infringement of the Plaintiff's patent, copyright and trademark, and enjoining the Defendant from unfair competition in violation of Section 43(a) of the Lanham Act;
- C. Money damages sufficient to compensate the Plaintiff for its losses, and for such statutory damages as may be allowed by law;
- D. Costs, interest and attorneys fees;
- E. Such other relief as may be appropriate in equity and good conscience.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.



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DATED: 2-12-03

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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