

FILED

OCT 14 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

**KWIKSET CORPORATION and
NEWFREY LLC,**

Plaintiffs,

vs.

**DELTANA ENTERPRISES, INC.,
DOORWARE, INC., and DOOR AND
CABINET HARDWARE DEPOT,**

Defendants.

05C 5935

Case No.

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE KEYS

COMPLAINT

Plaintiffs Kwikset Corporation and Newfrey LLC, for their complaint against defendants Deltana Enterprises, Inc., Doorware, Inc. and Door and Cabinet Hardware Depot, state the following:

PARTIES

1. Kwikset Corporation ("Kwikset") is a Delaware corporation having its headquarters in Lake Forest, California.

2. Newfrey LLC ("Newfrey") is a Delaware limited liability company with its principal place of business in Newark, Delaware.

3. Newfrey is the owner of title to issued United States patents on door hardware designs, specifically United States Patent Nos. Des. 361,489 (the "'489 patent,") issued August 22, 1995, Des. 443,194, (the "'194 patent") issued June 5, 2001, and Des. 361,706 (the "'706 patent") issued August 29, 1995.

4. Newfrey is the owner of title to Trademark Registrations in the United States Patent and Trademark Office for the following trademarks used for door hardware products including

locksets, handlesets, levers, and knobs:

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
Arlington®	1,775,712	June 8, 1993
Chelsea®	1,779,464	June 29, 1993
Dorian®	1,993,823	August 13, 1996
Saxton®	1,920,692	September 19, 1995
Delta®	2,833,065	April 13, 2004
Tylo®	1,501,908	August 30, 1988

5. Kwikset is the exclusive licensee in the United States of the above-referenced patents and trademarks. Kwikset manufactures and sells, among other products, an extensive line of door hardware including door locksets, handlesets, levers and knobs, that are among the best-known and top-selling products of this kind.

6. Kwikset sells, throughout this judicial district and elsewhere, door lever products covered by the '194 and '489 patents, and handleset products covered by the '706 patent, under its exclusive license.

7. Kwikset sells, throughout this judicial district and elsewhere, door handleset, lever, and knob products bearing and identified by the registered trademarks Arlington®, Chelsea®, Dorian®, Saxton®, Delta® and Tylo®, under its exclusive license. Kwikset also advertises those products using the trademarks.

8. Deltana Enterprises, Inc. ("Deltana") is a corporation having a principal place of business in Miami, Florida.

9. Deltana has imported, advertised, offered for sale and/or sold in this judicial district, and elsewhere throughout the United States, door hardware products that infringe the patents and trademarks at issue in this complaint. Deltana sells its products in Illinois and this district, and also

advertises directly to customers in this district.

10. Doorware, Inc. ("Doorware") is a corporation having a principal place of business in Lutz, Florida.

11. Door and Cabinet Hardware Depot ("Depot") is a corporation having a principal place of business in Atlanta, Georgia.

12. Doorware and Depot are dealers of Deltana products. Each of them operates a website to advertise, offer for sale and sell the infringing Deltana products directly to customers in Illinois and this judicial district. The defendants' websites permit such customers to purchase online the infringing products for shipment into this district.

JURISDICTION AND VENUE

13. This Complaint presents claims for patent infringement, trademark infringement, and unfair competition arising under federal law including 35 U.S.C. §271, and 15 U.S.C. §§1114 and 1125. This Court has exclusive jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367, and 15 U.S.C. §1121.

14. Each of the Defendants is subject to the jurisdiction of this Court because, as alleged in this Complaint, each of them does business in Illinois and this judicial district, each of them has committed tortious acts in Illinois and this judicial district, and each is otherwise subject to service of process under federal and Illinois law.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and 1400(b) because, as alleged in this Complaint, each of the defendant corporations resides in this district, each has committed acts of infringement here, and a substantial part of the infringing conduct has occurred in this district.

COUNT I
PATENT INFRINGEMENT

16. Plaintiffs restate the allegations of ¶¶ 1 through 15 as part of this Count I.
17. Kwikset and Newfrey have standing to sue for all infringements of the '489, '194 and '706 patents.
18. Kwikset and Newfrey have provided notice to the public of the '489, '194 and '706 patents by marking Kwikset products covered by those patents with the relevant patent numbers.
19. Deltana has infringed the '489 and '194 patents by its use, importation, sale and offer for sale of door lever products in the United States that are covered by the '489 and '194 patents. Deltana previously sold such products under the trade name "Dorlan."
20. Deltana has infringed the '706 patent by its use, importation, sale and offer for sale of door handleset products in the United States that are covered by the '706 patent. Deltana previously sold such products under the trade name "Arlon."
21. In March, 2005, Kwikset and Newfrey provided actual notice to Deltana of the '489, '194 and '706 patents, including specific notice to Deltana of its infringement of the patents.
22. In response, Deltana purported to take steps to cease infringement and discontinue sales of the infringing door hardware. However, Deltana and its dealers have continued to offer the infringing products for sale.
23. Doorware, as a dealer of Deltana products, also has infringed the '489, '194 and '706 patents by sale and offer for sale of the infringing Deltana door lever and handleset products in the United States and in this judicial district, including sales through the Doorware website "www.doorware.com."

24. In October, 2003, Kwikset and Newfrey provided actual notice to Doorware that the “Dorlan” products infringed the ‘489 and ‘194 patents.

25. In response, Doorware ceased to advertise the infringing “Dorlan” levers on its website.

26. Doorware continues to advertise the infringing Deltana “Arlon” products for sale on the Doorware website.

27. Depot, as a dealer of Deltana products, also has infringed the ‘489, ‘194 and ‘706 patents by sale and offer for sale of the infringing Deltana door lever and handleset products in the United States and in this judicial district, including sales through the Depot website, “www.doorandcabinethardwaredepot.com.”

28. Defendants’ infringement has injured Kwikset and Newfrey, and they are entitled to recover damages adequate to compensate for such infringement, but in no event less than a reasonable royalty.

29. Defendants’ infringement, at least in part, has continued without justification, in spite of notice of the infringement of the ‘489, ‘194 and ‘706 patents, and such infringement has been willful and deliberate.

30. Defendants’ infringement will continue to injure Kwikset and Newfrey, unless this Court enters an injunction prohibiting further infringement by importation, manufacture, use, sale and/or offer for sale of door lever products within the scope of the ‘489, ‘194 and ‘706 patents.

COUNT II
TRADEMARK INFRINGEMENT

31. Plaintiffs restates the allegations of ¶¶ 1 through 30 as part of this Count II.

32. Newfrey owns and has standing to sue for infringement of the trademark registrations to the marks Arlington®, Chelsea®, Dorian®, Saxton®, Delta®, and Tylo®, as listed in ¶4 above.

33. As exclusive licensee, Kwikset uses the trademarks at issue to identify well-known and popular lines of Kwikset door handlesets, levers, and knobs that are advertised and sold bearing the trademarks. The Kwikset product designs and attendant trademarks are well known to the buying public and are identified with Kwikset and Kwikset products.

34. Deltana has advertised and sold its own lines of door hardware with designs that imitate the Kwikset products. Deltana has infringed the registered trademarks by adopting and using in commerce model names for its products intended to copy and imitate the registered trademarks, in a manner intended to cause confusion and mistake, and also to deceive the buying public, as follows:

<u>Registered Mark</u>	<u>Infringing Model Name</u>
Arlington®	Arlon
Chelsea®	Chelson
Dorian®	Dorlan
Saxton®	Saxon
Delta®	Delton
Tylo®	Tylon

35. Deltana has used the infringing model names in various ways, for example, in its advertising in association with pictures of the Deltana products that imitate designs of Kwikset products, as well as on packaging for those Deltana products.

36. Doorware and Depot likewise have used the infringing Deltana model names to advertise Deltana's products on their respective websites, and in their sale of products as dealers of the Deltana products.

37. All three Defendants have made international and unauthorized use of the registered trademarks, and their acts constitute trademark infringement in violation of 15 U.S.C. § 1114. Defendants' unlawful use of the registered trademarks is likely to cause confusion and mistake on the part of, and likely to deceive, the buying public.

38. Plaintiffs gave Deltana specific notice of the trademark infringement in March, 2005. In response, Deltana changed its own advertising website, but Deltana's dealers Doorware and Depot have continued to use the registered marks to sell Deltana products on their retail websites.

39. Defendants' infringements have generated sales and profits for each of them from the sale of Deltana's products.

40. Defendants' infringements have damaged Plaintiffs in their business, reputation and goodwill and caused the loss of sales and profits that Plaintiffs would have made but for Defendants' acts.

41. Defendants' infringements have caused irreparable harm and will continue to do so unless enjoined by this Court.

COUNT III
UNFAIR COMPETITION

42. Plaintiffs restate the allegations of ¶¶ 1 through 41 as part of this Count III.

43. Defendants' uses of the infringing marks as alleged above, to identify, advertise and sell Deltana products that imitate well-known Kwikset products, are likely to cause confusion, cause mistake, or to deceive: (a) as to an affiliation, connection or association between Deltana, its products, and Kwikset and Kwikset's products; and (b) that the Deltana products originate with or have the sponsorship or approval of Kwikset.

44. Defendants' acts are unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

45. As a result of Defendants' unlawful acts, Plaintiffs have been and will continue to be damaged and irreparably harmed.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to enter judgment on each count of the Complaint against each of the Defendants, and against any subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An award of damages adequate to compensate Plaintiffs for the patent infringement that has occurred, but in no event less than a reasonable royalty, together with prejudgment interest from the date infringement began;
- B. Increased patent damages as permitted under 35 U.S.C. § 284;
- C. A finding that this case is exceptional and an award to Plaintiffs of their attorneys' fees and costs as provided by 35 U.S.C. § 285;
- D. A permanent injunction prohibiting further infringement of U.S. Patent No. Des. 361,489, Des. 443,194 and Des. 361,706;
- E. A permanent injunction prohibiting any further acts of trademark infringement or unfair competition;
- F. An award of damages and other relief for Defendants' trademark infringement and unfair competition as provided by law, including but not limited to damages pursuant to 15 U.S.C. §§ 1117, all profits received by Defendants from the sale of products, and damages for Plaintiffs' injuries sustained by reason of Defendants' unlawful acts,

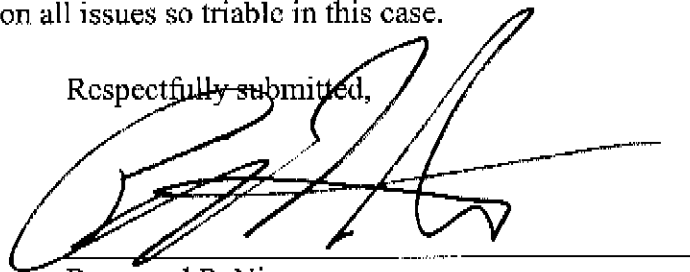
including loss of goodwill and past and/or future sales;

- G. An award of increased damages and attorneys' fees based upon the intentional and willful nature of Defendants' conduct, pursuant to 15 U.S.C. §1117;
- H. An award of prejudgment interest;
- I. An order that Defendants deliver up for destruction all packages, advertisements, circulars, brochures, and any other items in their possession, custody or control bearing the infringed trademarks or any other similar designations; and
- J. Such other and further relief as the Court or a jury deems just and proper, or that Plaintiffs may be entitled to under the law.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable in this case.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Raymond P. Niro, is written over a horizontal line.

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