

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

FILED

JUL 16 2001

DAVID W. DANIEL, CLERK
US DISTRICT COURT, EDNC
BY _____ DEP. CLERK

ALEXANDER JULIAN, INC.,

Plaintiff,

v.

KEMP ENTERPRISES, INC., and
WILLIAM P. KEMP, III,

Defendants.

Case No. 4:01-CV-108-H(3)

COMPLAINT AND JURY DEMAND

Plaintiff Alexander Julian, Inc. ("AJI"), by and through its attorneys, for its Complaint against Defendants, Kemp Enterprises, Inc., and William P. Kemp, III, (collectively, "Kemp"), alleges as follows upon knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

PARTIES

1. AJI is a North Carolina corporation having its principal place of business at 63 Cops Hill Road, Ridgefield, Connecticut 06877.
2. Kemp Enterprises, Inc., is a North Carolina corporation having its principal place of business at 2805 Trent Road, New Bern, Craven County, North Carolina 28562.
3. William P. Kemp, III, is an individual residing at 5003 Trent Woods Drive, New Bern, Craven County, North Carolina 28562, and a principal of Kemp Enterprises, Inc.

JURISDICTION AND VENUE

4. This is an action for:
- (a) trade dress infringement and unfair competition arising under the Trademark Act of 1946, as amended (15 U.S.C. § 1125(a));
 - (b) patent infringement of U.S. Design Patent Nos. (i) Des. 413,213 (the “213 patent”), (ii) Des. 413,462 (the “462 patent”), and (iii) Des. 423,257 (the “257 patent”) , copies of which are reproduced as Exhibits A, B and C, respectively), which arises under the patent laws of the United States (35 U.S.C. § 271); and
 - (c) related state law claims for deceptive trade practices, infringement and unfair competition.

5. Jurisdiction over the subject matter of this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338, as well as the doctrine of pendant jurisdiction. The matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Venue is proper in the Eastern Division of this District, pursuant to Local Rule 3.03, EDNC.

BACKGROUND

7. Born and raised in Chapel Hill, North Carolina, Alexander Julian is an acclaimed and innovative American designer of apparel and home furnishings including furniture. His work has earned him numerous accolades and awards, including five prestigious Coty Awards (and the distinction of being the youngest designer ever inducted into the Coty Hall of Fame), the Designer of the Year Award from the Council of Fashion Designers of America,

two Cutty Sark Menswear Awards and the Cutty Sark Career Achievement Award. In addition, Mr. Julian was the first American clothing designer to create his own exclusive fabrics, and his textile designs are part of the permanent collection of the Smithsonian Institution's National Design Museum.

8. Mr. Julian's design accomplishments range from men's and women's apparel, including the renowned men's sportswear collection known as COLOURS BY ALEXANDER JULIAN, to such high-profile commissions as the uniforms for the National Basketball Association's Charlotte Hornets, the uniforms for the men's and women's basketball teams of the University of North Carolina, the color concepts and design for Mario and Michael Andretti's racing cars, racing suits, and pit crew uniforms, and the seating of the award-winning Knights Castle baseball stadium in Charlotte, North Carolina.

9. AJI manages Alexander Julian's commercial affairs and licenses his designs to others. In particular for this action, AJI exclusively licenses furniture designs (created by Alexander Julian or under his scrupulous supervision) to Universal Furniture ("Universal").

10. Universal manufactures and sells those designs in various collections in the ALEXANDER JULIAN HOME COLOURS line.

11. Every piece of ALEXANDER JULIAN furniture is manufactured using only extremely high quality materials and specialized construction techniques, thus ensuring that each of its finished products consistently is of the highest quality. As a result, not only is ALEXANDER JULIAN furniture known for its elegantly casual design, but for the quality, care and craftsmanship of its manufacturing process.

12. ALEXANDER JULIAN furniture has been critically acclaimed and immensely commercially successful. The first collection, introduced in 1994, was the most successful

launch in the history of the International Home Furnishings market in High Point, North Carolina. *Home* magazine has honored ALEXANDER JULIAN's furniture designs three times with its American Furniture Award.

13. AJI and Universal introduced the PATTERNS collection in 1998, to immediate critical acclaim. That year, the PATTERNS collection garnered the prestigious American Society of Furniture Designers' Pinnacle Award, which is the top accolade in the "Major Collections" category. Mr. Julian was the first fashion designer ever to receive that honor. The collection has also been well received in the marketplace, and has generated significant sales.

14. The various pieces in the PATTERNS collection incorporate distinctive design elements unique to that collection, and to furniture design in general. (A copy of the PATTERNS COLLECTION catalog is attached hereto as Exhibit D.) In addition, the PATTERNS collection incorporates design elements uniquely associated with ALEXANDER JULIAN's fashion and furniture designs.

15. Individually and when taken together, the products in the PATTERNS furniture collection have come to be identified with ALEXANDER JULIAN. These distinctive products, individually and when taken together, have a protectable trade dress which indicates that ALEXANDER JULIAN is their source.

16. The trade dress embodied by the PATTERNS furniture collection, and each individual piece in that collection, has been recognized and relied upon by the trade and the purchasing public to identify ALEXANDER JULIAN as the source of those goods, and to distinguish those goods from the goods of others.

17. The PATTERNS furniture collection, and each individual product comprising that collection, has acquired distinctiveness and secondary meaning in the trade and in the minds of the purchasing public by virtue of extensive sales, promotion and advertising of the same.

18. The United States Patent and Trademark Office has acknowledged the novel, innovative and unique designs of various features of the PATTERNS collection by awarding design patents for them, including the furniture trim that is the subject of the '213 patent, the furniture molding that is the subject of the '462 patent, and the post that is the subject of the '257 patent. Those design patents serve as *prima facie* proof that the designs comprising the PATTERNS furniture collection are novel and non-obvious.

INFRINGEMENT ACTS

19. Kemp manufactures, markets and sells furniture under the name of Kemp Enterprises. Some of that furniture is promoted and sold to the trade, via a catalog with illustrations of its products, as well as through Kemp's Internet Web site at <http://www.kempent.com>. Excerpts from Kemp's catalog are attached hereto as Exhibit E, and pages from Kemp's Web site are attached as Exhibit F.

Trade Dress Infringement and Unfair Competition

20. Kemp unlawfully manufactures, markets and sells furniture bearing ALEXANDER JULIAN-created designs, including designs and design elements copied from ALEXANDER JULIAN's distinctive and widely recognized PATTERNS collection, and the patented designs of the '213, '462, and '257 patents. In particular, each piece in the Kemp 83000 "Panels" collection is confusingly similar to corresponding pieces in the ALEXANDER JULIAN PATTERNS collection.

21. Because Kemp does not employ ALEXANDER JULIAN's high-quality, exacting manufacturing and assembly techniques, and because Kemp does not use high quality materials as does ALEXANDER JULIAN, the quality of workmanship and materials in Kemp's products is lower than that of ALEXANDER JULIAN's furniture.

22. Thus, if consumers who purchase or view Kemp's reproductions, believing them to be associated with or sponsored by ALEXANDER JULIAN, ascertain quality (or other) problems with the reproductions, they are likely to associate those problems with ALEXANDER JULIAN, to AJI's obvious great detriment.

23. Kemp's infringing acts extend to additional ALEXANDER JULIAN designs not enumerated herein.

Patent Infringement

24. Kemp unlawfully manufactures, markets, and sells furniture incorporating the patented designs of the '213, '462, and '257 patents. Any differences between ALEXANDER JULIAN's patented designs and Kemp's products are insufficient to make them distinguishable by a reasonably prudent observer comparing the products in the marketplace.

FIRST CAUSE OF ACTION FEDERAL UNFAIR COMPETITION TRADE DRESS INFRINGEMENT

25. This Count arises under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

26. AJI repeats and re-alleges each and every allegation contained in Paragraphs 1 through 24 of the Complaint as though fully set forth herein.

27. Kemp is well aware, and even prior to the commission of the acts complained of herein, has been well aware that ALEXANDER JULIAN's PATTERNS collection has been

very commercially successful and that the trade and the purchasing public recognize and rely upon the trade dress and design of ALEXANDER JULIAN's PATTERNS collection to identify ALEXANDER JULIAN as the source of those goods and to distinguish these goods from the goods of others.

28. In this judicial district and elsewhere, Kemp manufactures and/or sells, and/or actively induces the manufacture and sale of furniture employing trade dresses which copy and confusingly simulate the distinctive trade dress of ALEXANDER JULIAN's PATTERNS furniture collection.

29. The visual features of Kemp's furniture so incorporate the distinctive trade dress elements of ALEXANDER JULIAN's PATTERNS collection that they are likely to cause (and are calculated and designed to cause) confusion, mistake, and to deceive.

30. Kemp has engaged and continues to engage in a willful, conscious and systematic practice of manufacturing and selling (or inducing the manufacture and sale of) various furniture designs, particularly the Kemp 83000 "Panels" collection, which misappropriates the overall aesthetic appearance and trade dress identified with ALEXANDER JULIAN's PATTERNS furniture collection and individual pieces comprising that collection.

31. Kemp's activities are likely to mislead the trade and public into believing that Kemp's products originate from, are affiliated with, or are sponsored, authorized, approved or sanctioned by AJI.

32. Kemp's practice of manufacturing and selling (or inducing the manufacture and sale of) lesser quality furniture which misappropriates the distinctive trade dress of ALEXANDER JULIAN's PATTERNS furniture collection, and individual pieces comprising that collection, has created confusion among the trade and the consuming public as to the source

of Kemp's 83000 "Panels" collection, and has caused injury to the business reputation and goodwill of ALEXANDER JULIAN, a recognized provider of high-end, innovative furniture featuring unique and distinctive designs.

33. Kemp's activities have caused AJI to sustain monetary damage, loss, and injury in an amount to be determined at the time of trial.

34. Kemp's acts have caused and will continue to cause irreparable injury to AJI unless said acts are enjoined by this Court.

35. AJI has no adequate remedy at law.

SECOND CAUSE OF ACTION
PATENT INFRINGEMENT

36. This Count arises under the patent laws of the United States (35 U.S.C. § 271).

37. AJI repeats and re-alleges each and every allegation contained in paragraphs 1 through 35 of the Complaint as though fully set forth herein.

38. On August 31, 1999, the United States Patent and Trademark Office issued the '213 patent, entitled "Furniture Trim." (See Exhibit A.) AJI is the owner of the entire right, title and interest in and to the '213 patent, including all rights to enforce it and to recover for infringement thereof.

39. Kemp has been and is presently infringing the '213 patent within this judicial district and elsewhere by making, using, selling and/or offering to sell furniture from Kemp's 83000 "Panels" collection, and/or inducing or contributing to the same.

40. A reasonable observer would mistakenly believe that pieces in the Kemp 83000 "Panels" collection are ALEXANDER JULIAN pieces incorporating the features of the '213 patent.

41. Kemp will continue to infringe the '213 patent and irreparably harm AJI thereby unless its infringing activities are enjoined by this Court.

42. AJI has no adequate remedy at law.

THIRD CAUSE OF ACTION
PATENT INFRINGEMENT

43. This Count arises under the patent laws of the United States (35 U.S.C. § 271).

44. AJI repeats and re-alleges each and every allegation contained in paragraphs 1 through 42 of the Complaint as though fully set forth herein.

45. On September 7, 1999, the United States Patent and Trademark Office issued the '462 patent, entitled "Furniture Molding." (*See* Exhibit B.) AJI is the owner of the entire right, title and interest in and to the '462 patent, including all rights to enforce it and to recover for infringement thereof.

46. Kemp has been and is presently infringing the '462 patent within this judicial district and elsewhere by making, using, selling and/or offering to sell furniture from Kemp's 83000 "Panels" collection, and/or inducing or contributing to the same.

47. A reasonable observer would mistakenly believe that pieces in the Kemp 83000 "Panels" collection are ALEXANDER JULIAN pieces incorporating the features of the '462 patent.

48. Kemp will continue to infringe the '462 patent and irreparably harm AJI thereby unless its infringing activities are enjoined by this Court.

49. AJI has no adequate remedy at law.

FOURTH CAUSE OF ACTION
PATENT INFRINGEMENT

50. This Count arises under the patent laws of the United States (35 U.S.C. § 271).

51. AJI repeats and re-alleges each and every allegation contained in paragraphs 1 through 49 of the Complaint as though fully set forth herein.

52. On April 25, 2000, the United States Patent and Trademark Office issued the '257 patent, entitled "Post for Furniture." (See Exhibit C.) AJI is the owner of the entire right, title and interest in and to the '257 patent, including all rights to enforce it and to recover for infringement thereof.

53. Kemp has been and is presently infringing the '257 patent within this judicial district and elsewhere by making, using, selling and/or offering to sell furniture from Kemp's 83000 "Panels" collection, and/or inducing or contributing to the same.

54. A reasonable observer would mistakenly believe that pieces in the Kemp 83000 "Panels" collection are ALEXANDER JULIAN pieces incorporating the features of the '257 patent.

55. Kemp will continue to infringe the '257 patent and irreparably harm AJI thereby unless its infringing activities are enjoined by this Court.

56. AJI has no adequate remedy at law.

FIFTH CAUSE OF ACTION
VIOLATION OF N.C. GEN. STAT. § 75-1.1

57. This count arises under §75-1.1 *et seq.* of the General Statutes of North Carolina.

58. AJI repeats and re-alleges each and every allegation contained in Paragraphs 1 through 56 of the Complaint as though fully set forth herein.

59. Kemp's adoption and use of copies and confusing simulations of ALEXANDER JULIAN's distinctive PATTERNS furniture collection trade dress misleads and deceives the trade and the consuming public as to the identity of Kemp or its products, or as to a

connection between Kemp and ALEXANDER JULIAN. Such acts and practices of Kemp constitute unfair competition in or affecting commerce, and unfair acts or practices in or affecting commerce, in violation of N.C. Gen. Stat. § 75-1.1.

60. Kemp's acts have caused and will continue to cause irreparable injury to AJI unless said acts are enjoined by this Court.

61. AJI has no adequate remedy at law.

SIXTH CAUSE OF ACTION
COMMON LAW UNFAIR COMPETITION

62. This Cause arises under the common law of North Carolina and other states.

63. AJI repeats and re-alleges each and every allegation contained in Paragraphs 1 through 61 of the Complaint as though fully set forth herein.

64. Kemp's use of virtually indistinguishable copies and confusing simulations of ALEXANDER JULIAN's PATTERNS furniture collection trade dress, as well as other properties not enumerated herein, constitutes infringement, copying, imitation and misappropriation of trade dress; unjust enrichment; and unfair competition, in violation of AJI's rights under North Carolina common law and/or the common law of other states.

65. Kemp's illegal acts have caused and will continue to cause great irreparable injury to AJI, unless said acts are enjoined by this Court.

66. AJI has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, AJI prays for the following relief against Kemp:

1. A judgment that Kemp has directly infringed, contributorily infringed, and/or induced infringement of

- a. ALEXANDER JULIAN's trade dress rights in its PATTERNS furniture collection; and
 - b. the '213, '462 and '257 patents.
2. A judgment that Kemp has violated North Carolina state law against unfair competition, and similar statutory or common law of other states.
3. An injunction enjoining Kemp and its officers, directors, agents, servants, employees, successors, assigns and all persons controlling, controlled by or affiliated with it, and all those in active concert or privity or participation with any of the foregoing from:
 - a. Using ALEXANDER JULIAN's distinctive PATTERNS furniture collection trade dress, or the trade dress of any individual piece that is a member of the PATTERNS collection, or any other trade dress sufficiently similar thereto so as to be likely to cause confusion, mistake or deception regarding distribution, sale or advertising of Kemp's furniture or other products; and
 - b. Unfairly competing with AJI in any manner whatsoever; and
 - c. Infringing, contributing to, or inducing the infringement of the '213, '462 and '257 patents.
4. A judgment ordering the recall and destruction of all Kemp products which infringe the '213, '257, and '462 patents or which incorporates any distinctive trade dress element of ALEXANDER JULIAN's PATTERNS furniture collection trade dress, or the trade dress of any individual piece that is a member of the PATTERNS collection, or any imitation

thereof, and an Order, pursuant to 15 U.S.C. § 1116, that Kemp shall report in writing, under oath to the Court, that such delivery and destruction occurred;

5. A judgment granting AJI an accounting and award of Kemp's profits derived from illegal acts of patent infringement, federal, state and common law trade dress infringement, unfair competition, false designations of origin, false descriptions and representations, dilution and injury to AJI's business reputation;

6. A judgment granting AJI damages for Kemp's violation of 15 U.S.C. § 1125(a), and treble damages for willful violation of the same;

7. A judgment granting AJI treble damages for Kemp's violation of N.C. Gen. Stat. §75-1.1;

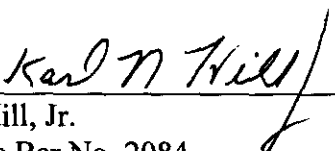
8. An order that AJI recover from Kemp all of AJI's fees, costs, disbursements and other expenses AJI has incurred due to Kemp's illegal actions, including, but not limited to AJI's attorneys' fees;

9. That AJI have a jury trial on all issue triable before a jury; and

10. A judgment granting AJI such further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: July 16, 2001
Greensboro, NC



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