

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

MASCO CORPORATION OF INDIANA )  
d/b/a DELTA FAUCET COMPANY, )  
an Indiana Corporation, )

Plaintiff, )

Civil Action No. 1:10-cv- \_\_\_\_\_

v. )

**JURY DEMAND**

WATERMARK DESIGNS, LTD., )

Defendant. )

**1 : 10 -cv- 0716 SEB -JMS**

**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT**

The plaintiff, Masco Corporation of Indiana d/b/a Delta Faucet Company ("Delta") files this Complaint for Patent and Trademark Infringement against the defendant, Watermark Designs, Ltd. ("Watermark").

**I. The Parties**

1. Delta is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 55 East 111th Street, Indianapolis, Indiana, 46280.

2. Watermark, upon information and belief, is a corporation organized under the laws of the State of New York, and has its principal place of business at 350 Dewitt Avenue, Brooklyn, New York, 11207.

3. Upon information and belief, Watermark does business in the State of Indiana and in this district.

## II. Jurisdiction and Venue

4. Plaintiff hereby realleges and incorporates by reference, as if fully set forth herein, their aforestated allegations in paragraphs 1-3, *supra*.

5. This is an action for patent infringement and trademark infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Watermark. On information and belief, Watermark has conducted, and does conduct, business within the State of Indiana and the Southern District of Indiana. Watermark has made, used, offered to sell, sold, and/or imported into the United States faucets that infringe one or more claims of a patent and a registered trademark owned by Delta. On information and belief, Watermark has offered to sell its infringing faucets to distributors and dealers, located within the State of Indiana and the Southern District of Indiana.

7. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c), and 1400(b).

## III. Infringement of United States Patent No. 6,962,168

8. Plaintiff hereby realleges and incorporates by reference, as if fully set forth herein, their aforestated allegations in paragraphs 1-7, *supra*.

9. Delta owns all of the rights and interest in United States Patent No. 6,962,168 ("the '168 Patent") which relates to capacitive touch on/off control for an automatic residential faucet. The '168 Patent was duly and legally issued by the United States Patent and Trademark Office ("PTO") on November 8, 2005 after full and fair examination. A true and accurate copy of the '168 Patent is attached hereto as Exhibit A.

10. Delta owns all rights and interest in, and is the assignee of, the '168 Patent, entitled "Capacitive Touch On/Off Control for an Automatic Residential Faucet."

11. Delta makes and sells, in the United States, faucets that embody the invention of '168 Patent.

12. Watermark is infringing the '168 Patent by making, using, selling, or offering for sale in the United States, including the Southern District of Indiana, products and/or services embodying the patented inventions claimed in the '168 Patent without authority.

13. Watermark's infringement of the '168 Patent is exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

14. On information and belief, Watermark will continue to infringe the '168 Patent, causing immediate and irreparable harm unless this Court enjoins and restrains Watermark's activities.

15. On information and belief, the infringement by Watermark has and will deprive Delta of sales, profits, and other related revenue which Delta would have made or would enjoy in the future, has injured Delta in other respects, and will cause Delta added injury and damage, including loss of sales, profits, and other related revenue in the future unless Watermark is enjoined from infringing the '168 Patent.

#### **IV. Trademark Infringement Under 15 U.S.C. § 1114**

16. Plaintiff hereby realleges and incorporates by reference, as if fully set forth herein, their aforestated allegations in paragraphs 1-15, *supra*.

17. Delta is a leading distributor of plumbing and plumbing related products. Delta's line of plumbing products includes faucets and faucet related accessories.

18. Delta is the owner of all right, title and interest in and to United States trademark Registration No. 3,676,837 (the "837 Registration") for the mark TOUCH<sub>2</sub>O as follows:

Mark	Registration No.	Class	Goods/Services
TOUCH <sub>2</sub> O	3,676,837	11	Plumbing products, namely, faucets

19. Pursuant to 15 U.S.C. §1057(b), the '837 Registration constitutes prima facie evidence of: (a) the validity of the TOUCH<sub>2</sub>O mark and of the registration of the TOUCH<sub>2</sub>O mark; (b) Delta's ownership of the TOUCH<sub>2</sub>O mark; and (c) Delta's exclusive right to use the TOUCH<sub>2</sub>O mark in commerce on and in connection with the goods identified in the registration. A copy of the TOUCH<sub>2</sub>O federal trademark registration is attached hereto as Exhibit B.

20. Delta advertises and sells faucets under the TOUCH<sub>2</sub>O mark in the United States. A copy of a package label showing use of Delta's TOUCH<sub>2</sub>O mark in association with faucets is attached hereto as Exhibit C. A copy of advertising material describing Delta's TOUCH<sub>2</sub>O faucets is attached hereto as Exhibit D.

21. The TOUCH<sub>2</sub>O mark is non-functional and distinctive.

22. The TOUCH<sub>2</sub>O mark has been continuously used in commerce by Delta since at least December 2008.

23. As a result of the continuous use of the TOUCH<sub>2</sub>O mark referred to above, the TOUCH<sub>2</sub>O mark is associated exclusively with Delta with respect to faucets.

24. Like Delta, Watermark advertises and sells faucets.

25. Subsequent to Delta's use of the TOUCH<sub>2</sub>O mark, and with constructive or actual knowledge of Delta's use and registration of the TOUCH<sub>2</sub>O mark, Watermark used the mark TOUCH27 in connection with Watermark's sale, offering for sale, distribution and advertising of faucets. The mark TOUCH27 is confusingly similar, and nearly identical, to Delta's registered TOUCH<sub>2</sub>O mark. A copy of advertising materials Watermark uses to market Watermark's TOUCH27 faucet are attached hereto as Exhibits E and F.

26. Watermark has no consent, license, approval or other authorization from Delta to use the TOUCH<sub>2</sub>O mark, or any confusingly similar mark, in association with Watermark's goods.

27. Watermark has adopted and used the TOUCH27 mark with the willful intent to cause confusion and mistake and to deceive as to the affiliation, connection, or association of Watermark with Delta as to the origin, sponsorship, or approval of Watermark's goods and commercial activities.

28. Watermark's actions complained of above constitute use in commerce, without the consent of Delta, of a reproduction, counterfeit, copy or colorable imitation of Delta's registered TOUCH<sub>2</sub>O mark on and in connection with the sale, offering for sale, distribution and advertising of goods that is likely to cause confusion and mistake and to deceive, all in violation of 15 U.S.C. §1114.

29. Watermark's actions complained of above have caused and continue to cause Delta irreparable harm for which there is no adequate remedy at law. Such irreparable harm will continue until Watermark's unlawful activities are enjoined.

**V. False Designation of Origin and False Description Of Fact  
Unfair Competition Under 15 U.S.C. § 1125(a)**

30. Plaintiff hereby realleges and incorporates by reference, as if fully set forth herein, their aforestated allegations in paragraphs 1-29, *supra*.

31. Watermark's actions complained of above are likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association of Watermark with Delta, and as to the origin, sponsorship, or approval of Watermark's goods and commercial activities, all in violation of 15 U.S.C. §1125(a).

32. Watermark's actions complained of above have caused and continue to cause Delta irreparable harm for which there is no adequate remedy at law. Such irreparable harm will continue until Watermark's unlawful activities are enjoined.

**VI. Common Law Trademark Infringement and False  
Advertising Unfair Competition**

33. Plaintiff hereby realleges and incorporates by reference, as if fully set forth herein, their aforestated allegations in paragraphs 1-32, *supra*.

34. Watermark's actions complained of above are likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association of Watermark with Delta, as to the origin, sponsorship, or approval of Watermark's goods and commercial activities, as well as misrepresenting the nature, characteristics and qualities of Watermark's goods, thereby infringing Delta's common law rights in the TOUCH<sub>2</sub>O mark.

35. Watermark's actions complained of above have caused and continue to cause Delta irreparable harm for which there is no adequate remedy at law. Such irreparable harm will continue until Watermark's unlawful activities are enjoined.

**VII. Prayer For Relief**

WHEREFORE, Plaintiff, Masco Corporation of Indiana d/b/a Delta Faucet Company, respectfully requests this Court enter judgment in its favor, and against Defendant, Watermark Designs, Ltd., as follows:

A. That U.S. Patent No. 6,962,168 is valid, enforceable, and infringed by the Watermark;

B. Entering a permanent injunction against Watermark enjoining them, their directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Watermark from making, using, selling, or offering for sale in the United States, or importing into the United States, any and all products and/or services embodying the patented inventions claimed in the '168 Patent;

C. Awarding such damages to Delta to which it is entitled, pursuant to 35 U.S.C. § 284;

D. Awarding Delta enhanced damages pursuant to 35 U.S.C. § 284;

E. Awarding Delta pre-judgment and post judgment interest as allowed by law;

F. Awarding Delta its costs, expenses, and fees, including reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

G. Holding that Watermark has caused damage to Delta by violating Delta's rights under 15 U.S.C. § 1114;

H. Holding that Watermark has caused damage to Delta by violating Delta's rights under 15 U.S.C. § 1125(a);

I. Holding that Watermark has caused damage to Delta by engaging in common law trademark infringement and false advertising unfair competition;

J. Holding that Watermark acted willfully in causing damage to Delta;

K. Enjoining Watermark, and those acting on behalf of or in concert with Watermark, from any further or future violation of Delta's rights in and to the TOUCH<sub>2</sub>O mark;

L. Ordering Watermark, pursuant to 15 U.S.C. § 1117, to pay to Delta:

(1) Watermark's profits and Delta's damages resulting from Watermark's violations of Delta's rights in the TOUCH<sub>2</sub>O mark; (2) three times actual damages or profits; (3) the costs of this action; and (4) all other relief to which Delta is entitled under 15 U.S.C. § 1117;

M. Ordering Watermark to deliver to Delta for destruction all infringing articles and associated packaging and promotional materials pursuant to 15 U.S.C. § 1118;

N. Awarding Delta such other and further relief as the Court deems just and proper.



**VIII. Request For Trial By Jury**

Plaintiff, Masco Corporation of Indiana d/b/a Delta Faucet Company, demands trial by jury on all issues in this case other than its request for injunctive relief.

Respectfully submitted,



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