

ORIGINAL

RECEIVED
JUN 1 2004

JUN 01 - 1 P 14:32

1 MICHAEL J. McCUE (Nevada Bar No. 6055)
W. WEST ALLEN (Nevada Bar No. 5566)
2 LEWIS AND ROCA LLP
3993 Howard Hughes Parkway
3 Suite 600
Las Vegas, Nevada 89109
4 Telephone: (702) 949-8200
Facsimile: (702) 949-8398

5 Attorneys for Plaintiffs

6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 AGIO INTERNATIONAL COMPANY, LTD.,
11 ROBERT A. GAYLORD, and
OLIVER WANG,

12 Plaintiffs,

13
14 vs.

15 BOND MANUFACTURING COMPANY,
16 TAIZHOU YONGJIANG ARTS & CRAFTS
CO. LTD, and
17 CAMERON JENKINS,

18 Defendant.
19

CV-S-04-0606 KJD (RJJ)

AMENDED COMPLAINT

JURY DEMAND

20 Plaintiffs Agio International Company, Ltd. ("Agio"), Robert A. Gaylord ("Mr. Gaylord"),
21 and Oliver Wang ("Mr. Wang") complain of defendants, Bond Manufacturing Company
22 ("Bond"), Taizhou Yongjiang Arts & Crafts Co. Ltd. ("Taizhou"), and Cameron Jenkins
23 ("Jenkins") (collectively the "Defendants") as follows:

24 **JURISDICTION AND VENUE**

25 1. This is a claim for (a) patent infringement arising under the patent laws of the
26 United States, Title 35 of the United States Code, and (b) violation of Section 43(a) of the Lanham
27 Act, 15 U.S.C. § 1125(a).
28

1 2. The Court has jurisdiction over the subject matter of this complaint under 15
2 U.S.C. § 1121, 28 U.S.C. § 1338(a) & (b), and 28 U.S.C. § 1367(a).

3 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(a) & (b).
4 This Court may assert personal jurisdiction over the Defendants Jenkins, Bond, and Taizhou
5 because Jenkins, in his individual capacity, and Defendants Bond and Taizhou through their duly
6 authorized agents, employees and officers, have each regularly and systematically caused or
7 contributed to the importation into, and the sale, offering for sale, and distribution of the infringing
8 products and related services in and among the several United States, and particularly in this
9 judicial district and, as a result, the Plaintiffs have been injured in this District.

10 **PARTIES**

11 4. Plaintiff Agio is a Hong Kong company that has for many years been engaged in
12 the business of designing, developing, manufacturing and selling outdoor and casual furniture to
13 retailers who then resell the products to end-users throughout the United States and elsewhere.
14 Agio holds the exclusive license to practice the art covered by the patents being infringed by
15 Defendants and makes and sells a collection of products that embody the claims of those patents.

16 5. Plaintiff Mr. Gaylord is a citizen of the United States who resides in Virginia
17 Beach, Virginia. Mr. Gaylord is an officer of Agio's U.S. Representative and is one of the named
18 inventors of the unique "Sling Chair" disclosed in United States Patent No. 6,293,624, issued on
19 September 25, 2001 and entitled "Sling Chair" ("the '624 patent") and further disclosed in United
20 States Patent No. 6,583,323, issued on July 1, 2003 and entitled "Sling Chair" ("the '323 patent")
21 (collectively "the Patents").

22 6. Plaintiff Mr. Wang is a citizen and resident of the United States who has a place of
23 residence in Millbrae, California. Mr. Wang is an officer of Agio and is a second named inventor
24 of the unique "Sling Chair" disclosed in the Patents.

25 7. On information and belief, Defendant Jenkins is a citizen and resident of the United
26 States, and an officer of Defendant Bond, holding the title of "Vice President Marketing & Sales."
27 Upon information and belief, Jenkins, either individually or in consort with others, orchestrates,
28 controls and directs the infringing activities of Bond complained of below.

1 8. Upon information, Defendant Taizhou is a legal entity organized and existing in the
 2 nation of China, and is believed to control, be controlled by, or to be under common control with,
 3 or to consort with Bond, and, acting by and through its authorized officers, employees and agents,
 4 it either directly or as part of a group acting in consort, is engaged in the manufacture, importation,
 5 warehousing, sale, distribution and servicing of outdoor furniture in the United States and this
 6 District.

7 9. Upon information, Defendant Bond is a corporation organized and existing under
 8 the laws of one of the several states of the United States, and is believed to control, be controlled
 9 by, or to be under common control with, or to consort with, Taizhou, and, acting by and through
 10 its authorized officers, employees and agents, either directly or as part of a group acting in consort,
 11 is engaged in the manufacture, importation, warehousing, sale, distribution and servicing of
 12 outdoor furniture in the United States and this District.

13 10. Upon information, there may be one or more other individuals and legal entities
 14 involved who consort together with these named parties as part and parcel of a common enterprise
 15 in which each plays a part in the infringing activities stated below, and who may be proper parties
 16 in this proceeding. Should these individuals and legal entities be identified, Plaintiffs intend to
 17 amend their complaint accordingly.

THE CASUAL FURNITURE INDUSTRY

18
 19 11. The wholesale casual or outdoor furniture industry is highly competitive, and sales
 20 tend to be largely seasonal. Operators of retail outlets make inventory purchases primarily in the
 21 winter and spring of each year for delivery in the spring and following summer, so that delivery
 22 will coincide with the retail selling season during the summer of each year.

23 12. The widely followed practice of leading manufacturers in this industry, such as that
 24 of Plaintiff Agio, is to create unique, decoratively styled designs of furniture from time to time,
 25 and even annually, in order to distinguish them from and make them more appealing than
 26 competing products.

27 13. Wholesale purchases are substantially influenced by the uniqueness, aesthetic
 28 appeal, and exclusivity of a manufacturer's products. It is not uncommon for a retailer's buyer to

1 obtain a photo or sample of a manufacturer's product and ask other manufacturers if they can
2 make the same or substantially similar product of lower quality and price. Accordingly, a
3 manufacture's novel designs are often protected by one or more patents. In some cases, a line of
4 products from one producer, such as those of Agio, will become perennial favorites of wholesale
5 buyers and retail consumers, and will become recognized by sight as originating from that
6 producer.

7 14. Agio is an industry leader in this field, enjoying a history of success in designing
8 novel and highly appealing styles, and methods of constructing them.

9 **COUNT I - PATENT INFRINGEMENT**

10 15. Plaintiffs incorporate and reallege the foregoing paragraphs as if fully set forth
11 herein.

12 16. Mr. Wang and Mr. Gaylord own and have standing to sue for infringement of the
13 Patents. Agio has standing to sue for infringement of the Patents because it is the exclusive
14 licensee of the Patents.

15 17. Defendants, and each of them, have infringed claims of the Patents through, among
16 other activities, manufacturing, importing, using, selling and/or offering for sale sling chair
17 products that are covered by one or more of the claims of the Patents. Defendants, and each of
18 them, through their actions have also knowingly contributed to or induced the infringement of the
19 Patents in violation of 35 U.S.C. § 271.

20 18. Defendants, and each of them, have had actual notice of the Patents and their
21 infringement by Defendants. Defendants' infringement has been willful and deliberate and has
22 continued without a reasonable basis or justification.

23 19. Defendants' infringement has caused irreparable harm to Plaintiffs, who have no
24 adequate remedy at law, and will continue to injure Plaintiffs unless and until this Court enters a
25 preliminary and permanent injunction prohibiting further infringement and, specifically, enjoining
26 Defendants and all others who have notice of the injunction from further manufacture, use, offer
27 for sale, sale and importation of products that fall within the scope of claims of the Patents.

28

1 20. Plaintiffs are entitled to recover damages from Defendants in an amount adequate
2 to compensate them for the infringement that has occurred and that will continue to occur until an
3 injunction is issued by the Court.

4 **COUNT II – TRADE SECRET MISAPPROPRIATION**

5 21. Plaintiffs incorporate and reallege the foregoing paragraphs as if fully set forth
6 herein.

7 22. Plaintiffs have expended substantial time, resources, and expenses, to create, design
8 and develop new additions to the Agio product line. These additions include distinctive and
9 unique designs, specifications, techniques and related confidential materials incorporated into, but
10 not limited to, Agio’s Amherst, Courtyard, Oceanic, Impressions, and Geneva designer casual
11 furniture collections (collectively the “New Collections”).

12 23. The printed designs, manufacturing specifications, techniques, drawings and
13 know-how for the New Collections have never before been produced or disclosed to the public.
14 This production information is a closely guarded secret, known only to a few individuals who
15 were engaged in design work and production planning for Agio.

16 24. The designs, styles, production drawings, and manufacturing specifications for the
17 New Collections were and are highly valuable proprietary information and trade secrets to Agio
18 and gave Agio a competitive advantage over others in the industry. Agio took reasonable and
19 substantial steps to keep that information confidential. Accordingly the designs, styles, production
20 drawings, and manufacturing specifications for the New Collections constitute trade secrets of
21 Agio under common law and the Nevada Trade Secrets Act, N.R.S. § 600A.010 et seq.

22 25. Upon information and belief, some or all of the Defendants obtained these trade
23 secrets and other valuable proprietary information of Agio regarding the New Collections through
24 improper means, including obtaining Agio’s valuable trade secrets and other proprietary
25 information from, among other persons, a Chinese citizen named Xiang Guang Qiang who was the
26 former factory plant manager of Agio who and who had access to, among other things, the product
27 design information, prototypes, production drawings and manufacturing specification for the New
28 Collections.

1 26. Having misappropriated Agio’s trade secrets and other valuable proprietary
 2 information, Defendants have already manufactured, imported into the U.S., marketed, offered to
 3 sell, and, upon information and belief, obtained orders in the U.S. for its virtual imitations of
 4 Agio’s New Collections, including at the recently-concluded trade show at the National Hardware
 5 Show in Las Vegas on May 10 through 12, 2004.

6 27. Defendants’ copies of Agio’s New Collections wholly copy the designs, product
 7 configuration, overall look and image, texture, color and relative size of Agio’s New Collections.
 8 The Defendants’ virtual imitations of Agio products have been developed and offered only
 9 through the misappropriation of Agio’s trade secrets.

10 28. Defendants misappropriated, derived and used Agio’s trade secrets. Defendants’
 11 disclosure and use of Agio’s trade secrets constitute unauthorized misappropriation of Agio’s
 12 trade secrets. This has substantially and irreparably injured, and continues to injure, Agio.

13 29. The trade secrets misappropriated by Defendants remain in their possession,
 14 custody or control. Defendants have no right, interest or entitlement to such trade secrets and
 15 Agio is entitled to their recovery.

COUNT III – VIOLATION OF LANHAM ACT

16
 17 30. Plaintiffs incorporate and reallege the foregoing paragraphs as if fully set forth
 18 herein, and assert this claim for violations of Section 43(a) of the Lanham Act, 15 U.S.C. §
 19 1125(a).

20 31. The unique, single-frame sling chair with top casting manufactured and marketed
 21 by Agio under its license of the Patents, and certain other models or sets of furniture made and
 22 marketed by Agio (collectively the “Distinctive Designs”), have been in continuous, exclusive,
 23 usage by Agio, in the case of the sling chairs, for at least four (4) years.

24 32. Agio has spent substantial resources, time and money to ensure that its Distinctive
 25 Designs meet high standards of quality and reliability.

26 33. Of equal importance, the Distinctive Designs possess various style attributes that
 27 are unique, distinctive and obvious from the relative size, shape, light weight, texture, overall

28

1 concept, artistic design, and execution and aesthetic impression that are carried throughout the
2 collection.

3 34. The Distinctive Designs were an immediate commercial success for Agio and have
4 enjoyed continuous success since their introduction, resulting in significant sales. They have been
5 acclaimed as unique, innovative, creative, attractive, and inherently distinctive. They have been
6 advertised, promoted and sold nationally. Some have been featured in prominent trade news
7 publications.

8 35. As a result of these advertising and promotional efforts and, as importantly, the
9 substantial publicity associated with the Distinctive Designs, the total image, shape, configuration,
10 packaging and overall look, appearance and impression of the sets within the products
11 incorporating the Distinctive Design have caused a segment of the public and/or buyers for the
12 various retail outlets which form Agio's customer base, to now associate these products with
13 Agio.

14 36. Agio has established an exclusive right to use the overall style, design, look,
15 appearance, texture, graphics and trade dress of its products incorporating these unique Distinctive
16 Designs free from confusingly similar imitations that are calculated to deceive the public and/or
17 buyers and injure Agio.

18 37. Defendants, individually and jointly, have worked to copy, imitate and duplicate
19 the total image, look, appearance, style and overall size, shape and appearance of the unique
20 aesthetic elements of the products incorporating of Distinctive Designs. Upon information and
21 belief, Defendants misappropriated proprietary and confidential information containing the
22 Distinctive Designs, have carefully studied and examined this information, and are now
23 attempting to capitalize on Agio's success by selling imitations or otherwise passing off products
24 under other trade names that are calculated to deceive and confuse the aforementioned public
25 and/or buyers and irreparably injure Agio.

26 38. Without the consent of Agio, Defendants are now in the process of actively
27 manufacturing, marketing, importing and selling knock-off outdoor and casual furniture products

28

1 that are virtually identical in every material way to the unique combination of aesthetic elements
2 found throughout the products incorporating the Distinctive Designs.

3 39. Defendants' unauthorized copying of the total image, configuration, and look
4 represented by the Distinctive Designs are intended to create confusion, to deceive the public
5 and/or buyers and to decrease Agio's sales of its products incorporating the Distinctive Designs.
6 Defendants' use of Agio's trade dress associated with the Distinctive Designs deprives Agio of
7 control over the quality of outdoor and casual furniture products the consuming public and retail
8 buyers have come to associate as emanating from Agio. The potential negative effects on Agio's
9 reputation and potential market for outdoor furniture products are substantial, immeasurable and
10 irreparable.

11 40. Defendants' sales and offers for sale of, among other things, their knock-off copies
12 of products incorporating the Distinctive Designs have created a likelihood of confusion or
13 misunderstanding as to the origin of those products, and/or the sponsorship or approval by Agio of
14 the Defendants' products.

15 41. Defendants, and each of them, who are fully aware of, among other things, the
16 popularity and success of Agio's Distinctive Designs, have acted with predatory intent,
17 knowledge, and intent that Defendants' products will be passed-off as those of Agio or,
18 alternatively, will be confused or likely to be incorrectly thought of as being approved or
19 authorized by, or otherwise originating from, Agio.

20 42. Defendants' sales and offers to sell their knock-off copies of Agio's highly
21 successful products incorporating the Distinctive Designs have caused and threaten to cause
22 confusion and deception in the marketplace and endanger Agio's valuable goodwill and reputation
23 for making and selling unique, high quality outdoor and casual furniture and other products.

24 43. Despite their imitative overall visual appearance, Defendants' knock-off products
25 are of a lower quality than Agio's and sold at a lower price to the detriment of Agio's reputation.

26 44. Any solicitations and sales by Defendants and their associates are likely to cause
27 immediate confusion on the part of purchasers of such products. These purchasers will be falsely
28 led to associate Defendants' knock-off products with Agio's Distinctive Designs because of the

1 similarity, and therefore to erroneously believe that Defendants' products are either manufactured
2 or sponsored by Agio or are being placed on the market with the consent and authority of Agio.

3 45. The foregoing acts by Defendants constitute violations of Section 43(a) of the
4 Lanham Act, 15 U.S.C. § 1125(a). Such acts have irreparably injured and will continue to injure
5 Agio unless enjoined by this Court.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs respectfully request the following relief:

8 That this Court to enter judgment against Defendants, finding Defendants, individually,
9 jointly and severally, granting the following relief:

10 A. On their patent infringement claim, Plaintiffs request:

11 1. The entry of judgment in favor of Plaintiffs, and against Defendants, finding
12 Defendants jointly and severally liable in connection with the claims set forth herein;

13 2. An award of damages adequate to compensate Plaintiffs for the infringement that
14 has occurred, together with prejudgment interest from the date infringement of the Patents began,
15 but in no event less than a reasonable royalty as provided by 35 U.S.C. § 284;

16 3. Increased damages as permitted under 35 U.S.C. § 284;

17 4. A finding that this case is exceptional and an award to Plaintiffs of their attorneys'
18 fees and costs as provided by 35 U.S.C. § 285;

19 5. A preliminary and permanent injunction prohibiting Defendants, and their
20 respective subsidiaries, affiliates, officers, directors, agents, servants, employees, and all persons
21 in active concert or participation with them, from infringing, contributing to the infringement of,
22 and inducing infringement of the Patents in suit; and,

23 6. Such other and further relief as this Court or a jury may deem proper and just.

24 B. On their trade secret misappropriation claim, Plaintiffs request:

25 1. That Defendants, and their officers, agents, servants, employees and attorneys, and
26 all persons in active concert or participation with them who receive actual notice of the Court's
27 order, be enjoined preliminarily and permanently from:

28

1 (a) using, distributing, manufacturing, offering to sell or selling any item
2 derived from or constituting, in whole or in part, any Agio trade secrets;

3 (b) selling or offering to sell any product in a manner which creates a likelihood
4 of confusion or which may deceive the public into believing that the source of such product is
5 Agio, or that such product is authorized or endorsed by Agio in any way;

6 (c) offering to do any of the acts enjoined in subparagraphs (a) and (b) above;

7 (d) in any manner disclosing, infringing or contributing to or participating in
8 the misappropriation or disclosure by others of any of Agio's trade secrets, and from acting in
9 concert with, inducing, aiding, or abetting others to infringe, misappropriate or disclose any of
10 said trade secrets in any way; and

11 (e) engaging in further acts of trade secret misappropriation or unfair
12 competition.

13 2. The destruction and/or surrender of any Agio property or trade secrets, or any
14 materials derived therefrom, such as molds, drawings, specification and tooling, and all means of
15 making or reproducing the same;

16 3. That defendants advise their customers and all those solicited to be their customers
17 in writing, in a form suitable to Agio that:

18 (a) Defendants have unlawfully used Agio's property and trade secrets; and

19 (b) Defendants' products are not associated with Agio and are not endorsed or
20 approved by Agio.

21 3. A declaration from the Court, among other things:

22 (a) that the trade secret misappropriation by Defendants was willful and
23 malicious;

24 (b) that Agio be awarded compensatory and exemplary damages;

25 (c) that Agio recover attorneys' fees and costs of suit incurred herein; and

26 (d) that Agio have such other and further relief as the Court and/or a jury deems
27 just and proper.

28 C. On their Lanham Act claim, Plaintiffs request:

1 1. That Defendants, and their officers, agents, servants, employees and attorneys, and
2 all persons in active concert or participation with them who receive actual notice of the Court's
3 order, be enjoined preliminarily and permanently from:

4 (a) selling or offering to sell any product or service in a manner which creates a
5 likelihood of confusion or which may deceive the public into believing that the source of such
6 product or service is Agio, or that such product or service is authorized or endorsed by Agio in any
7 way;

8 (b) using in connection with advertising, offering for sale or sale of any product
9 any false designation, description or representation of the origin, nature, quality or association of
10 such products; and

11 (c) further acts of deceptive trade practices and/or unfair competition in any
12 manner whatsoever, including selling, offering to sell or otherwise or marketing or promoting
13 their current products and future designs which have substantially the same overall image,
14 appearance or look or that are imitations or copies of Agio's Distinctive Designs.

15 2. An order directing Defendants to deliver to Agio for immediate destruction all
16 drawings, molds, tooling, specifications, advertisements, circulars, brochures or other promotional
17 and advertising items or materials for their sales, marketing and manufacture of their outdoor and
18 casual furniture products that are copies of Agio's Distinctive Designs;

19 3. An order directing the United States Marshal, or persons acting under his or her
20 direction, to seize and impound all of the outdoor and casual furniture products that are copies of
21 Agio's Distinctive Designs, and all catalogs, brochures and packaging from Defendants that have
22 been used by them to commit any of the unlawful acts complained of by Agio;

23 4. That Agio be awarded compensatory damages in an amount to be determined at
24 trial;

25 5. That Agio be awarded punitive damages arising from the willful and malicious acts
26 of Defendants, in an amount to be determined at trial;

27 6. That Agio recover attorneys' fees and costs of suit incurred herein; and

28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. That Agio have such other and further relief as the Court and/or a jury deems just and proper.

JURY DEMAND

A trial by jury is demanded on all issues triable to a jury in this case.

LEWIS AND ROCA LLP


MICHAEL J. McCUE (Nevada Bar No. 6055)
W. WEST ALLEN (Nevada Bar No. 5566)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89109
Telephone: (702) 949-8200
Facsimile: (702) 949-8398

Attorneys for Plaintiff
AGIO INTERNATIONAL COMPANY, LTD.
ROBERT GAYLORD, and OLIVER WANG