

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

C&A PRO, LLC, a North Dakota Limited Liability Company,)	Civil Action No. _____
)	
Plaintiff,)	
)	
v.)	VERIFIED COMPLAINT FOR PATENT
)	INFRINGEMENT, TRADEMARK
PRIDE SOLUTIONS, LLC, (d/b/a C&A ULTRA PRO) a Minnesota Limited Liability Company,)	INFRINGEMENT & UNFAIR
)	COMPETITION
)	
Defendant.)	DEMAND FOR JURY TRIAL

Plaintiff C&A Pro, LLC (hereinafter "C&A PRO" or "Plaintiff") brings its Complaint against Defendant Pride Solutions, LLC (hereinafter "PRIDE SOLUTIONS" or "Defendant") for patent infringement, trademark infringement and unfair competition.

PARTIES

1. Plaintiff C&A Pro, LLC is a limited liability company organized and existing under the laws of North Dakota and has a principal place of business at 2534 South University Drive, Suite 2, Fargo, North Dakota 58103.

2. Plaintiff is informed and believes, and thereon alleges, that Defendant Pride Solutions, LLC is a limited liability company organized and existing under the laws of Minnesota and has a place of business at 720 Highway 7 West, Hutchinson, Minnesota 55350. Pride Solutions, LLC is doing business as C&A ULTRA PRO.

NATURE OF ACTION

3. This is an action for patent infringement under the Patent Act (35 U.S.C. §§ 1 et seq.) arising from Defendant's manufacture, marketing, offer for sale and sale of snowmobile skis in violation of Plaintiff's rights in U.S. Patent No. 6,086,101, U.S. Patent No. 6,331,008, U.S. Patent No. 6,619,676, U.S. Patent No. 6,764,635, U.S. Patent No. D466,832, U.S. Patent No. D480,332, and U.S. Patent No. D485,786.

4. This is also an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. § 1051 et seq.) arising from the use by Defendant of the names and marks "C&A PRO" and "C&A ULTRA PRO" in violation of Plaintiff's rights in their federally registered "C&A PRO" trademark.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of this patent infringement action pursuant to 28 U.S.C. §§1331, 1338(a), and 15 U.S.C. §1121.

6. This Court has personal jurisdiction over PRIDE SOLUTIONS because it resides in this District and because it manufactured, purposefully offered for sale, marketed, sold, distributed, and continues to manufacture, offer for sale, market, sell, and distribute infringing products in this Judicial District.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400 in that PRIDE SOLUTIONS is physically located in and has committed acts of infringement in this Judicial District.

FACTUAL BACKGROUND

A. Dale Cormican

8. Dale Cormican, a resident of Mentor, Minnesota, has devoted his life to improving the snowmobile industry through the development of innovative technologies and products.

9. Mr. Cormican is nationally recognized in the snowmobile industry as an innovator and former professional snowmobile racer.

10. Mr. Cormican has won various snowmobile-racing events such as the International 500 Cross-Country in 1968 and 1969.

11. During the years of 1969 to 1973, Mr. Cormican worked in product development at Arctic Cat, Inc., inventing various snowmobile technologies still in use today. While at Arctic Cat, Mr. Cormican co-built and raced a turbine-powered snowmobile vehicle called the Boss Cat that set several world speed records.

12. Mr. Cormican then joined John Deere's snowmobile department in the mid-1970s. Mr. Cormican worked on various projects such as the original Deere Cross-Country 340S and the Liquidator snowmobiles. In 1997, Mr. Cormican was one of three inductees into the prestigious Snowmobile Hall of Fame (www.snowmobilehalloffame.com), which recognizes his contribution as a pioneer in the snowmobile industry.

13. Mr. Cormican has pioneered many innovative snowmobile technologies. Mr. Cormican relies heavily upon the protection of his snowmobile innovations through

the granting of United States patents. Mr. Cormican has been granted numerous United States patents for groundbreaking snowmobile technologies such as: U.S. Patent No. 6,086,101 (**Exhibit A**), U.S. Patent No. 6,331,008 (**Exhibit B**), U.S. Patent No. 6,619,676 (**Exhibit C**), U.S. Patent No. 6,764,635 (**Exhibit D**), U.S. Patent No. D466,832 (**Exhibit E**), U.S. Patent No. D480,332 (**Exhibit F**), and U.S. Patent No. D485,786 (**Exhibit G**); U.S. Patent No. 6,354,391 (Progressive Rate Suspension Spring Tensioning Device); U.S. Patent No. 6,474,662 (Snowmobile Ski Suspension System); U.S. Patent No. D451,064 (Bogie Wheel for a Snowmobile); and U.S. Patent No. D373,981 (Snowmobile Suspension Fairing).

B. Conventional Snowmobile Skis

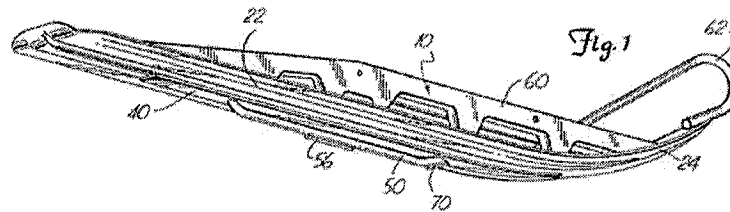
14. Conventional snowmobile skis were originally of an all-metal construction and were attached to the front suspension system of a snowmobile.

15. An all-metal ski is inflexible and unyielding, thereby reducing ski control and stability.

16. All-metal skis accumulate wet snow and do not slide easily on a snow surface.

17. In addition, all-metal skis are susceptible to bending, denting and breaking when engaging objects.

18. As illustrated below, United States Patent No. 5,344,168 granted to Olson on September 6, 1994, illustrates an exemplary all-metal ski (10).

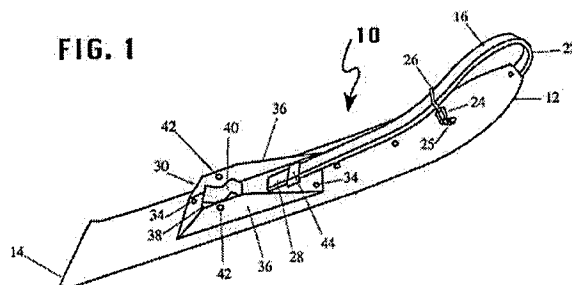


Exemplary All-Metal Ski (U.S. Pat. No. 5,344,168)

19. To address the disadvantages of the all-metal ski, combination metal-plastic skis were developed that utilized a rigid metal saddle attached to an elongate plastic ski body.

20. The metal saddle is attached to the upper surface of the elongate plastic ski body, thereby allowing attachment to the snowmobile steering system.

21. Figure 1 of U.S. Patent No. 5,360,220, granted to Simmons on November 1, 1994, illustrates an exemplary combination metal-plastic ski where a metal saddle (30) having a U-shaped structure is attached to the upper surface of the elongate plastic ski body (10).



Exemplary Plastic Ski With Metal Saddle (U.S. Pat. No. 5,360,220)

22. Thus, while the combination metal-plastic ski was semi-resilient at the front and rear portions, the metal bridge or saddle caused the ski to be rigid overall.

23. Accordingly, when the front of the metal-plastic ski would encounter a

bump or obstacle, the ski would follow the bump, resulting in the base of the ski losing contact with the snow surface and affecting the rider's ability to control the snowmobile.

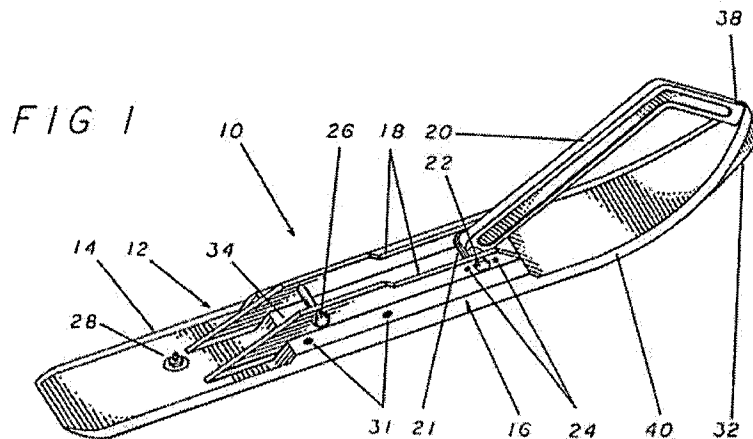
C. The All-Plastic Ski

24. In about 1996, Mr. Cormican conceived of the revolutionary idea of utilizing an all-plastic ski design to solve the problems associated with the preceding ski designs.

25. Mr. Cormican solved the prior ski problems by developing a ski having an integrated all-plastic saddle and a structure for attaching the all-plastic saddle to the front suspension of a snowmobile.

26. The present invention is an all-plastic ski having the flexibility to withstand impacts during normal use and also maintain contact with the snow, thereby enhancing the operator's steering control.

27. In addition, an all-plastic ski is lighter in weight, more flexible, and more durable than conventional skis having a metal saddle arrangement. Below is an exemplary illustration of the all-plastic ski invented by Mr. Cormican.



Dale Cormican's All-Plastic Ski (U.S. Patent No. 6,331,008)

28. Mr. Cormican had the first mold of his all-plastic ski made in 1997 by North American Ultra High (hereinafter "NAUH") in Crookston, Minnesota.

29. Mr. Cormican immediately realized the significant advantages of the all-plastic ski design and established a business (C&A Plus, Inc.) to commercialize his innovative ski design.

D. C&A Plus, Inc.

30. Mr. Cormican formed C&A Plus, Inc. (hereinafter "C&A PLUS") to market and sell his innovative all-plastic ski design.

31. In 1998, Mr. Cormican contracted with Integrated Tooling Systems, Inc., to mold the all-plastic skis for C&A PLUS since he was unable to manufacture the skis himself.

32. In accordance with Mr. Cormican's ski design, specifications and directions, Integrated Tooling Systems created a ski mold in January 1999.

33. Mr. Cormican then provided this original mold to Plastic Specialties Manufacturing, Inc. (hereinafter "Plastic Specialties") so they could manufacture the all-

plastic skis for C&A PLUS.

34. The C&A PLUS all-plastic skis immediately became very successful and recognized throughout the snowmobile industry, particularly within the snowmobile racing community.

35. C&A PLUS marketed and sold the all-plastic skis under the Federally registered trademark "C&A PRO".

36. The C&A PLUS business had grown dramatically since its inception and had created a significant market for all-plastic skis.

37. The C&A PLUS all-plastic skis were used in numerous national competitions by several of the top snowmobile racers in the World Snowmobile Association (WSA), such as Blair Morgan and Tucker Hibbert.

38. The C&A PLUS all-plastic skis quickly became the ski of choice for many snowmobile racers because of their superior handling capabilities.

39. Snowmobile enthusiasts purchased the C&A PLUS skis to replace the metal skis that were original equipment on snowmobiles and to use the skis they saw racers use.

E. First Lawsuit Filed Against Plastic Specialties Manufacturing, Inc.

40. After Plastic Specialties had manufactured skis for C&A PLUS for several years, the business relationship between C&A PLUS and Plastic Specialties grew strained and ended in 2000.

41. C&A PLUS was forced to find a new molding company to produce its all-plastic ski, as C&A PLUS did not have a plastic molding facility.

42. After the termination of their business relationship, Plastic Specialties then began making and selling all-plastic skis using the very same mold that Plastic Specialties had used to make C&A PLUS skis.

43. Plastic Specialties was now in direct competition with C&A PLUS using the C&A PLUS molds to produce a copycat of the C&A PLUS ski, doing so without any license or permission from Mr. Cormican.

44. On August 7, 2001, Mr. Cormican filed a lawsuit against Plastic Specialties for (i) trade dress infringement, (ii) tortious interference with prospective advantage, (iii) violation of Minnesota Deceptive Trade Practices Act, and (iv) common law unfair competition, in United States District Court for the District of Minnesota (CASE NO. 01-CV-1428 ADM/RLE). The original complaint against Plastic Specialties was later amended to include claims of misappropriation of trade secrets and patent infringement (U.S. Patent Nos. 6,086,101 and 6,331,008).

45. On February 14, 2003, Mr. Cormican served his Motion for Summary Judgment for patent infringement against Plastic Specialties.

46. On July 23, 2003, the Minnesota District Court granted Mr. Cormican's request for Summary Judgment. **Exhibit H.**

F. Second Lawsuit Filed Against Pride Solutions, LLC

47. Plastic Specialties apparently ran into financial problems. On August 21, 2002, all the business assets of Plastic Specialties Manufacturing, Inc., including the snowmobile ski manufacturing assets used to manufacture the copycat ski, were transferred to the Citizens Bank & Trust Company (hereinafter "Citizens Bank") through

a default judgment (without any associated liabilities) and order for repossession. Plastic Specialties, through their legal counsel, alleged that they were "no longer in business" and have "no assets" other than its counterclaims against C&A PLUS.

48. Until the Fall of 2002, Defendant Pride Solutions, LLC, was never involved in the snowmobile industry, much less the snowmobile ski industry. Defendant Pride Solutions, LLC does business under various names, such as HUTCHINSON MANUFACTURING (www.hutchmfg.com), MAY-WES MANUFACTURING (www.may-wes-mfg.com), and PLASTIC SPECIALTIES (www.flexski.com and www.plasticspecialties.com). Defendant Pride Solutions, LLC is involved in various industries such as but not limited to assembly services, CAD services, fabrication services, machining services, custom metal fabrication, fixture design, laser cutting, OEM contract manufacturing, project manufacturing, surface preparation and coating, agricultural products, industrial, food processing, chemical, medical, and water recreation industries.

49. After Citizens Bank acquired Plastic Specialties' assets, Citizens Bank then transferred at least a portion of the snowmobile ski assets, including the ski mold, to Defendant Pride Solutions, LLC. Defendant Pride Solutions then began to make and sell the infringing ULTRA III FLEX snowmobile skis using the very same mold that Plastic Specialties had used to make C&A PLUS skis.

50. On October 28, 2002, Mr. Cormican filed a lawsuit against Pride Solutions for patent infringement (U.S. Patent Nos. 6,086,101 and 6,331,008), in United States District Court for the District of North Dakota (CASE NO. A3-02-118).

51. On December 13, 2002, Mr. Cormican filed a Motion for Preliminary Injunction against Pride Solutions for the unauthorized manufacture, offering for sale and sale of the infringing snowmobile skis.

52. On February 7, 2003, the North Dakota District Court granted Mr. Cormican's request for a Preliminary Injunction against Pride Solutions thereby enjoining Pride Solutions from manufacturing and selling the infringing snowmobile skis.

Exhibit I.

G. Dale Cormican Settles Lawsuits with Pride Solutions

53. Despite the Preliminary Injunction and Summary Judgment rulings by two separate Federal Courts against Pride Solutions and its predecessor in interest Plastic Specialties, patent infringement litigation is expensive and Mr. Cormican decided that in view of, that settlement was a feasible option.

54. On July 11, 2003, Mr. Cormican entered into a Purchase Agreement with Pride Solutions, LLC based upon representations made by Pride Solutions, LLC in an attempt to resolve the costly litigation. **Exhibit J.**

55. Unfortunately, Pride Solutions, LLC never provided the guaranteed consideration and compensation as agreed under the Purchase Agreement.

56. On February 26, 2004, Mr. Cormican provided written notice of Pride Solution, LLC's failure to provide the consideration required under the Purchase Agreement. **Exhibit K.**

57. Pride Solutions, LLC never cured (and never attempted to cure) their failure to provide consideration required under the Purchase Agreement within the required thirty (30) days and the Purchase Agreement was expunged.

H. C&A Pro, LLC

58. C&A Pro, LLC is engaged in the business of designing, manufacturing, marketing, promoting and selling unique and successful snowmobile skis for both consumer trail use and on snow cross racing snowmobiles.

59. C&A PRO, LLC is about to release its new 2005 race skis for the snow cross racer market and general consumers.

60. The release of C&A PRO's new 2005 race skis is extremely important for its future business with racers and general consumers.

61. However, the release of C&A PRO's new 2005 race skis will be virtually impossible if Defendant is allowed to continue selling snowmobile skis that infringe the Patents-in-Suit and that bear the name "C&A ULTRA PRO".

62. C&A PRO is the owner of the following U.S. Patents (collectively, the "Patents-in-Suit"): U.S. Patent No. 6,086,101 (**Exhibit A**), U.S. Patent No. 6,331,008 (**Exhibit B**), U.S. Patent No. 6,619,676 (**Exhibit C**), U.S. Patent No. 6,764,635 (**Exhibit D**), U.S. Patent No. D466,832 (**Exhibit E**), U.S. Patent No. D480,332 (**Exhibit F**), and U.S. Patent No. D485,786 (**Exhibit G**). The Patents-in-Suit is incorporated by reference herein are true and correct copies of the Patents-in-Suit.

63. By at least August 30, 2004, Mr. Cormican legally transferred all of his rights in the Patents-in-Suit to C&A Pro, LLC including the right to seek past damages for infringement.

64. By at least August 31, 2004, C&A Plus, Inc. legally transferred all of its rights and goodwill with respect to the trademark C&A PRO to C&A Pro, LLC including the right to seek past damages for infringement.

I. Pride Solutions, LLC's Patent Infringement

65. Despite the previous two court rulings against them and expungement of the Purchase Agreement, PRIDE SOLUTIONS is still flagrantly engaged in the business of manufacturing, marketing, promoting and selling infringing snowmobile skis under various names including but not limited to C&A ULTRA PRO, EXTREME ADVANTAGE XT, EXTREME ADVANTAGE RZ, EXTREME ADVANTAGE ADX, EXTREME ADVANTAGE AD, and EXTREME ADVANTAGE SPORT (hereinafter "Infringing Snowmobile Skis").

66. The Infringing Snowmobile Skis and/or their operation fall within the scope of the claims of the Patents-in-Suit.

67. PRIDE SOLUTIONS' manufacture, use, offer for sale, marketing and sale of its Infringing Snowmobile Skis is in violation of C&A PRO's exclusive right to make, offer for sale, use and sell products covered by the Patents-in-Suit and, therefore, constitutes patent infringement.

68. Defendant's continued patent infringing activities will cause immediate and irreparable injury, loss and damage to C&A PRO.

J. Pride Solutions, LLC's Trademark Infringement

69. C&A PRO is the owner of U.S. Registration No. 2,325,867 on the Principal Register for "C&A PRO" issued by the U.S. Patent and Trademark Office on March 7, 2000, for "snowmobile parts, namely, snowmobile skis and structural parts thereof; suspension parts, namely, shock absorbers; carbide runners and studs; and snowmobile track wheels" in International Class 012 (U.S. Classes 019, 021, 023, 031, 035 and 044) (hereinafter the "C&A's Registered Mark"). Attached hereto as **Exhibit L** and incorporated by reference herein is a true and correct copy of the March 7, 2000 registration.

70. PRIDE SOLUTIONS is now marketing, offering for sale and selling snowmobile skis under the name "C&A ULTRA PRO" on the website having a URL of WWW.CAULTRAPRO.COM. **Exhibit M.**

71. C&A's Registered Mark pre-dates Defendant's use of the C&A ULTRA PRO name, or Defendant's use of any other name incorporating C&A or C&A PRO.

72. The snowmobile skis offered by Defendant under the "C&A ULTRA PRO" name are virtually identical to the types of products offered by Plaintiff C&A PRO under its "C&A PRO" mark.

73. The snowmobile skis sold by Defendant have the "C&A ULTRA PRO" name molded into the upper surface of the body of the ski.

74. The ski loops used on Defendant's snowmobile skis have the "C&A PRO" name molded into the side portions of the loops.

75. The products offered by Defendant under the "C&A ULTRA PRO" and "C&A PRO" names, or intended to be offered by Defendant under the C&A ULTRA PRO name, are sold or will be sold in the same channels of trade and to the same prospective customers as the products offered by Plaintiff.

76. Defendant's use of "C&A ULTRA PRO" and "C&A PRO" will cause confusion, mistake and deception among purchasers and users as to the source or origin of the parties' respective products, thereby causing immediate and irreparable loss, damage and injury to Plaintiff and the public.

77. Plaintiff is informed and believes, and thereon alleges, that Defendant's infringing use of "C&A ULTRA PRO" and "C&A PRO" is willful.

78. Defendant is actively marketing the Infringing Snowmobile Skis with the "C&A ULTRA PRO" and "C&A PRO" names.

79. The Defendant is actively soliciting business relationships with individuals and companies to market and promote the Infringing Snowmobile Skis to.

80. The most vital portion of the snowmobile ski season is just starting and important marketing relationships are beginning.

81. "Brand marketing" in the snowmobile industry is very important for snowmobile accessory companies, particularly aftermarket companies such as C&A Pro, LLC.

82. If the "C&A PRO" brand is allowed to be used by an unauthorized third-party such as the Defendant, C&A PRO will incur immediate and irreparable injury, loss and damage.

K. Irreparable Injury to C&A Pro, LLC

83. PRIDE SOLUTIONS has already had a Summary Judgment against their predecessor in interest, Plastic Specialties, Inc. **Exhibit H.**

84. PRIDE SOLUTIONS has also already had a Preliminary Injunction ordered against it for its infringing activities. **Exhibit I.**

85. PRIDE SOLUTIONS defaulted on a Purchase Agreement with Mr. Cormican and C&A Plus, Inc. by not paying monies owed under the Purchase Agreement and not curing the same within thirty (30) days as requested. **Exhibit K.**

86. However, PRIDE SOLUTIONS still continues to manufacture, use, offer for sale and sell snowmobile skis that infringe upon Plaintiff's Patents-in-Suit. **Exhibit M.**

87. To make matters worse, PRIDE SOLUTIONS is using the same "C&A PRO" name and a confusingly similar variation of the C&A PRO trademark -- C&A ULTRA PRO.

88. Defendant Pride Solutions, LLC is aggressively and viciously targeting C&A Pro's all-plastic ski market, specifically the snowmobile racers who are the primary marketing tool for C&A Pro's skis. **Exhibit N.**

89. Snowmobile racers routinely purchase products that other racers use and have success with.

90. Recreational riders and general snowmobile consumers purchase the brand of ski they see utilized by snowmobile racers in racing events.

91. The products utilized by professional and semi-professional snowmobile

racers are recognized as high-performance products, making those products highly sought after by snowmobile riders.

92. Defendant has significantly undercut C&A Pro's prices, which is preventing the establishment of business relationships by C&A PRO with the racing market as well as distributors who place the skis in their after-market catalogs.

93. One recent example of a lost significant business relationship because of Defendant's infringing activities is with Arctic Cat's race program. Plaintiff has communicated with Arctic Cat's race program and has been informed that Arctic Cat plans to use the Defendant's snowmobile skis on all of their new 2005 race snowmobiles. In other words, if Defendant is allowed to continue with their infringing activities, potentially over 1,000 Arctic Cat race snowmobiles will be used in snow cross races with the Defendant's infringing skis instead of C&A PRO's skis.

94. Plaintiff has also lost market share to Defendant's infringing skis and simply cannot survive a price war with the Defendant.

95. Plaintiff's production costs are significantly greater than Defendant's production costs because C&A PRO does not manufacture the skis itself. C&A PRO has to hire a third party molder to produce their skis which is more costly than manufacturing the skis in-house as Defendant does.

96. In addition, Defendant does not have any associated design costs because they have shamelessly copied the C&A snowmobile ski design that Mr. Cormican has worked years on developing.

97. Finally, the trademark C&A PRO which is owned by the Plaintiffs has an

established consumer base that immediately recognize the C&A PRO trademark. Defendant's usage of C&A ULTRA PRO is causing confusion in the marketplace and will eventually destroy the strong trademark for C&A PRO unless temporarily restrained, preliminary enjoined and permanently enjoined by the Court.

98. Defendant's continued patent infringement, trademark infringement, unfair competition, false designation of origin and predatory price-cutting scheme is likely to drive C&A PRO, a relatively new company, completely out of business.

99. C&A will be irreparably injured if this Court does not temporarily restrain, preliminarily enjoin and permanently enjoin Defendant's conduct.

COUNT I
PATENT INFRINGEMENT

100. Plaintiff incorporates by reference the allegations of the above-stated paragraphs.

101. PRIDE SOLUTIONS has manufactured, used, offered for sale and sold its Infringing Snowmobile Skis throughout the United States.

102. The Infringing Snowmobile Skis, their manufacture and/or their operation infringe the Patents-in-Suit, more particularly:

- a. U.S. Patent No. 6,086,101;
- b. U.S. Patent No. 6,331,008;
- c. U.S. Patent No. 6,619,676;
- d. U.S. Patent No. 6,764,635;
- e. U.S. Patent No. D466,832;

f. U.S. Patent No. D480,332; and

g. U.S. Patent No. D485,786.

103. PRIDE SOLUTIONS' manufacture, use, offer for sale, and/or sale of the Infringing Snowmobile Skis was and is without C&A PRO's authorization and consent.

104. PRIDE SOLUTIONS' manufacture, use, offer for sale and sale of the Infringing Snowmobile Skis is in violation of 35 U.S.C. §271.

105. Such acts of patent infringement are occurring and will continue to occur unless the Court enjoins PRIDE SOLUTIONS from further manufacture, use, offer for sale and sale of the Infringing Snowmobile Skis.

106. C&A PRO has been irreparably damaged by PRIDE SOLUTIONS' infringing activities, and will continue to be damaged by the infringing activities of PRIDE SOLUTIONS.

107. PRIDE SOLUTIONS has willfully and deliberately conducted the infringing activities described above, and C&A PRO therefore seeks an assessment of increased damages pursuant to 35 U.S.C. §284, and awarding attorneys' fees as an exceptional case pursuant to 35 U.S.C. §285.

COUNT II

TRADEMARK INFRINGEMENT IN VIOLATION OF LANHAM ACT, 15 U.S.C. §1114

108. Plaintiff incorporates by reference the allegations of the above-stated paragraphs.

109. This claim for relief arises under the Lanham Act (15 U.S.C. §§ 1051-1127).

110. Defendant's use of the "C&A PRO" name, alone and in combination with other words, constitutes trademark infringement under 15 U.S.C. §1114.

111. Defendant's use of the "C&A ULTRA PRO" name, alone and in combination with other words, constitutes trademark infringement under 15 U.S.C. §1114.

112. Defendant's use of "C & A RACE LOOP", alone and in combination with other words, constitutes trademark infringement under 15 U.S.C. §1114.

113. Defendant's use of the "C&A PRO" and "C&A ULTRA PRO" names likely will cause confusion with respect to the origin of the parties' respective products, and will continue to cause confusion, unless Defendant's use of the "C&A PRO" and "C&A ULTRA PRO" names is enjoined.

114. These wrongful acts have proximately caused and will continue to cause Plaintiff injury including but not limited to lost profits, dilution of its goodwill and injury to its reputation.

115. Unless enjoined by the Court, Defendant's conduct will cause immediate and irreparable harm and injury to Plaintiff, the amount of which will be difficult to ascertain.

116. Plaintiff has no adequate remedy at law and is entitled to injunctive relief against Defendant from engaging in further such unlawful conduct.

117. Plaintiff further is entitled to recover from Defendant the gains, profits, and advantages obtained as a result of the unlawful conduct alleged herein, in an amount to be determined at trial.

COUNT III
UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN
IN VIOLATION OF LANHAM ACT, 15 U.S.C. §1125(a)

118. Plaintiff incorporates by reference the allegations of the above-stated paragraphs.

119. This claim arises under the Lanham Act (15 U.S.C. §§ 1051-1127), specifically 15 U.S.C. § 1125(a).

120. Defendant selected the “C&A PRO” and “C&A ULTRA PRO” names, and/or began offering products using the “C&A PRO” and “C&A ULTRA PRO” names, with full knowledge of prior registration of the C&A Registered Mark.

121. Defendant's use of the “C&A PRO” and “C&A ULTRA PRO” names likely will cause confusion with respect to the origin of the parties' respective products and services, and will continue to cause confusion, unless Defendant's use of the “C&A PRO” and “C&A ULTRA PRO” names is enjoined.

122. Defendant makes numerous false statements on its website (www.caultrapro.com) such as but not limited to:

- “*Protected by patents # 6,086,101 and 6,331,008B2*”;
- “*Become a part of the C&A*”; and
- “*C & A Race Loop*”.

123. Defendant's use of the notice “*Protected by patents # 6,086,101 and 6,331,008*” likely will cause confusion with respect to who is the actual owner of United

States Patent Nos. 6,086,101 and 6,331,008B2, and will continue to cause confusion, unless Defendant's use of the patent notice is enjoined.

124. Defendant's statement "*Become a part of the C&A*" likely will cause confusion with respect to the origin of the parties' respective products and services, and will continue to cause confusion, unless Defendant's use of the patent notice is enjoined.

125. Defendant's statement "*C & A Race Loop*" likely will cause confusion with respect to the origin of the parties' respective products and services, and will continue to cause confusion, unless Defendant's use of the patent notice is enjoined.

126. Defendant's use of the names "C&A", "C&A PRO" and "C&A ULTRA PRO" is a false designation of origin as to products made available by Defendant and a false and misleading representation in violation of § 43(a) of The Lanham Act (15 U.S.C. § 1125(a)).

127. These wrongful acts have proximately caused and will continue to cause Plaintiff injury including but not limited to lost profits, dilution of its goodwill, and injury to its reputation.

128. Unless enjoined by the Court, Defendant's conduct will cause immediate and irreparable harm and injury to Plaintiff; the amount of which will be difficult to ascertain.

129. Plaintiff has no adequate remedy at law and is entitled to injunctive relief against Defendant from engaging in further such unlawful conduct.

130. Plaintiff further is entitled to recover from Defendant the gains, profits, and advantages obtained as a result of the unlawful conduct alleged herein, in an amount to be determined at trial.

PRAYER FOR RELIEF (FOR COUNT I)

WHEREFORE, with respect to Count I of the Complaint, C&A Pro, LLC requests that this Court:

- I. Enter a temporary restraining order pursuant to Rule 65, a preliminary injunction and permanent injunction directing and restraining Defendant and each of its agents and/or representatives, at first during the pendency of this action and thereafter permanently from making, using, offering for sale, or selling any product, including its Infringing Snowmobile Skis, in violation of the Patents-in-Suit;
- II. Enter judgment that Defendant has infringed Plaintiff's rights in the Patents-in-Suit;
- III. Order Defendant to deliver to this Court, for destruction, all Infringing Snowmobile Skis in Defendant's possession;
- IV. Award C&A PRO damages adequate to compensate for Defendant's infringement of the Patents-in-Suit and all pre-judgment interest; and
- V. Enter judgment that Defendant has willfully infringed Plaintiff's rights in the Patents-in-Suit and award Plaintiff treble damages, as well as the costs and reasonable attorneys' fees incurred by it herein.

PRAYER FOR RELIEF (COUNTS II AND III)

WHEREFORE, with respect to Count II and Count III of the Complaint, C&A Pro, LLC requests that this Court:

- VI. Enter a temporary restraining order, a preliminary injunction and permanent injunction directing and restraining Defendant and each of its agents and/or representatives, at first during the pendency of this action and thereafter permanently:
- a. using "C&A", "C&A PRO", "C&A ULTRA PRO", "C&A RACE LOOP" or any other name or mark confusingly similar to "C&A PRO", along or in combination with other words, names, styles, titles or marks (hereinafter referred to as "using the name or mark C&A") in connection with the advertising, promotion, offering or selling of snowmobile skis;
 - b. holding themselves out as the owners of, or otherwise authorized to use the name and mark "C&A" in connection with snowmobile skis and other snowmobile accessories;
 - c. performing any actions or using any words, names, styles, titles or marks which are likely to cause confusion, to cause mistake or to deceive, or to otherwise mislead the trade or public into believing that Plaintiff and Defendant are one and the same or are in some way connected, or that Plaintiff is a sponsor of Defendant, or that

Defendant is in some manner affiliated or associated with or under the supervision or control of Plaintiff, or that the products of Defendant originate with Plaintiff or are manufactured or offered with the approval, consent or authorization, or under the supervision of Plaintiff, or are likely in any way to lead the trade or the public to associate Defendant with Plaintiff;

- d. using any words, names, styles, titles or marks which create a likelihood of injury to the business reputation of Plaintiff;
- e. using any trade practices whatsoever including those complained of herein, which tend to unfairly compete with or injure Plaintiff's business and the goodwill appertaining thereto; and
- f. committing any acts calculated to cause purchasers to believe that any products or services sold or offered by Defendant are sponsored by, approved by, connected with, guaranteed by, or offered or sold by, Plaintiff or under the control or supervision of Plaintiff;

VII. Enter an order requiring Defendant to delete all references to the C&A, C&A PRO and C&A ULTRA PRO names, alone or in combination with any other word or words or design, from any written or electronic material and from their internet websites;

VIII. Enter judgment that Defendant be required to pay to Plaintiff compensatory damages for the injuries sustained by Plaintiff in consequence of the acts herein complained of and that such damages be trebled because of the willful

acts described herein in disregard of Plaintiff's known rights as aforesaid;

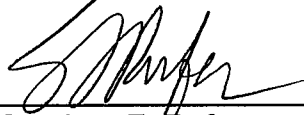
- IX. Enter judgment that Defendant be required to account for and pay over to Plaintiff all gains, profits and advantages derived by them from the activities herein complained of; and
- X. Order Defendant to deliver up for destruction all snowmobile skis, ski loops, stationery, signs, advertisements, brochures, promotional materials and other written materials which bear the name and mark "C&A", "C&A PRO", "C&A ULTRA PRO", "C&A RACE LOOP" or any other name or mark confusingly similar to Plaintiff's C&A PRO mark together with all plates, molds, matrices and other means and materials for making or reproducing same.

PRAYER FOR RELIEF (COUNTS 1, II AND III)

WHEREFORE, with respect to Count I, Count II and Count III of the Complaint, C&A Pro, LLC requests that this Court:

- XI. Enter an order requiring Defendant, within thirty (30) days after entry of judgment, to file with this Court and to serve upon Plaintiff a written report, under oath, setting forth in detail the manner in which Defendant has complied with the above paragraphs;
- XII. Enter judgment that Defendant be required to pay to Plaintiff all of its litigation expenses including reasonable attorneys' fees and the costs of this action; and
- XIII. Enter judgment that Plaintiff have such other and further relief as the Court may deem just and proper.

PEMBERTON, SORLIE, RUFER,
AND KERSHNER, P.L.L.P.



Date: September 1, 2004

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ATTORNEYS FOR PLAINTIFF


VERIFICATION

Brandon Cormican declares as follows:

I am an owner of C&A Pro, LLC, Plaintiff herein. I have read the foregoing Verified Complaint and know the contents thereof and the same are true of my own knowledge except as to such matters therein stated to be on information and belief, and as to these matters, I believe them to be true.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1st, 2004.

By: 

Brandon Cormican – Owner