

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

**DOCKETED**

**JAN 31 2003**

COBRA ELECTRONICS CORPORATION )

Plaintiff, )

**FILED**

Civil Action No.: 03 C 0613

v. )

**JAN 30 2003**

Honorable Paul E. Plunkett

THE WHISTLER GROUP, INC. )

**MICHAEL W. DOBINS**

Magistrate Judge Nolan

Defendant. )

**CLERK, U.S. DISTRICT COURT**

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on Thursday, January 30, 2003, Plaintiff, through its attorneys, filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, its FIRST AMENDED COMPLAINT, a copy of which is hereby served upon you. The First Amended Complaint corrects the Design Patent Number referred to in paragraph numbers 11, 25 and in the Prayer for Relief.

Respectfully submitted,

COBRA ELECTRONICS CORPORATION

Dated: 1/30/03

By Thomas K Stine

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**FIRST AMENDED COMPLAINT**

**NATURE AND STATUTORY BASIS OF ACTION**

1. This is an action for (I) trade dress infringement under the laws of the United States, as provided for by Title 15 United States Code §1125(a); (II) design patent infringement as provided for under Title 35 United States Code §§ 271 and 289; (III) deceptive trade practices under the laws of the State of Illinois, as provided by 815 ILCS 510/1 - 510/7; and (IV) consumer fraud under the laws of the State of Illinois, as provided by 815 ILCS 505/1-505/12.

**THE PARTIES**

2. Plaintiff, Cobra Electronics Corporation, is a Delaware corporation, having a principal place of business at 6500 West Cortland Street, Chicago, Illinois 60707.

3. On information and belief, Defendant, The Whistler Group, Inc., is a Texas corporation, having a principal place of business at 13016 North Walton Boulevard, Bentonville, Arkansas 72712.

**JURISDICTION AND VENUE**

4. Jurisdiction over Count I is expressly conferred on this Court under 15 U.S.C. §1121, and 28 U.S.C. §§1331 and 1338. Jurisdiction over Count II is expressly conferred on this Court

under 28 U.S.C. §§1331 and 1338. Jurisdiction over Counts III and IV is conferred on this Court under 28 U.S.C. §1338, since these claims are joined with substantial and related claims under the patent and trademark laws of the United States, and 28 U.S.C. §1367 the supplemental jurisdiction of this Court.

5. Personal jurisdiction over Whistler is vested in this Court because Whistler has purposely availed itself of the laws of the State of Illinois. Personal jurisdiction over Whistler is further vested in this Court pursuant to one or more sections of 735 ILCS §§ 5/2-201 through 5/2-213.

6. Venue is proper under 28 U.S.C. §§ 1391 (c).

#### **RELEVANT FACTS**

7. Cobra develops, markets, and sells consumer electronic devices, including radar/ laser detectors (hereinafter, "detectors"), under its well-known COBRA® trademark. Cobra has marketed and sold its detectors throughout the United States and the world, and has continuously done so for many years.

8. Cobra's second generation 9000-Series Detectors, consisting of Model Nos. 9110, 9210, 9560 and 9860 detectors (**EXHIBIT A**) feature a trade dress that includes distinctive appearance features, including *inter alia*, a two-toned product color scheme, product contour, button shape, button placement and button color (collectively comprising the Cobra "trade dress").

9. Cobra's trade dress, as exhibited by its second generation 9000-Series Detectors, is unique, arbitrary, and non-functional.

10. Through extensive use, promotion and sales in interstate commerce, the distinctive trade dress of Cobra's detectors have come to be recognized as denoting Cobra as the source of such

products. At minimum, Cobra's use and promotion of its trade dress has caused the trade dress to acquire secondary meaning.

11. Cobra is the assignee of U.S. Design Patent No. D468,224 entitled "Radar Detector" ("the '224 patent"). A true and accurate copy of the '224 patent is attached as **EXHIBIT B**.

12. The '224 patent was issued on January 7, 2003, and has been duly and legally assigned to Cobra Electronics Corporation for a nonfunctional, ornamental design for detectors.

13. Defendant, Whistler, manufactures, markets and sells consumer electronic devices, including detectors in the United States and the State of Illinois.

14. Whistler has undertaken, without the prior knowledge or authorization of Cobra, at least the marketing, advertising, offer for sale and/or sale, in commerce, of detectors exhibiting and incorporating Cobra's trade dress. Whistler's detectors are marketed and offered for sale under the name ALL BAND, including Model Nos. 1733, 1743, 1748, 1753, 1763, 1783 and 1793SE. (See **EXHIBIT C**).

15. The ALL BAND Model Nos. 1733, 1743, 1748, 1753, 1763, 1783 and 1793SE are virtually identical in appearance to Cobra's proprietary trade dress as embodied in Cobra's second generation 9000-Series detectors, namely, Model Nos. 9110, 9210, 9560 and 9860 detectors.

16. Whistler's copying, adoption and use of Cobra's trade dress is willful, contemptuous and in flagrant disregard of Cobra's lawful rights. As such, this case is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

17. In addition, Whistler is infringing Cobra's design patent by making, using, importing, selling, and/or offering to sell detectors which use Cobra's patented design or a colorable imitation thereof without license, and will continue to do so unless enjoined by this Court.

**COUNT I**  
**TRADE DRESS INFRINGEMENT**

18. As a first and complete ground for relief, Cobra hereby charges Whistler with federal unfair competition under the Lanham Act, in particular, 15 U.S.C. §1125(a), for unlawful appropriation of proprietary appearance features of Cobra's trade dress, and realleges by reference Paragraphs 1-17 above.

19. The external appearance features of Cobra's second generation 9000-Series detectors are unique, arbitrary, non-functional and have acquired secondary meaning and contribute to the overall distinctive trade dress of Cobra's detectors.

20. Through extensive use, promotion and sales in interstate commerce, Cobra's distinctive trade dress has come to be recognized as denoting Cobra as the source of such products.

21. Whistler has copied, adopted and used in commerce, in connection with at least the marketing, advertising, offering for sale and/or sale of, detectors having the overall distinctive trade dress owned by Cobra.

22. Whistler's adoption and use in commerce of Cobra's proprietary detector features without authorization of Cobra constitutes an unlawful appropriation, copying and simulation of Cobra's trade dress and product appearance and will likely cause confusion, mistake, or deception as to the affiliation, connection or association of Whistler with Cobra, or as to the origin, sponsorship or approval of its goods by Cobra, in violation of 15 U.S.C. §1125(a).

23. Whistler's conduct has and will continue to injure Cobra by diminishing and destroying Cobra's good will in its trade dress.

24. On information and belief, Whistler's adoption and use of Cobra's trade dress is intentional and in flagrant disregard of Cobra's lawful rights, warranting a finding of an exceptional case within the meaning of 15 U.S.C. § 1117(a).

**COUNT II**  
**DESIGN PATENT INFRINGEMENT**

25. As second and complete ground for relief, Cobra hereby charges Whistler with infringement of U.S. Patent No. D468,224 in violation of Title 35, United States Code §§ 271 and 289, and realleges by reference Paragraphs 1-24 above.

26. Whistler has and continues to sell and/or offer for sale products within the United States that infringe the '224 patent without Cobra's authorization.

27. Whistler's conduct has caused, and will continue to cause, Cobra damage and irreparable harm.

**COUNT III**  
**DECEPTIVE TRADE PRACTICES**

28. As a third and complete ground for relief, Cobra hereby charges Whistler with deceptive trade practices, in violation of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/1 - 510/7, and realleges by reference Paragraphs 1-27 of this Complaint.

29. Whistler has made use of Cobra's proprietary trade dress by offering for sale and/or selling Whistler's detectors, thereby causing a likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by Cobra, have passed off its products as those of Cobra, and/or have engaged in other conduct which similarly creates a likelihood of confusion or misunderstanding.

**COUNT IV**  
**CONSUMER FRAUD**

30. As a fourth and complete ground for relief, Cobra hereby charges Whistler with consumer fraud and deceptive business practices, in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act enacted by the State of Illinois, 815 ILCS 505/1-505/12, and realleges by reference Paragraphs 1-29 of this Complaint.

31. The aforesaid unfair competition and deceptive acts and practices of Whistler with respect to its advertisement, offering for sale and/or sale of detectors constitute consumer fraud and deceptive trade practices, in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act enacted by the State of Illinois, 815 ILCS 505/1-505/12, and are subject to the sanctions provided therein.

**PRAYER FOR RELIEF**

Cobra Electronics Corporation prays for the following relief:

1. Judgment confirming that the trade dress is owned by Cobra, and that Cobra has the exclusive right to use the trade dress in commerce.
2. Judgment that Whistler has competed unfairly with Cobra, has unlawfully and without authorization used Cobra's trade dress by use of product configurations and appearances confusingly similar to those adopted and owned by Cobra.
3. Judgment that Whistler is liable for direct infringement of U.S. Patent No. D468,224.
4. That Whistler and its officers, agents, servants, employees, attorneys, and all other persons in active concert and/or participation with them who receive notice, be preliminarily and permanently enjoined and restrained from:

- a. using any trade dress or design identical or confusingly similar to Cobra's trade dress and U.S. Patent No. D468,224, or any colorable imitations thereof;
- b. otherwise infringing Cobra's trade dress and U.S. Patent No. D468,224;
- c. otherwise unfairly competing with Cobra; and,
- d. causing a likelihood of confusion or misunderstanding as to source, association with, affiliation with, sponsorship of, approval of, or certification of, or by Cobra, or engaging in any other conduct which tends to pass off Whistler's products as those of Cobra or tends to create a likelihood of confusion, misunderstanding, or false representation.

5. That Whistler be directed to file in Court, and to serve on Cobra, within thirty (30) days after entry of the above injunction, a report in writing, under oath, setting forth in detail the manner and form in which it has complied with the injunction.

6. That Whistler be directed to deliver up to this Court for destruction, pursuant to 15 U.S.C. §1118, all prints, advertisements, tapes or other articles in its possession bearing or exhibiting Cobra's trade dress, or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices, screens, or other means of making the same.

7. That Whistler be directed to deliver up to Cobra, or otherwise destroy, all tooling used in the manufacturing and production of any products exhibiting or likely to cause confusion with Cobra's trade dress and any other detectors made with such tooling.

8. A finding that this case is exceptional pursuant to 15 U.S.C. § 1117 (a).



9. That this Court award attorneys' fees and taxable costs, and such other and further relief to Cobra as the Court deems just.

**JURY DEMAND**

Cobra requests a trial by jury.

Respectfully submitted,

COBRA ELECTRONICS CORPORATION

Dated: \_\_\_\_\_

1/30/03

By \_\_\_\_\_

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Linda A. Kuczma

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*Counsel for Cobra Electronics Corporation*

(166471.1)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and accurate copies of Cobra Electronics Corporations' **NOTICE OF FILING** and **FIRST AMENDED COMPLAINT** were served as follows:

via electronic mail and overnight courier to:

David W. Carstens, Esq.  
Carstens, Yee & Cahoon, LLP  
The Stone Tower  
13760 Noel Road  
Suite 900  
Dallas, TX 75240  
(972) 367-2001  
(972) 367-2002 (fax)

via hand delivery to:

Timothy J. Vezeau  
Katten, Muchin, Zavis & Rosenman  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661-3693  
(312)902-5200  
(312)902-1061 (fax)

on this 30<sup>th</sup> day of January, 2003

  
\_\_\_\_\_  
Thomas K. Stine

**SEE CASE  
FILE FOR  
EXHIBITS**