

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:09-CV-221**

LA-Z-BOY GREENSBORO, INC.,

Plaintiff,

vs.

**THE H.T. HACKNEY CO., D/B/A
HOLLAND HOUSE FURNITURE**

Defendant

JURY TRIAL DEMANDED

COMPLAINT

For its complaint against the Defendant, Plaintiff alleges:

1. Plaintiff La-Z-Boy Greensboro, Inc. is a North Carolina Corporation doing business in this State and District having its headquarters in High Point, North Carolina. Prior to December, 2003, Plaintiff was known as LADD Furniture, Inc.
2. Plaintiff and Plaintiff's parent corporation, La-Z-Boy Incorporated are widely known within the furniture manufacturing and retail trade as well as among the general public as manufacturers of high quality furniture. Plaintiff expends large amounts of time, money and effort each year to advertising and promoting the company, its brands and its products.
3. On December 30, 2003 the United States Patent and Trademark Office duly and lawfully issued United States Design Patent D484,329 (hereinafter the "329

patent”). Plaintiff is, and at all relevant times has been, the owner by assignment of the ‘329 patent. A copy of the ‘329 patent is attached hereto as Exhibit A.

4. On June 1, 2004, the United States Patent and Trademark Office duly and lawfully issued United States Design Patent D490,626 (hereinafter the “‘626 patent”). Plaintiff is, and at all relevant times has been, the owner by assignment of the ‘626 patent. A copy of the ‘626 patent is attached hereto as Exhibit B.

5. On April 19, 2005, the United States Patent and Trademark Office duly and lawfully issued United States Design Patent D504,037 (hereinafter the “‘037 patent”). Plaintiff is, and at all relevant times has been, the owner by assignment of the ‘037 patent. A copy of the ‘037 patent is attached hereto as Exhibit C.

6. On June 7, 2005 the United States Patent and Trademark Office duly and lawfully issued United States Design Patent D505,805 (hereinafter the “‘805 patent”). Plaintiff is, and at all relevant times has been, the owner by assignment of the ‘805 patent. A copy of the ‘805 patent is attached hereto as Exhibit D. (The ‘329, ‘626, ‘037 and ‘805 patents are hereinafter collectively referred to as “Plaintiff’s Patents.”)

7. Jessica McClintock is an award-winning fashion designer, of international reputation, of apparel and other products for girls and young women. Plaintiff markets an exclusive line of Jessica McClintock branded furniture, including collections of girls’ youth furniture, inspired by Ms. McClintock’s designs, fashion sense and design philosophy and is the exclusive licensee of Ms. McClintock’s name and likeness and of the trademarks of her company, Jessica McClintock, Inc., for use on furniture. Plaintiff’s

collaboration with Ms. McClintock and her company and its licensing arrangements with her are among Plaintiff's most valued assets. Plaintiff, in conjunction and coordination with Ms. McClintock and her company, accordingly expends significant money, time and effort marketing and advertising the collections of furniture within Plaintiff's Jessica McClintock branded line.

8. Furniture made to the designs protected by Plaintiff's Patents is manufactured and sold by Plaintiff's Lea Industries division throughout the United States as part of the Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection of girls' youth furniture. The Jessica McClintock Romance Collection contains pieces with a dark "natural" finish while the pieces in the Jessica McClintock Heirloom Collection are white. The two collections have several pieces that, aside from finish, share a common ornamental design and, even as to pieces unique to each collection share a common set of design elements and a common design theme and philosophy.

9. As a result of the coordinated advertising and marketing efforts of Plaintiff and Ms. McClintock's company, and of the ornamental design of the pieces in those collections, the Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection have been great commercial successes for Plaintiff. Because of Plaintiff and Ms. McClintock's advertising and marketing efforts, and the attendant commercial success, the ornamental design of the pieces in the Jessica McClintock Romance Collection and the Jessica McClintock Heirloom Collection, and of the

common design elements and unitary design theme of the two collections as a whole, have acquired secondary meaning both among Plaintiff's retailer customers and among the relevant market segment of the consuming public, and have become a valuable trade dress that is distinctive of Plaintiff's goods. (The ornamental design of the individual pieces in the Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection, and the overall shared design and thematic elements of the two collections as a whole are hereinafter "Plaintiff's trade dress.")

10. Defendant H.T. Hackney Co. is a Tennessee corporation having its principal place of business in Knoxville, Tennessee. On information and belief, "Holland House Furniture" is a division or other operating unit of Defendant doing business, and having a principle place of business in Indianapolis, Indiana. Defendant, d/b/a "Holland House Furniture" also maintains a showroom in High Point, North Carolina and does significant business in this Judicial District. Defendant is duly registered to do business in this state with the North Carolina Secretary of State, and regularly and systematically transacts business in this state and judicial district. On information and belief, products of Defendant's that are alleged to infringe Plaintiff's patent, trademark and other rights as asserted herein have been sold and offered for sale in this state and judicial district.

11. This Action arises under the patent and trademark laws of the United States (Title 35 of the United States Code and 15 U.S.C. § 1051 *et. seq.*). This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338 and has pendant jurisdiction over related state law claims under 28 U.S.C. § 1367. Additionally, there is complete diversity

of citizenship between the parties and the amount in controversy exceeds \$75,000.00 and the court accordingly has jurisdiction over Plaintiff's claims under the Lanham Act and state law pursuant to 28 U.S.C. § 1332.

12. Venue is proper under 28 U.S.C. § 1391 (b) and (c) and 28 U.S.C. § 1400. This Court has personal jurisdiction over Defendant and venue is both proper and convenient to both parties. Defendant maintains a showroom in this District and has sold and offered for sale products alleged to infringe Plaintiff's patents and other rights in this District.

FIRST CLAIM FOR RELIEF

13. The allegations of paragraphs 1 – 12 are incorporated by reference as if here fully set forth.

14. Defendant has infringed, and is presently infringing, Plaintiff's Patents by making, using, selling, offering for sale, and/or importing articles of furniture that infringe the designs protected by Plaintiff's patents as part of a collection of furniture Defendant calls "LA BELLE"

15. On or about July 9, 2008, Plaintiff was placed on actual notice of Plaintiff's Patents by correspondence dated July 8, 2008 from Plaintiff's in-house counsel to Defendant, delivered via Federal Express. In said correspondence, Plaintiff demanded that Defendant cease and desist its infringing activities and account to Plaintiff for its sales of infringing merchandise. Despite this correspondence Defendant has not discontinued the manufacture, importation, sale and offer for sale of infringing goods.

16. Defendant had actual knowledge of Plaintiff's Patents at least as early June 9, 2008.

17. Defendant's infringement of Plaintiff's Patents is continuing and willful.

18. Plaintiff has suffered monetary damages as a result of Defendant's infringement of Plaintiff's Patents in an amount to be proven at trial.

19. Defendant's ongoing infringement has caused, is causing and will continue to cause serious and irreparable economic and reputational injury to Plaintiff, and to the business reputation and goodwill of Plaintiff, unless enjoined by this Court.

SECOND CLAIM FOR RELIEF

20. The allegations of paragraphs 1 – 19 are incorporated by reference as if here fully set forth.

21. Both the individual pieces in Defendant's La Belle collection, and the La Belle Collection as a whole appropriate the distinctive trade dress of Plaintiff's Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection. The confusing similarity caused by Defendant's misappropriation of Plaintiff's trade dress represents a false designation of origin constituting actionable unfair competition pursuant 15 U.S.C. § 1125(a) in that it:

- a. has created, and will create, a likelihood of confusion as to the affiliation, connection or association of Defendant with Plaintiff and/or Plaintiff's licensor as to the origin, sponsorship, or approval of Defendant's goods, and,

- b. Defendant's commercial advertising and promotion of goods bearing Plaintiff's trade dress misrepresents the nature, characteristics and/or quality of Defendant's goods.

22. Defendant's infringing activities, as alleged herein, are done willfully and with actual knowledge of Plaintiff's rights and actual knowledge that such infringing activities are likely to confuse, mislead and deceive actual and potential customers for Plaintiff's goods.

23. Defendant's infringing activities, as alleged herein are done with actual knowledge and intent, or with reckless disregard for the likelihood, that consumers will mistakenly associate Defendant's goods with Plaintiff and/or Plaintiff's licensor Jessica McClintock.

24. Plaintiff has suffered monetary injury as a result of Defendant's infringing activities and unfair competition.

25. Plaintiff has suffered, and will continue to suffer injury to its reputation and goodwill, and to the value of its licensor-licensee relationship with Jessica McClintock that is cannot be fully remedied by monetary relief and such injury will continue unless Defendant's infringing activities and unfair competition are enjoined.

THIRD CLAIM FOR RELIEF

26. The allegations of paragraphs 1 – 25 are incorporated by reference as if here fully set forth.

27. Defendant's importation and sale of goods misappropriating of the distinctive trade dress of Plaintiff's Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection constitutes unfair and deceptive acts in or affecting commerce in the State of North Carolina.

28. Plaintiff has been directly and proximately injured by Defendant's importation and sale of goods misappropriating of the distinctive trade dress of Plaintiff's Jessica McClintock Romance Collection and Jessica McClintock Heirloom Collection.

29. Defendant has engaged in the unfair and deceptive acts and practices alleged herein willfully or recklessly, without regard to the rights of Plaintiff and has failed and refused to fully resolve such conduct despite having been called upon to do so by Plaintiff.

WHEREFORE, Plaintiff prays:

1. For a trial by jury of all issues so triable;
2. For an accounting of Defendant's profits from or on account of its infringement of the Plaintiff's Patents;
3. For a permanent injunction enjoining Defendant from importing, purchasing, manufacturing, ordering, selling, or offering for sale articles that infringe Plaintiffs' patents;
4. For monetary damages in an amount to be proven at trial;
5. That all monetary damages awarded hereunder be trebled;
6. For an award of Plaintiff's reasonable attorney fees;

7. For a mandatory injunction requiring Defendant to destroy all infringing articles in its possession or control;
8. That Plaintiff be awarded its costs, expenses and prejudgment interest, and,
9. Such other relief as the Court deems just.

This the 30th day of March, 2009

/s/ Kevin L. Miller
Kevin L. Miller, N.C. Bar No. 12493
kmiller@robinsonlawing.com
H. Stephen Robinson, N.C. Bar No. 18401
srobinson@robinsonlawing.com
Counsel for Plaintiff

OF COUNSEL:

ROBINSON & LAWING, L.L.P.
101 North Cherry Street, Suite 720
Winston-Salem, North Carolina 27101-4035
Telephone: (336) 631-8500
Facsimile: (336) 631-6999