

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

**MJT HOLDINGS LLC,
a Georgia limited liability company,
d/b/a AMERICAN DRILL BUSHINGS,**

Plaintiff,

v.

**WW GRAINGER, INC., a Delaware
corporation,**

Defendant.

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Case No.:

COMPLAINT AND JURY DEMAND

Comes Now MJT HOLDINGS LLC d/b/a AMERICAN DRILL BUSHINGS, Plaintiff in the above-styled civil action, and files its Complaint and Jury Demand, respectfully showing the Court as follows:

THE PARTIES

1.

MJT HOLDINGS LLC., d/b/a American Drill Bushings (hereinafter sometimes referred to as “ADB”), is a limited liability company organized and existing under the laws of the State of Georgia, having a place of business at 5740 Hunt Road, Valdosta, Georgia, 48033.

2.

W.W. Grainger Inc. (hereinafter referred to as “Grainger”), upon information and belief, is a Delaware corporation headquartered in Lake Forest Illinois, and having a place of business at Branch: 051, 2048 Paul Walsh Dr., Macon, GA 31206-3168, Phone: (478) 781-4941.

3.

Grainger, upon information and belief, is doing business within the State of Georgia and within the Middle District of Georgia, and is engaged in continuous and systematic business within the Middle District of Georgia, and including the commission of acts of infringement as hereinafter stated.

JURISDICTION AND VENUE

4.

This action arises under the patent laws of the United States, Title 35 of the United States Code, §§ 1, et seq., and the trademark laws of the United States 15 U.S.C. §1051, et seq.

5.

This Court has jurisdiction in this action under 28 U.S.C. §§ 1331 and 1338. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. This Court has ancillary jurisdiction over the state law cause of action.

BACKGROUND ALLEGATIONS

6.

On November 2, 1992, United States Letters Patent No. 5,405,210 was duly, and legally issued for an invention entitled “Hoist Ring Assembly and Method”. A true and correct copy of United States Patent No, 5,405,210 is attached hereto as Exhibit A (hereinafter the “’210 Patent”). This patent was assigned to MJT on December 31, 2007. Hoist rings are industrial hardware that attach to heavy objects so that the objects can be lifted by industrial lifting devices such as cranes. Hoist rings are safety devices, as it is critical for each hoist ring to bear its design weight lest the load drop and injure the operator or others in the workplace.

7.

ADB is the owner by assignment of all right, title, and interest in and to the '210 patent.

8.

ADB has caused the required statutory notice to be placed on all products manufactured and sold by it under the '210 Patent, and has given written notice to Grainger of the '210 Patent and Grainger's infringement thereof.

9.

ADB, doing business as American Drill Bushing, has been a leader in the manufacture of hoist rings for over 35 years.

10.

In or about 1989, ADB began selling hoist rings under the trademark, "Heavy Duty".

11.

On May 16, 2006, ADB was issued Trademark Registration No. 3091849 for "Heavy Duty" for "hoist rings of metal" (Exhibit B).

12.

Since 1989, ADB has continuously used, advertised and promoted the mark "Heavy Duty" for hoist rings, and has monitored the industry and has policed infringing uses of the mark "Heavy Duty".

13.

Grainger is in direct competition with ADB in the sale of hoist rings.

COUNT I

**INFRINGEMENT OF UNITED STATES
PATENT NO. 5,858,815 BY GRAINGER**

14.

Plaintiff adopts and incorporates the allegations of Paragraphs 1 through 13 of this Complaint as if fully set forth herein.

15.

Grainger has, upon information and belief, in the past been and still is infringing United States Letters Patent No. 5,405,210 by making, importing, using, selling, and/or offering for sale in and to the United States products incorporating hoist rings embodying the patented invention of the '210 Patent, including but not limited to, the Grainger 1DMW9, 1DMX1, 1DMX3, 1DMX4, 1DMX5, 1DMX6, 1DMX7, 1DMX8, 1DMX9, 1DMY1, 1DMY2, 1DMY3, 1DMY4, 1DMY5, 1DMY6, 1DMY7, and 1DMY8 Swivel Hoist Rings.

16.

Upon information and belief, with knowledge and/or reckless disregard amounting to knowledge of the infringement of the '210 Patent by the aforesaid products obtained from or through Grainger, Grainger has provided hoist rings to at least one third party for use in infringement of the '210 Patent. The actions of Grainger constitute inducement of infringement of United States Letters Patent No. 5,405,210.

17.

Upon information and belief, Grainger makes, imports, sells, and/or offers to sell hoist rings and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the invention of the '210 Patent and that are especially made or especially adapted for use in

infringement of the '210 Patent, and said hoist rings and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Grainger constitute contributory infringement of United States Letters Patent No, 5,405,210.

18.

Despite any statement to the contrary, upon information and belief, Grainger will continue to infringe, contributorily infringe, and induce infringement of the '210 Patent unless enjoined by this Court.

19.

Upon information and belief, Grainger's infringement, contributory infringement, and inducement of infringement have been willful.

20.

Upon information and belief, Grainger's infringement, contributory infringement, and inducement of infringement have resulted in damage to ADB and will continue to do so unless enjoined by this Court.

21.

ADB has no adequate remedy at law and is, therefore, entitled to a permanent injunction prohibiting further infringement by Grainger.

22.

Grainger's manufacture, use, sale, offer to sell, and/or distribution of these products that infringe, contributorily infringe, and induce infringement of the '210 Patent have caused ADB to suffer damages in an amount not yet determined but which will be proven at trial.

COUNT II

TRADEMARK INFRINGEMENT

23.

Plaintiff adopts and incorporates the allegations of Paragraphs 1 through 22 of this Complaint as if fully set forth herein.

24.

Grainger has used the mark “Heavy Duty” in connection with the sale of hoist rings (Exhibit C) in a manner to cause confusion in the minds of potential purchasers of hoist rings.

25.

Grainger’s sale, advertisement for sale, and/or distribution of these products with the designation “Heavy Duty” infringe ADB’s Trademark Registration No. 3091849 for “Heavy Duty” for “hoist rings of metal,” and have caused ADB to suffer damages in an amount not yet determined but which will be proven at trial.

COUNT III

FALSE ADVERTISING (Federal and State Law)

26.

Plaintiff adopts and incorporates the allegations of Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27.

Grainger falsely represents its Dayton brand hoist ring products as comparable in quality to ADB’s hoist rings by offering inferior Grainger hoist ring products as “alternates” to authentic ADB products, in a side-by-side “Product Comparison,” in such a way intended to confuse

potential consumers as to the quality of Grainger's Dayton brand goods (Exhibit C). Grainger's Dayton brand hoist rings are inferior to the allegedly comparable ADB hoist rings.

28.

Grainger unfairly lists its Dayton brand hoist ring products as alternatives to authentic ADB products, in a chart bearing the representation that the "Heavy Duty" products are "100% Magnetic Particle Inspected per ASTM E 1444-94A." Upon information and belief, less than 100% of the Grainger Dayton brand hoist rings listed in the chart are Magnetic Particle inspected.

29.

Grainger unfairly lists its individual Dayton brand swivel hoist ring products as "Magnetic Particle Inspected per ASTM E 1444-94A," falsely creating the impression in the mind of the consumer that each hoist ring is Magnetic Particle inspected. Upon information and belief, less than 100% of Grainger's Dayton brand hoist rings are Magnetic Particle inspected. In contrast, ADB's hoist rings are 100% Magnetic Particle inspected. Thus, Grainger's representation is likely to cause confusion as to the relative levels of certification as to the competing products.

30.

Grainger unfairly sells its individual Dayton brand swivel hoist ring products with an Angular Lifting Graph (Exhibit D), directly copied from ADB (Exhibit E), thus creating the false impression that the Dayton brand swivel hoist ring are structurally equivalent to ADB hoist rings.

31.

Grainger's false representations have been made with the intention of deceiving potential customers that the Grainger products have attributes that they do not have in violation of 15 USC § 1125(a)(1)(B) and OCGA § 10-1-393 (2), (3), (5), and/or (7).

32.

ADB has suffered loss as a result of Grainger's violations of the Lanham Act and the Georgia Fair Business Practices Act and has standing to recover damages and attorney fees.

WHEREFORE, ADB demands that judgment be entered in its favor against Grainger as follows:

- (a) Finding the '210 patent infringed.
- (b) Permanently enjoining Grainger, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with it, and each of them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the '210 Patent.
- (c) Permanently enjoining Grainger, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with it, and each of them, from further acts of infringement of the '210 Patent.
- (d) Ordering an accounting.
- (e) Holding Grainger's patent infringements were willful.
- (f) Awarding damages adequate to compensate ADB for Grainger's infringement, contributory infringement, and inducement of infringement of the '210 Patent, together with interest and costs.

- (g) Increasing the damages up to three times the amount found or assessed for Grainger's willful acts of infringement.
- (h) Awarding prejudgment and post-judgment interest and costs.
- (i) Holding this to be an exceptional case.
- (j) Permanently enjoining Grainger, its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, and each of them, from using the term "Heavy Duty" in conjunction with the sale or advertising of hoist rings.
- (k) Awarding ADB Grainger's profits from its trademark infringements.
- (l) Awarding ADB its damages sustained due to Grainger's trademark infringement.
- (m) Awarding ADB Grainger's profits from its false advertising.
- (n) Awarding ADB its damages sustained due to Grainger's false advertising.
- (o) Awarding ADB three times the profits and damages to compensate ADB for Grainger's false advertising and trademark infringement.
- (p) Ordering Grainger to destroy all advertising containing false advertising or uses of the term "Heavy Duty" in connection with hoist rings.
- (q) Awarding reasonable attorneys' fees and costs to ADB.
- (r) Awarding ADB exemplary damages for Grainger's intentional violation of the Georgia Fair Business Practices Act.
- (s) Such other and further relief as is necessary and appropriate.

JURY DEMAND

Plaintiff requests a jury for all issues triable by jury in this action.

Respectfully submitted this 4th day of June, 2009.

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