



## **VENUE AND JURISDICTION**

4. This action arises under the patent laws of the United States, Title 35 United States Patent Code, for trade dress and unfair competition under 15 U.S.C. § 1125(a) and under the common laws of the state of Iowa. This Court has jurisdiction over the patent claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332 as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. The Court has subject matter jurisdiction over the federal unfair competition claim pursuant to 15 U.S.C. § 1121, and has subject matter jurisdiction over the related common law claim pursuant to the Court's ancillary and supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367.

5. Upon information and belief, Defendants Sportsman's Guide and NTM have transacted substantial business and committed acts of infringement within the State of Iowa and more particularly, within this judicial District. Further, Defendants have intentionally directed their actions to this District by undertaking the conduct alleged below having known or should have known that the brunt of the injury would be suffered in this District. The Defendants, therefore, are subject to the personal jurisdiction of this Court.

6. Venue is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b) since Defendants reside in this District by virtue of their doing business in this District, and since acts of which Plaintiff complains have occurred in this District and elsewhere in the U.S.A.

### **COUNT I** **(Patent Infringement of U.S. Patent No. 7,367,877)**

7. Plaintiff hereby realleges paragraphs 1-6 and incorporates them herein by reference.

8. On May 6, 2008, United States Letters Patent 7,367,877 ("the '877 patent") entitled "BIG GAME FIELD DRESSING TOOL AND METHOD" was duly and legally issued in the name of Michael Luster. A copy of the aforesaid patent is attached hereto as Exhibit 1.

9. Through the grant of an exclusive license, Hunter's Specialties has acquired substantially all rights under the '877 patent, including the right to file suit and recover damages for infringement of the '877 patent, and therefore has standing to sue and enforce the '877 patent.

10. Upon information and belief, Defendant Sportsman's Guide has directly infringed at least claims 11-15 of the '877 patent, and has actively induced infringement of at least claims 1, 2, 3, 6 and 8 of the patent by others, without authority to do so, all in violation of 35 U.S.C. § 271. Plaintiff Hunter's Specialties has been damaged by Sportsman's Guide's infringement of the '877 patent and will continue to be damaged in the future unless Defendant Sportsman's Guide is enjoined from infringing, either directly or indirectly, said patent.

11. Upon information and belief, Defendant NTM has directly infringed at least claims 11-15 of the '877 patent through its manufacture, use and/or sale of the infringing products, all in violation of 35 U.S.C. § 271. Plaintiff Hunter's Specialties has been damaged by NTM's infringement of the '877 patent and will continue to be damaged in the future unless Defendant NTM is enjoined from infringing said patent.

12. Upon information and belief, Defendants have both constructive and actual notice of the '877 patent and, in particular, that said patent was duly and legally issued, and Defendants are aware or should be aware that their activities directly infringe, contributorily infringe and/or induce others to infringe the '877 patent.

13. Upon information and belief, Defendants' infringement of the '877 patent is now and has been intentional, willful, and deliberate, and objectively reckless.

**COUNT II**  
**(Patent Infringement of U.S. Patent No. D539,868)**

14. Plaintiff hereby realleges paragraphs 1-13 and incorporates them herein by reference.

15. On April 3, 2007, U.S. Patent No. D539,868 (“the ‘868 patent”) entitled “BIG GAME FIELD DRESSING TOOL” was duly and legally issued in the name of Michael Luster and titled to the patent was assigned to Michael Luster and Gary Castle, as reflected by the information appearing on the face of the patent. A copy of the aforesaid patent is attached hereto as Exhibit 2.

16. Through the grant of an exclusive license, Hunter’s Specialties has acquired substantially all rights under the ‘868 patent, including the right to file suit and recover damages for infringement of the ‘868 patent, and therefore has standing to sue and enforce the ‘868 patent.

17. Upon information and belief, Defendant Sportman’s Guide has manufactured, used, offered for sale, sold and/or distributed field dressing tools within the United States that infringe the ‘868 patent, either directly, contributorily, or by inducement, or otherwise, all in violation of 35 U.S.C. §§ 271 and 289. Plaintiff Hunter’s Specialties has been damaged by Sportsman’s Guide's infringement of the ‘868 patent and will continue to be damaged in the future unless Defendant Sportman’s Guide is enjoined from infringing, either directly or indirectly, said patent.

18. Upon information and belief, Defendant NTM has manufactured, used, offered for sale, sold and/or distributed field dressing tools within the United States that infringe the ‘868 patent, either directly, contributorily, or by inducement, or otherwise, all in violation of 35 U.S.C. §§ 271 and 289. Plaintiff Hunter’s Specialties has been damaged by NTM’s infringement

of the '868 patent and will continue to be damaged in the future unless Defendant NTM is enjoined from infringing, either directly or indirectly, said patent.

19. Upon information and belief, the Defendants have both constructive and actual notice of the '868 patent and, in particular, that said patent was duly and legally issued, and Defendants are aware or should be aware that their activities directly infringe, contributorily infringe and/or induce others to infringe the '868 patent.

20. Upon information and belief, Defendants' infringement of the '868 patent is now and has been intentional, willful, deliberate, and objectively reckless.

**COUNT III**  
**(15 U.S.C. § 1125(a) – Federal Unfair Competition)**

21. Plaintiff hereby realleges paragraphs 1-20 and incorporates them herein by reference.

22. Plaintiff Hunter's Specialties has offered for sale in this District and elsewhere in the United States large game field dressing tools with a unique, distinctive ornamental appearance, with such sales occurring in both intrastate and interstate commerce.

23. Plaintiff Hunter's Specialties has spent substantial sums to accrue goodwill associated with its large game field dressing tools to the point where the shape and appearance has become uniquely associated with Hunter's Specialties.

24. Plaintiff Hunter's Specialties has acquired secondary meaning in the look, shape and appearance to identify Plaintiff as the source of its large game field dressing tools.

25. Defendants continued manufacture, use, sale and advertising of large game field dressing tool of the same shape and appearance constitutes a false designation of origin and/or a false or misleading description which is likely to cause confusion or to cause mistake or to deceive as to the affiliation or source and/or origin all creating a wrong impression of

sponsorship or approval of the source of Defendants' products and consumers will be confused that Defendants' products are Plaintiff's. This representation of Defendants' large game field dressing tools which occurs in interstate commerce is a violation of 15 U.S.C. § 1125(a).

26. Plaintiff and Defendants are competitors and have the same customers in the same channels of trade and compete for the same customer dollars both in this district and elsewhere through the United States.

27. Defendants' actions cause irreparable harm to Plaintiff Hunter's Specialties and defray customers from Plaintiff to Defendants and causes confusion as to source in the marketplace.

28. Defendants are liable in a civil action to Plaintiff who has been damaged by such conduct in an amount not yet ascertained.

29. Unless Defendants are enjoined by this Court from further violations, Plaintiff will have no adequate remedy at law.

**COUNT IV**  
**(State Common Law Infringement/Unfair Competition)**

30. Plaintiff hereby realleges paragraphs 1-29 and incorporates them herein by reference.

31. Plaintiff Hunter's Specialties has priority of use of the shape and appearance and source identifying shape and appearance of its large game field dressing tools *vis á vis* the Defendants.

32. Upon information and belief, Defendants Sportsman's Guide and NTM have adopted a confusingly similar shape and appearance, sold similar goods competing with Plaintiff's large game field dressing tools, sold the same in the same channels of trade to the

same customer base, all as junior users with knowledge as junior users and, therefore, are not in good faith in their sales.

33. Defendants' adoption and use of the Butt Quick large game field dressing tool impacts the business of Plaintiff in this District and elsewhere in the United States and, as such, the adoption and use in commerce by Defendants of a confusingly similar shape and appearance as junior users constitutes infringement under state common law trademark rights and is unfair competition under the law of the State of Iowa.

34. Defendants manufacture, use and conduct as described herein have caused substantial and irreparable damage to Plaintiff and will continue to cause such irreparable damage to Plaintiff if Defendants are not enjoined by this Court from further violation of Plaintiff's state and common law rights and Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Hunter's Specialties respectfully requests judgment by this Court:

a) That finds Defendants have infringed United States Patent Nos. 7,367,877 and D539,868;

b) That enjoins Defendants, their officers, directors, employees, agents, servants, assigns, representatives, successors, subsidiaries, divisions, affiliates, and/or any other entity or person in active concert or participation with Defendants:

i) from making, using, selling, offering for sale, or importing infringing products, and from otherwise infringing, contributing to the infringement of, or inducing infringement of United States Patent Nos. 7,367,877 and/or D539,868; and

- ii) for all further and proper injunctive relief pursuant to 35 U.S.C. § 283 and/or 15 U.S.C. § 116;
- c) That awards Plaintiff monetary damages from Defendants for all damages allowable by law for infringement, together with pre- and post-judgment interest and costs, under 35 U.S.C. § 284 and/or the Defendants' total profits under 35 U.S.C. § 289;
- d) That finds Defendants' infringement to be willful and awards treble damages under 35 U.S.C. § 284;
- e) That requires destruction and/or impounding pursuant to 15 U.S.C. § 1118 of all products found to be in violation of 15 U.S.C. § 1125 and all plates, molds, and other means of making such products.
- f) That awards to Plaintiff the profits Defendants unjustly obtained and all damages sustained by Plaintiff resulting from Defendants' unfair competition, including the costs of this action;
- g) That finds Plaintiff is entitled to enhanced damages under 15 U.S.C. § 1117(a) and awards Plaintiff treble damages;
- h) That requires Defendants to provide restitution to Plaintiff for all improperly acquired benefits acquired by Defendants through its unlawful and unfair business practices;
- i) That finds the present case to be exceptional and awards attorney fees to Plaintiff under 35 U.S.C. § 285 and/or 15 U.S.C. § 1117;
- j) That awards Plaintiff its costs and such other and further relief as the Court may deem equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 38.1, Plaintiff Hunter's Specialties hereby demands a trial by jury on all issues triable of right by jury in this action.

Respectfully submitted,

/s/ Edmund J. Sease

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