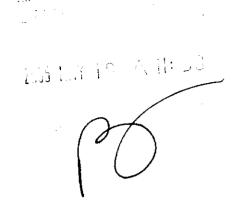
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Attorneys for Plaintiffs

#### UNITED STATES DISTRICT COURT

### DISTRICT OF NEVADA

AGIO INTERNATIONAL COMPANY, LTD., ROBERT A. GAYLORD, and OLIVER WANG,

COMPLAINT

Plaintiffs.

vs.

JURY DEMAND

GRACIOUS LIVING INDUSTRIES, a Canadian company,

CV-S-05-0632-LDG-LRL

Defendant.

Plaintiffs, Agio International Company, Ltd. ("Agio"), Robert A. Gaylord ("Gaylord"), and Oliver Wang ("Wang"), complain of defendant, Gracious Living Industries ("Defendant") as follows:

### JURISDICTION AND VENUE

- 1. This is a claim for (a) patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, and (b) violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 2. The Court has jurisdiction over the subject matter of this complaint under 15 U.S.C. § 1121, 28 U.S.C. § 1338(a) & (b), and 28 U.S.C. § 1367(a).

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3. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(a) & (b). This Court may assert personal jurisdiction over the Defendant because Defendant, through its authorized agents, employees and officers, has regularly and systematically caused or contributed to the importation into, and the sale, offering for sale, and distribution of the infringing products and related services in and among the several United States, and particularly in this judicial district and, as a result, the Plaintiffs have been injured in this District.

## **PARTIES**

- 4. Plaintiff Agio is a Hong Kong company that has for many years been engaged in the business of designing, developing, manufacturing and selling outdoor and casual furniture to retailers who then resell the products to end-users throughout the United States and elsewhere. Agio holds the exclusive license to practice the art covered by the Patents being infringed by Defendant and makes and sells a collection of products that embody the claims of the Patents.
- 5. Plaintiff Gaylord is a citizen of the United States who resides in Virginia Beach, Virginia. Mr. Gaylord is an officer of Agio and is one of the named inventors of the unique "Sling Chair" disclosed in United States Patent No. 6,293,624, issued on September 25, 2001 and entitled "Sling Chair" ("the '624 patent") and further disclosed in United States Patent No. 6,583,323, issued on July 1, 2003 and entitled "Sling Chair" ("the '323 patent"). The two said patents are collectively referred to herein as "the Patents."
- 6. Plaintiff Wang is a citizen and resident of the United States who has a place of residence in Millbray, California. Mr. Wang is an officer of Agio and is a second named inventor of the unique "Sling Chair" disclosed in the '624 Patent the '323 Patent.
- 7. Upon information, Defendant is a legal entity organized and existing under the laws of Canada and is engaged in the manufacture, importation, warehousing, sale, distribution and servicing of outdoor furniture in the United States and this District.
- 9. Upon information, there may be one or more individuals and other legal entities involved who consort together with this Defendant as part and parcel of a common enterprise in which each plays a part in the infringing activities stated below, and who may be proper parties in this proceeding.

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#### BACKGROUND ON THE LEISURE FURNITURE INDUSTRY

- 11. The wholesale leisure or outdoor furniture industry is highly competitive, and sales tend to be largely seasonal. Operators of retail outlets make inventory purchases primarily in the winter and spring of each year for delivery in the spring and following summer, so that delivery will coincide with the retail selling season.
- 12. The widely followed practice of leading manufacturers in this industry, such as Plaintiff Agio, is to create unique, decoratively styled designs of furniture from time to time, and even annually, in order to distinguish them from and make them more appealing than competing products.
- 13. Wholesale purchases are substantially influenced by the uniqueness, aesthetic appeal, and exclusivity of a manufacturer's products. It is not uncommon for a retailer's buyer to obtain a photo or sample of a manufacturer's product and ask other manufacturers if they can make the same or substantially similar product of lower quality and price. Accordingly, a manufacture's novel designs are often protected by one or more patents. In some cases, a line of products from one producer, such as Agio, will become a perennial favorites of wholesale buyers and retail consumers, and will become recognized by sight as originating from that producer.
- 14. Agio is an industry leader in this field, enjoying a history of success in designing novel and highly appealing styles, and methods for constructing them.

# **COUNT I - PATENT INFRINGEMENT**

- 15. Agio incorporates and realleges the foregoing paragraphs as if fully set forth herein.
- 16. Plaintiffs Wang and Gaylord own and have standing to sue for infringement of the Patents. Plaintiff Agio has standing to sue for infringement of the Patents because it is the exclusive licensee of the Patents.
- 17. Defendant has infringed claims of the Patents through, among other activities, manufacturing, importing, using, selling and/or offering for sale sling chair products that are covered by one or more of the claims of the Patents. Defendant, through its actions, also knowingly has contributed to or induced the infringement of the Patents in violation of 35 U.S.C. § 271.

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18. Defendant has had actual notice of the Patents and its infringement. The infringement by Defendant has been willful and deliberate and has continued without a reasonable basis or justification.

- 19. Defendant's infringement has caused irreparable harm to Plaintiffs, who have no adequate remedy at law, and will continue to injure Plaintiffs unless and until this Court enters a temporary restraining order and preliminary and permanent injunction prohibiting further infringement and, specifically, enjoining Defendant and all others who have notice of the injunction from further manufacture, use, offer for sale, sale and importation of products that fall within the scope of claims of the Patents.
- 20. Plaintiffs are entitled to recover damages from Defendant in an amount adequate to compensate them for the infringement that has occurred and that will continue to occur until an injunction is issued by the Court.

## **COUNT II – VIOLATION OF LANHAM ACT**

- 21. Agio incorporates and realleges the foregoing paragraphs as if fully set forth herein. This Count is a claim for violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 22. The unique, single-frame sling chair with top casting manufactured and marketed by Agio under its license of the Patents ("the Agio Sling-Casting Collection") has been in continuous, exclusive, usage by Agio for approximately four (4) years.
- 23. Agio has spent substantial resources, time and money to ensure that the Agio Sling-Casting Collection meets high standards of quality and reliability.
- 24. Of equal importance, the Agio Sling-Casting Collection possesses an elegant simplicity that is unique, distinctive and obvious from the relative size, shape, light weight, texture, overall concept and aesthetic impression that is carried throughout the collection.
- 25. The Agio Sling-Casting Collection was an immediate commercial success for Agio and has enjoyed continuous success since its introduction, resulting in large sales. It has been acclaimed as a unique, innovative, creative and inherently distinctive product line. It has been advertised, promoted and sold nationally; and it has been featured in prominent trade news.

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26. As a result of these advertising and promotional efforts and, as importantly, the substantial publicity associated with the Agio Sling-Casting Collection, the total image, shape, configuration, packaging and overall look, appearance and impression of Agio's unique sling chair collection has caused a segment of the public to now associate this type of sling chair with Agio.

- 27. Agio has established an exclusive right to use the overall style, design, look, appearance, texture, graphics and trade dress of its collection of these unique sling chairs free from confusingly similar imitations that are calculated to deceive the public and injure Agio.
- 28. Defendant has worked to copy, imitate and duplicate the total image, look, appearance, style, overall size, shape and appearance of the unique elements of the Agio Sling-Casting Collection. Upon information and belief, Defendant has obtained or inspected samples or photos of examples from the Agio Sling-Casting Collection, has carefully studied and examined them, and is now attempting to capitalize on Agio's success by selling imitations that are calculated to deceive and confuse the public and irreparably injure Agio.
- 29. Without the consent of Agio, Defendant is now in the process of actively manufacturing, marketing, importing and selling knock-off outdoor and casual furniture products that are virtually identical in every material way to the unique combination of elements found throughout the Agio Sling-Casting Collection.
- 30. Defendant's unauthorized copying of the total image, configuration, and look represented by the Agio Sling-Casting Collection are intended to create confusion, to deceive the public and to decrease Agio's sales of the Agio Sling-Casting Collection. Further use by Defendant of Agio's trade dress associated with the Agio Sling-Casting Collection, deprives Agio of control over the quality of outdoor and casual furniture products the consuming public has come to associate as emanating from Agio. The potential negative effects on Agio's reputation and potential market for outdoor furniture products are substantial, immeasurable and irreparable.
- 31. Defendant's sales and offers for sale of, among other things, its knock-off copies of the Agio Sling-Casting Collection have created a likelihood of confusion or misunderstanding as to the origin from, or sponsorship or approval by Agio of the Defendant's products.

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32. Defendant, who is fully aware of, among other things, the popularity and success of
the Agio Sling-Casting Collection, has acted with predatory intent, knowledge and intent that
Defendant's products will be passed-off as those of Agio or, alternatively, will be confused o
likely to be incorrectly thought of as being approved or authorized by, or otherwise originating
from, Agio.

- 33. Defendant's sales and offers to sell its knock-off copies of Agio's highly successful products has caused and threaten to cause confusion and deception in the marketplace and endangers Agio's valuable goodwill and reputation for making and selling unique, high quality outdoor and casual furniture and other products.
- 34. Despite their imitative overall visual appearance, Defendant's knock-off products are of a lower quality than Agio's.
- 35. Any solicitations and sales by Defendant and its associates are likely to cause immediate confusion on the part of purchasers of such products. These consumers will be falsely led to associate Defendant's knock-off products with the Agio Sling-Casting Collection because of the similarity, and therefore to erroneously believe that Defendant's products are either manufactured or sponsored by Agio or are being placed on the market with the consent and authority of Agio.
- 36. The foregoing acts by Defendant constitutes violations of Section 43(a) of the Lanham Act. Such acts have irreparably injured and will continue to injure Agio unless enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

- Α. On their patent infringement claim, Plaintiffs request:
- 1. The entry of judgment in favor of Plaintiffs, and against Defendant, finding Defendant liable in connection with the claims set forth herein;
- 2. An award of damages adequate to compensate Plaintiffs for the infringement that has occurred, together with prejudgment interest from the date infringement of

the Patent in suit began, but in no event less than a reasonable royalty as provided by 35 U.S.C. § 284;

- 3. Increased damages as permitted under 35 U.S.C. § 284;
- 4. A finding that this case is exceptional and an award to Plaintiffs of their attorneys' fees and costs as provided by 35 U.S.C. § 285;
- 5. A preliminary and permanent injunction prohibiting Defendant, and its respective subsidiaries, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, from infringing, contributing to the infringement of, and inducing infringement of the Patents in suit; and,
- 6. Such other and further relief as this Court or a jury may deem proper and just.
  - B. On their Lanham Act claim, Plaintiffs request:
- 1. That Defendant, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with it who receive actual notice of the Court's order, be enjoined preliminarily and permanently from:
- (a) selling or offering to sell any product or service in a manner which creates a likelihood of confusion or which may deceive the public into believing that the source of such product or service is Agio, or that such product or service is authorized or endorsed by Agio in any way;
- (b) Using in connection with advertising, offering for sale or sale of any product any false designation, description or representation of the origin, nature, quality or association of such products; and
- (c) Further acts of deceptive trade practices and/or unfair competition in any manner whatsoever, including selling, offering to sell or otherwise or marketing or promoting their current products and future designs which have substantially the same overall image, appearance or look or that are imitations or copies of the Agio Sling-Casting Collection.
- 2. An order directing Defendant to deliver to Agio for immediate destruction all drawings, molds, tooling, advertisements, circulars, brochures or other promotional and

advertising items or materials for their sales, marketing and manufacture of their outdoor and casual furniture products that are copies of the Agio Sling-Casting Collection;

- 3. An order directing the United States Marshal, or persons acting under his or her direction, to seize and impound all of the outdoor and casual furniture products that are copies of the Agio Sling-Casting Collection, catalogs, brochures and packaging from Defendant that has been used by it to commit any of the unlawful acts complained of by Agio;
- 4. That Agio be awarded compensatory damages in an amount to be determined at trial;
- 5. That Agio be awarded punitive damages in an amount to be determined at trial;
  - 6. That Agio recover attorneys' fees and costs of suit incurred herein; and
- 7. That Agio have such other and further relief as the Court and/or a jury deems just and proper.

## **JURY DEMAND**

A trial by jury is demanded on all issues triable to a jury in this case.

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