

ORIGINAL

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6 Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10
11 AGIO INTERNATIONAL COMPANY, LTD.,
12 ROBERT A. GAYLORD, and
13 OLIVER WANG,

13 Plaintiffs,

14 vs.

15 GRACIOUS LIVING INDUSTRIES, a
16 Canadian company,

17 Defendant.

COMPLAINT

JURY DEMAND

CV-S-05-0632-LDG-LRL

18
19 Plaintiffs, Agio International Company, Ltd. ("Agio"), Robert A. Gaylord ("Gaylord"),
20 and Oliver Wang ("Wang"), complain of defendant, Gracious Living Industries ("Defendant") as
21 follows:

22 **JURISDICTION AND VENUE**

23 1. This is a claim for (a) patent infringement arising under the patent laws of the
24 United States, Title 35 of the United States Code, and (b) violation of Section 43(a) of the
25 Lanham Act, 15 U.S.C. § 1125(a).

26 2. The Court has jurisdiction over the subject matter of this complaint under 15
27 U.S.C. § 1121, 28 U.S.C. § 1338(a) & (b), and 28 U.S.C. § 1367(a).

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

5 27. Agio has established an exclusive right to use the overall style, design, look,
6 appearance, texture, graphics and trade dress of its collection of these unique sling chairs free from
7 confusingly similar imitations that are calculated to deceive the public and injure Agio.

8 28. Defendant has worked to copy, imitate and duplicate the total image, look,
9 appearance, style, overall size, shape and appearance of the unique elements of the Agio Sling-
10 Casting Collection. Upon information and belief, Defendant has obtained or inspected samples or
11 photos of examples from the Agio Sling-Casting Collection, has carefully studied and examined
12 them, and is now attempting to capitalize on Agio's success by selling imitations that are
13 calculated to deceive and confuse the public and irreparably injure Agio.

14 29. Without the consent of Agio, Defendant is now in the process of actively
15 manufacturing, marketing, importing and selling knock-off outdoor and casual furniture products
16 that are virtually identical in every material way to the unique combination of elements found
17 throughout the Agio Sling-Casting Collection.

18 30. Defendant's unauthorized copying of the total image, configuration, and look
19 represented by the Agio Sling-Casting Collection are intended to create confusion, to deceive the
20 public and to decrease Agio's sales of the Agio Sling-Casting Collection. Further use by
21 Defendant of Agio's trade dress associated with the Agio Sling-Casting Collection, deprives Agio
22 of control over the quality of outdoor and casual furniture products the consuming public has
23 come to associate as emanating from Agio. The potential negative effects on Agio's reputation
24 and potential market for outdoor furniture products are substantial, immeasurable and irreparable.

25 31. Defendant's sales and offers for sale of, among other things, its knock-off copies of
26 the Agio Sling-Casting Collection have created a likelihood of confusion or misunderstanding as
27 to the origin from, or sponsorship or approval by Agio of the Defendant's products.

1 the Patent in suit began, but in no event less than a reasonable royalty as provided by 35 U.S.C. §
2 284;

3 3. Increased damages as permitted under 35 U.S.C. § 284;

4 4. A finding that this case is exceptional and an award to Plaintiffs of their
5 attorneys' fees and costs as provided by 35 U.S.C. § 285;

6 5. A preliminary and permanent injunction prohibiting Defendant, and its
7 respective subsidiaries, affiliates, officers, directors, agents, servants, employees, and all persons
8 in active concert or participation with them, from infringing, contributing to the infringement of,
9 and inducing infringement of the Patents in suit; and,

10 6. Such other and further relief as this Court or a jury may deem proper and
11 just.

12 B. On their Lanham Act claim, Plaintiffs request:

13 1. That Defendant, and its officers, agents, servants, employees and attorneys,
14 and all persons in active concert or participation with it who receive actual notice of the Court's
15 order, be enjoined preliminarily and permanently from:

16 (a) selling or offering to sell any product or service in a manner which
17 creates a likelihood of confusion or which may deceive the public into believing that the source of
18 such product or service is Agio, or that such product or service is authorized or endorsed by Agio
19 in any way;

20 (b) Using in connection with advertising, offering for sale or sale of any
21 product any false designation, description or representation of the origin, nature, quality or
22 association of such products; and

23 (c) Further acts of deceptive trade practices and/or unfair competition in
24 any manner whatsoever, including selling, offering to sell or otherwise or marketing or promoting
25 their current products and future designs which have substantially the same overall image,
26 appearance or look or that are imitations or copies of the Agio Sling-Casting Collection.

27 2. An order directing Defendant to deliver to Agio for immediate destruction
28 all drawings, molds, tooling, advertisements, circulars, brochures or other promotional and

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

3 3. An order directing the United States Marshal, or persons acting under his or
4 her direction, to seize and impound all of the outdoor and casual furniture products that are copies
5 of the Agio Sling-Casting Collection, catalogs, brochures and packaging from Defendant that has
6 been used by it to commit any of the unlawful acts complained of by Agio;

7 4. That Agio be awarded compensatory damages in an amount to be
8 determined at trial;

9 5. That Agio be awarded punitive damages in an amount to be determined at
10 trial;

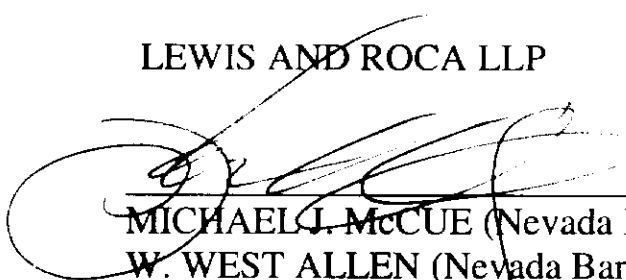
11 6. That Agio recover attorneys' fees and costs of suit incurred herein; and

12 7. That Agio have such other and further relief as the Court and/or a jury
13 deems just and proper.

14 **JURY DEMAND**

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

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