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10 Attorneys for Plaintiff  
11 **WARN INDUSTRIES, INC.**

12  
13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15  
16 **WARN INDUSTRIES, INC.**, an Oregon  
corporation,

17 Plaintiff,

18 vs.

19 **CHAMPION POWER EQUIPMENT,**  
20 **INC.**, a California corporation,

21 Defendant.

Case No.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Pursuant to the Federal Rules of Civil Procedure, Plaintiff Warn Industries, Inc. (“Warn”)  
2 brings this legal action against Defendant Champion Power Equipment, Inc. (“Champion”) and  
3 alleges as follows:

4 **NATURE OF ACTION**

5 **1.** This is an action for patent infringement under the United States Patent Laws,  
6 including 35 U.S.C. §§ 271, 281-85. Warn seeks damages (including lost profits), injunctive  
7 relief, costs and attorneys’ fees, and any other available relief as a result of Champion’s past,  
8 present, and future infringement of U.S. Reissue Patent No. Re 36,216 (“the ’216 Patent”). A true  
9 and correct copy of the ’216 Patent is attached as **Exhibit A** to this Complaint.

10 **THE PARTIES**

11 **2.** Plaintiff Warn is a Delaware corporation with its principal place of business in  
12 Oregon at 12900 S.E. Capps Road, Clackamas, Oregon 97015. Warn designs, manufactures, and  
13 markets a variety of equipment and accessories for industrial and off-road use. Among other  
14 activities, Warn is in the business of designing, manufacturing, and selling winches (both  
15 recreational and industrial) and winch-related products.

16 **3.** Based on Champion’s website, reports by Dun & Bradstreet, Inc., and other  
17 sources, Warn is informed, believes, and on that basis alleges that Champion is a California  
18 corporation formed in 2003, and that Champion’s principal place of business is 10006 Santa Fe  
19 Springs Road, Santa Fe Springs, California, 90670. According to its website at  
20 <http://championpowerequipment.com/home.php>, Champion is “a US owned and operated  
21 company with [its] manufacturing facilities in the Zehjiang province of China.” Champion  
22 manufactures and sells “portable generators, transfer pumps, pressure washers and winches.”

23 **JURISDICTION AND VENUE**

24 **4.** Warn’s patent infringement cause of action against Champion arises under the  
25 patent laws of the United States, 35 U.S.C. § 100 *et seq.*, including 35 U.S.C. §§ 271, 281-85.  
26 The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and  
27 1338(a). The Court has personal jurisdiction over Champion, because Champion has its primary  
28 place of business, and resides, in California. The Court also has personal jurisdiction over

1 Champion, because Champion has sufficient business activities in California to be deemed  
2 present throughout the state for purposes of general jurisdiction, because Champion resides in the  
3 state, and because this case specifically involves one or more types of accused products that  
4 Champion has made, used, sold, or offered to sell in California, thus establishing specific  
5 jurisdiction.

6 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) & (c) and  
7 1400(b). Under 28 U.S.C. § 1391(c), a defendant corporation is deemed to reside “in any judicial  
8 district in which it is subject to personal jurisdiction.” Venue is proper in this Court, since  
9 Champion sells and offers to sell winches that infringe one or more claims of the ’216 Patent  
10 within this judicial district and is thus subject to personal jurisdiction here.

11 **INTRADISTRICT ASSIGNMENT**

12 6. On information and belief, a substantial portion of the events that give rise to  
13 Warn’s claim for patent infringement have occurred in Sacramento County, California, and, thus,  
14 this action should be assigned to the Sacramento division of this judicial district.

15 **CLAIM 1: PATENT INFRINGEMENT**

16 7. Warn incorporates the allegations of paragraphs 1-6 as if fully set forth here.

17 8. On June 1, 1999, the United State Patent and Trademark Office granted a  
18 broadening reissue of U.S. Patent No. 5,261,646, reissuing it as Re 36,216. The ’216 Patent,  
19 entitled “Winch Having Automatic Brake,” issued to inventor Thomas M. Telford as sole  
20 inventor. Mr. Telford, however, assigned all right, title, and interest in the ’216 Patent to Warn.  
21 Warn continues to be the sole owner of all right, title, and interest in the ’216 Patent.

22 9. Warn has placed the statutory notice provided by 35 U.S.C. § 287 on Winches sold  
23 by Warn that are covered by the ’216 Patent. Additionally, in October of 2008, Warn sent a letter  
24 to Champion’s President, Dennis Trine, informing him, and thus Champion, that Champion’s  
25 Model 8000 winch, and other winches with the same design, infringe the ’216 Patent.

26 10. Champion has infringed and is still infringing claims of the ’216 Patent, both  
27 literally and under the doctrine of equivalents, by doing one or more of the following: making,  
28 using, selling, or offering to sell within the United States, or importing into the United States

1 winches, including the Champion Model 8000, that infringe one or more claims of the '216  
2 Patent. On information and belief, Champion has also induced or contributed to infringement of  
3 the '216 Patent by other persons or entities and has imported and/or exported components of  
4 infringing winches, intending those components to be combined, and knowing that those  
5 components are especially made or adapted for use in an infringing winch.

6 **11.** By reason of Champion's infringing acts as alleged in this Complaint and  
7 otherwise, Warn has been damaged by Champion's infringement of the '216 Patent through lost  
8 sales, lost profits, price erosion, loss of market share, lost royalties, and other damages or  
9 measures of damages, and Champion has and will enjoy profits to which it is otherwise not  
10 entitled and for which Warn is entitled to relief at law.

11 **12.** Champion has had actual knowledge that it is infringing the '216 Patent since no  
12 later than October 2008, when it received a letter from Warn explicitly notifying Champion of its  
13 ongoing infringement of the '216 Patent. Through Warn's compliance with 35 U.S.C. § 287,  
14 Champion also received constructive notice of its infringement of the '216 Patent. Despite  
15 knowing of its infringement, Champion continues to infringe. Champion's continued  
16 infringement of the '216 Patent thus has been and continues to be willful. This case is therefore  
17 exceptional, entitling Warn to costs and attorneys' fees under 35 U.S.C. § 285. Warn is also  
18 entitled to a trebling of damages under 35 U.S.C. § 284.

19 **13.** Champion's infringing activities have caused Warn irreparable harm, and Warn  
20 will continue to suffer such irreparable harm unless Champion is enjoined from continuing to  
21 infringe the '216 Patent. It would be difficult to ascertain the amount of compensation that could  
22 afford Warn full and adequate relief for such continuing acts and a multiplicity of judicial  
23 proceedings would be required to attempt to achieve such relief. Warn's remedy at law is not  
24 adequate to compensate Warn for the injuries threatened. Champion is entitled to injunctive  
25 relief, both preliminary and permanent, to end Champion's ongoing infringement, in addition to  
26 any damages to which Warn is entitled.

27 ///

28 ///

**PRAYER FOR RELIEF**

**WHEREFORE**, Warn prays for the following relief:

**A.** A judgment or order declaring that Champion has infringed the '216 Patent;

**B.** A judgment or order declaring that Champion's infringement of the '216 Patent has been willful and that this case is "exceptional" under 35 U.S.C. § 285;

**C.** A preliminary and/or permanent injunction prohibiting Champion and its subsidiaries, affiliates, parents, successors, assigns, officers, employees, attorneys, agents, and all other persons acting with Champion or on its behalf from continuing to infringe the '216 Patent;

**D.** A judgment, order, or award of damages sufficient to compensate Warn for Champion's infringement of the '216 Patent, based on lost sales, lost profits, price erosion, loss of market share, or any other applicable theory, but in no event less than a reasonable royalty, together with prejudgment interest;

**E.** An accounting to determine information relevant to establishing Warn's damages, including the number of infringing sales, the sales price, the number of years that Champion has been infringing, the profit on infringing sales, and other such information;

**F.** An order trebling the damage award under 35 U.S.C. § 284, together with prejudgment interest;

**G.** An award of costs and attorneys' fees, pursuant to 35 U.S.C. § 285; and

**H.** All other legal and equitable relief this Court deems to be just and appropriate.

Dated: October 31, 2008

WENDEL, ROSEN, BLACK & DEAN LLP

By: s/Daniel Rapaport

Daniel Rapaport

**Of Counsel:**

David W. Axelrod (OR Bar No. 75023)

Paul H. Beattie (WA Bar No. 30277)

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Warn demands a trial by jury of all issues so triable.

Dated: October 31, 2008

WENDEL, ROSEN, BLACK & DEAN LLP

By: s/Daniel Rapaport

Daniel Rapaport

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