

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

COLUMBIA INSURANCE COMPANY and	)	
SÖFFT SHOE COMPANY, INC.	)	Civil Action No.
	)	
Plaintiffs,	)	
	)	<b>JURY TRIAL DEMANDED</b>
v.	)	
	)	
WANTED SHOES, INC. and	)	
EBLEN'S LIMITED PARTNERSHIP,	)	
	)	
Defendants.	)	

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**COMPLAINT FOR INFRINGEMENT OF DESIGN PATENT, TRADE DRESS,  
UNFAIR COMPETITION AND FALSE ADVERTISING**

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Plaintiffs Columbia Insurance Company and Söfft Shoe Company, Inc.  
complain and allege as follows:

**PARTIES**

1. Plaintiff Columbia Insurance Company (hereinafter "Columbia") is a Nebraska corporation with a place of business at 4016 Farnam Street, Omaha, Nebraska 68131 and is doing business in this District.

2. Plaintiff Söfft Shoe Company, Inc. (hereinafter "Söfft") is a New Hampshire corporation with a place of business at 124 West Putnam Avenue, Greenwich, CT 06830 and is doing business in this District.

3. Upon information and belief, Defendant Wanted Shoes, Inc. ("Wanted") is a New Jersey corporation with a place of business at 195 Carter Drive, Edison, New Jersey 08817-2068 and is doing business in this district.

4. Upon information and belief, Defendant Eblen's Limited Partnership is a Connecticut corporation doing business as Eblens at 1210 Main Street, East Hartford, Connecticut 06108 ("Eblens"). The alleged infringing shoes are sold at this location.

#### **JURISDICTION**

5. This is a civil action for trade dress infringement under the Lanham Act 15 U.S.C. §§ 1051 *et seq.*, design patent infringement under the Patent Act of 1976, 35 U.S.C. §§ 1, *et seq.*, and unfair competition and false advertising under 15 U.S.C. § 1125 (a). This Court has subject matter jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1338 (a) in that this Complaint raises federal questions under Title 35 of the United States Code.

6. Personal jurisdiction over Defendants is vested in the United States Court for the District of Connecticut in that Defendants transact business in Connecticut.

7. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

#### **Facts Applicable To All Causes Of Action**

8. Plaintiff Söfft has been a manufacturer and distributor of footwear since approximately 1927.

9. Plaintiff Söfft has enjoyed extraordinary success in designing, developing and marketing its footwear. Plaintiff Söfft has spent large sums of money in designing its distinctive, uniquely-marked, high-quality footwear and all footwear are manufactured under strict quality controls.

10. Plaintiff Columbia is the owner of U.S. Design Patent No. D492,095 (“’095 Patent”), entitled “Shoe”, which was duly and legally issued by the U.S. Patent and Trademark Office on June 29, 2004 in the name of the inventors, Jose Sanchez and David C. Issler, and was assigned to Columbia. A copy of the ‘095 Patent is attached as Exhibit A. Plaintiff Columbia has granted Plaintiff Söfft a license to make, use, sell, and offer to sell products embodying the ‘095 Patent.

11. Plaintiff Söfft makes, sells, offers for sale, and advertises a line of “Quark” shoes which embody the design of the ‘095 patent and is highly successful throughout the country. See attached Exhibit B.

12. The ‘095 patent is valid, subsisting, enforceable, and unrevoked and all rights, title and interest therein is and has at all times relevant hereto been owned by Plaintiff Columbia, including but not limited to, the right to sue for and recover and obtain damages and all other available remedies for infringement of the ‘095 Patent.

13. Defendants have not been given a right, license, or other authorization or consent from Plaintiffs to make, use, offer to sell, or otherwise carry out any of the activities alleged herein connected with the Infringing Footwear including, but not limited to, any activities that would, if unauthorized, constitute infringement of the Design Patent under 35 U.S.C. § 271.

14. Upon information and belief, Defendants have been infringing and are continuing to infringe the ‘095 patent by making, using, selling, or offering for sale shoes that infringe or fall within the scope of the claim of the ‘095 Patent.

15. Upon information and belief, Defendants have engaged in the use, manufacture, purchase, distribution, offer for sale and sale of footwear which are direct

copies of the Söfft Quark shoes ("Infringing Footwear"). Photographs of the Infringing Footwear are attached as Exhibit C. The Infringing Footwear copies Plaintiffs' Trade Dress.

16. Upon information and belief, Defendant Wanted distributes and sells the infringing shoes to Connecticut consumers through Eblens.

17. Upon information and belief, the pricing presently offered by Defendants for the Infringing shoes is substantially below the pricing of Söfft for its Quark shoes, and is in the order of one-half or less than one-half Plaintiffs' pricing.

18. Upon information and belief, the substantially lower pricing of the Infringing Footwear by Defendants unfairly entices and will unfairly entice purchasers to buy such shoes instead of purchasing Söfft's higher priced genuine Quark shoes, causing Söfft to lose substantial sales and resulting in a flood of infringing products into the marketplace and eroding the market for Söfft's Quark shoes.

#### **COUNT I- DESIGN PATENT INFRINGEMENT**

19. Plaintiffs re-allege the allegations contained in Paragraphs 1-18 as if fully set forth herein.

20. On June 29, 2004, the United States Patent Office duly and legally issued United States Design Patent No. D492,095 to Plaintiff Columbia as the assignee.

21. Defendants have been and are now engaged in activities which infringe the '095 Patent by making, using, selling, and/or offering for sale the Infringing Footwear in violation of 35 U.S.C. § 271, 281, 284, 285, and 289.

22. The Defendants' acts complained of herein have been and are now being done willfully with knowledge of or reason to know that they constitute or induce

infringement of the '095 Patent and/or other patents in violation of Title 35 of the United States Code including, but not limited to, 35 U.S.C. § 271.

23. The acts of Defendants complained of herein are continuing in nature and will continue unless and until enjoined and restrained by the Court. Moreover, Söfft has suffered and will continue to suffer irreparable harm, damage, and injury by reason of the complained of acts for which Söfft has no adequate remedy at law.

### **COUNT II- TRADE DRESS INFRINGEMENT**

24. Plaintiffs re-allege the allegations contained in Paragraphs 1-23 as if fully set forth herein.

25. Plaintiffs' Quark shoe design represents a novel and striking product ornamental configuration for a shoe. This product configuration is depicted in the aforementioned Exhibit B.

26. As a result of Plaintiffs' enormous investment in the design, development, advertising and marketing of its distinctively designed footwear bearing the QUARK Trade Dress, Plaintiffs' shoes embodying this trade dress are inherently distinctive and/or have become recognizable to the consuming public as Plaintiffs products.

27. The QUARK Trade Dress has achieved secondary meaning in the marketplace as an indicator of Plaintiffs as the source of shoes bearing this trade dress.

28. Upon information and belief, the Infringing Footwear are so visually similar to the QUARK shoes that the sale thereof is likely and certainly is intended to cause confusion to purchasers and deceive the public into purchasing Infringing Footwear believing it is the product of or associated with the Plaintiffs.

29. Upon information and belief, the Infringing Footwear are inferior in quality to the QUARK shoes sold under Plaintiffs' authority and the sale thereof has and will continue to damage and dilute the goodwill that Plaintiffs have developed in connection with the sale of legitimate, high-quality footwear.

30. The unlawful activities of Defendants result in irreparable harm and injury to Plaintiffs. Among other harms, these activities: deprive Plaintiffs of their absolute right to determine the manner in which its image is presented to the general public through merchandising; deceive the public as to the origin and sponsorship of the Infringing Footwear; and wrongfully trade upon Plaintiffs' reputation and exclusive rights in its trade dress.

31. By misappropriating and using the QUARK Trade Dress, Defendants have misrepresented and falsely described to the general public the origin and source of the Infringing Footwear so as to deliberately create the likelihood of confusion by ultimate purchaser and deceive the public into likely believing the Infringing Footwear is manufactured, distributed, sold, authorized by or associated with the Plaintiffs, all to Defendants' profit and Plaintiffs' irreparable damage and injury.

32. Given the similarity between the overall commercial impression of genuine QUARK Trade Dress footwear and the Infringing Footwear, the sale by Defendants of the Infringing Footwear constitutes false designations of origin and false descriptions and representations to the consuming public.

33. These acts by Defendants violate Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and have caused and will continue to cause Plaintiffs irreparable injury unless restrained by this Court. Plaintiffs have no adequate remedy at law.

**COUNT III- UNFAIR COMPETITION AND FALSE ADVERTISING**

34. Plaintiffs re-allege the allegations contained in Paragraphs 1-33 as if fully set forth herein.

35. By misappropriating and using a copy and simulation of Plaintiffs' shoe, Defendants misrepresent and falsely describe to the general public the origin and source of Defendants' Infringing Footwear and create a likelihood of confusion by ultimate purchasers as to both the source and sponsorship of such merchandise.

36. Defendants offer for sale and sale of Defendants' Infringing Footwear creates the express and implied misrepresentations that it was created, authorized or approved by Plaintiffs.

37. Defendants' aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), in that Defendants' use, in connection with goods and services, creates a false designation of origin and causes said goods to enter into interstate commerce.

38. Plaintiffs have no adequate remedy at law. Further, if Defendants' activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to its goodwill and reputation.

**COUNT IV- VIOLATION OF CUTPA**

39. Plaintiff re-alleges the allegations contained in Paragraphs 1-38 as if fully set forth herein.

40. By the acts complained of herein, Defendants have violated the provisions of Conn.Gen.Stat. §42-110g (the Connecticut Unfair Trade Practices Act).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That a preliminary and permanent injunction be entered against the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with it who receive actual notice of the order by personal service or otherwise, from any further infringement of the '095 Patent.

B. That Plaintiffs be awarded their damages, suffered by reason of the infringements by Defendants, together with prejudgment interest.

C. That the damages awarded to Plaintiffs be trebled in accordance with 35 U.S.C. §284.

D. That damages be awarded to Plaintiffs under 35 U.S.C. § 289.

E. That this is an exceptional case within the meaning of 35 U.S.C. §285, and Plaintiffs should be awarded reasonable attorneys fees, and costs.

F. Order that all footwear, signs, wrappings, catalogs, decals or other goods or printed matter bearing the QUARK Trade Dress or any colorable imitation of same and all plates, molds, matrices or other material for producing or printing such items in the possession or control of Defendants be delivered up to Plaintiffs for destruction or other disposition at Plaintiffs' sole discretion and that Defendants be ordered to notify its customers that Infringing Footwear sold by Defendants was in no way connected with Plaintiffs, that such customers should return all Infringing Footwear to Defendants for credit, that Defendants will give such credit in the form of cash refunds and that the returned Infringing Footwear shall be delivered up to Plaintiffs for destruction or other disposition at Plaintiffs sole discretion.



G. Grant Plaintiffs an equitable accounting of Defendants profits from the sale of shoes infringing the QUARK Trade Dress and award Plaintiffs judgment for its damages or Defendants profits, whichever are greater, arising from Defendants unfair competition.

H. Enter a permanent injunction enjoining Defendants and its affiliates, subsidiaries, officers, agents, employees, representatives, privies, successors, assigns and all those acting for it or on its behalf, or acting in concert with it directly or indirectly from: manufacturing, importing, distributing, offering for sale or selling footwear infringing the QUARK Trade Dress; making false descriptions or representations relating to the origin or nature of its products, or making misrepresentations that products sold by Defendants are genuine products of or are associated with or emanate from Plaintiffs.

I. That Plaintiffs be awarded any other and further relief that this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury on all counts in this Complaint.

Respectfully submitted this 7th day of April 2005.

ST. ONGE, STEWARD, JOHNSTON & REENS, LLC

A handwritten signature in black ink, appearing to read "Gene S. Winter", is written over a horizontal line.

Gene S. Winter (ct05137)

David Chen, (ct21783)

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